

**206 (2) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.FAO-5216-2015 (O&M)

Rajender Singh

....Appellant

Versus

Cholamandium MS General Insurance and another

..Respondents

2.FAO-2885-2020 (O&M)

Bir Singh alias Veer Singh

....Appellant

Versus

Rajender Singh and another

..Respondents

Date of decision: 17.11.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Nain, Advocate for the claimant
Ms. Varuna Singh, Advocate for the driver/owner
Mr. Rajneesh Malhotra, Advocate for the Insurance
Company

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

By this order two FAOs i.e FAO-5216-2015 and 2885 of 2020 shall stand disposed of.

Both the appeals are arising from a common award passed by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal').

In FAO-5216-2015, the owner of the Autorikshaw bearing registration No.HR-69B-0261 assails the finding of the Tribunal on the ground that the driver/owner did possess the driving license to drive light transport vehicles and therefore, the Insurance Company has been wrongly absolved. Reliance has been placed on the judgment passed by

the Hon'ble Supreme Court in **Mukand Dewangan Vs. Oriental Insurance Company 2017(4) RCR (Civil) 111**. Learned counsel representing the Insurance Company does not dispute the aforesaid position.

In view of the aforesaid, FAO-5216-2015 is allowed.

FAO-2885-2020 has been filed by the claimant. He suffered grievous injuries in an automobile accident. The Tribunal has already recorded a finding of fact that the accident took place due to rash and negligent driving of Rajinder Singh (owner and driver) of Autorikshaw. The claimant prays for modification of the award. As per the finding recorded by the Tribunal, the claimant was working as a Registered Medical Practitioner. The Medical Board found out that the appellant suffers permanent disability to the extent of 79% on account of severe Ataxia (Impaired coordination) with 25% intellectual impairment. The Tribunal, while observing that the appellant can resume the enjoyment of life and can do any other work, assessed the loss of future earning to the extent of 60%.

Learned counsel representing the claimant contends that once the Medical Board has given an opinion that the appellant suffers from 25% intellectual impairment on account of severe ataxia then he cannot be expected to continue with the medical practice. He, hence, contends that the Tribunal has committed an error in assessing the loss of future earning capacity only to the extent of 60%.

Per contra, learned counsel for the Insurance Company contends that the claimant can do any other work.

Having heard learned counsel for the parties at some length, this Court is of the considered opinion that the Tribunal has committed error in assessing loss of future capacity only to the extent of 60%. The claimant was a Registered Medical Practitioner. He at the time of accident was 51 years of age. Due to the intellectual impairment to the extent of 25%, he cannot be expected to continue with the practice as a medical professional. The Tribunal has erred in overlooking the fact that a medical practitioner suffering from 25% of intellectual impairment is not likely to get many patients and the treatment done by an intellectually impaired person may cause dangerous situations to arise.

As per the finding of the Tribunal, the claimant was earning Rs.2,05,745/- as per income tax return. Hence, it is held that the appellant has suffered 100% loss of future earning capacity and keeping in view his age, a multiplier of 11 is to be applied. Therefore, the amount towards loss of future income is assessed at Rs.22,63,195/- ($205745 \times 11 = 22,63,195/-$). Rest of the amount awarded by the Tribunal under the various other heads is upheld. Hence, FAO-2885-2020 is allowed. The enhanced amount of compensation i.e Rs.9,04,695/- ($22,63,195 - 13,58,500 = 9,04,695$) shall be payable to the claimant alongwith interest as awarded by the Tribunal.

All the pending miscellaneous applications, if any, are also disposed of.

17.11.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE