

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.3710 of 2012

Sunil @ Shillu

....Appellant

Versus

Ram Ditta @ Ramdutt and others

.....Respondents

FAO No.3712 of 2012

Chander Kanta and others

....Appellant

Versus

Ram Ditta @ Ram Dutt and others

.....Respondents

Date of Decision : 21.07.2022

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. B.S. Mittal, Advocate
for the appellant(s).

Ms. Meenakshi Bali, Advocate
for respondent No.4/Insurance Company.

PANKAJ JAIN, J.

Four different sets of the claimants filed different Claim Petitions under Section 166 of the Motor Vehicles Act, 1988. All have been decided vide single Award which is subject matter of present appeals.

2. Before adverting to the merits of the present appeals, it needs to be noticed that the insurer preferred appeals in all the Claim Petitions

which have been dismissed by a Coordinate Bench of this Court vide order dated 28th of March, 2012. The details of which are as under :-

Sr. No.	Case No.	Title
1	FAO No.1975 of 2012	Reliance General Ins. Co. Ltd. vs. Anand Parkash and others
2	FAO No.1976 of 2012	Reliance General Ins. Co. Ltd. vs. Sunil Kumar and others
3	FAO No.1977 of 2012	Reliance General Ins. Co. Ltd. vs. Chanderkanta and others
4	FAO No.1978 of 2012	Reliance General Ins. Co. Ltd. vs. Krishan Kumar and others

3. The present set of two appeals are at the behest of the claimants. In FAO No.3710 of 2012, the claimant/appellant namely Sunil @ Shillu seeks modification of the award praying for enhancement of the compensation amount of Rs.41,605/- awarded by the Tribunal. In FAO No.3712 of 2012, claimants/appellants are legal heirs of the deceased Nand Lal, who died in the said accident. They too seek modification of the award praying for enhancement of the compensation amount of Rs.4,51,200/-.

4. Since the instant appeals are directed against the common Award and involve common set of facts, the same are being adjudicated upon by this common judgment.

5. It has been proved on record that on 9th of March, 2009 Krishan Kumar along with Nand Lal (since deceased) and Sunil were going from Sirsa to Karamgarh on a Tempo/Three Wheeler No.HR-39-5688 which was being driven by Krishan Kumar. When they reached near Ghaggar Pull at

about 2:30 p.m., a truck bearing No.RJ-13-1G-0686, driven by respondent No.1 came from the opposite side in a rash and negligent manner and struck against the Three-wheeler. Three-wheeler was badly damaged. Krishan Kumar, Nand Lal and Sunil sustained serious and multiple injuries on their person. They were taken to Civil Hospital, Sirsa. Nand Lal succumbed to the accidental injuries. The matter was reported to the police on the basis of which formal FIR No.51 dated 9th March, 2009 under Section 279/337/304-A/427 IPC was got registered.

6. On the basis of the pleadings of the parties following issues were framed by the Tribunal :-

- “1. Whether petitioners Sunil Kumar alias Shillu son of Shri Nand Lal and Krishan Kumar alias Kishan Lal son of Shri Rishal Singh have sustained injuries; Nand Lal son of Shri Saiditta has died and Three-wheeler No.HR-39-5688 owned and possessed by Anand Parkash alias Nand Parkash petitioner suffered accidental losses in an accident caused by the respondent No.1 Ram Ditta alias Ramdutt while driving Truck No.RJ-13-IG-0686 rashly and negligently? OPP.*
- 2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom/ OPP.*
- 3. Whether the instant petitions are not maintainable in the present form and the petitioners have no cause of action and locus standi to file it? OPR.*
- 4. Whether the petitioners are estopped by their own act and conduct from filing the instant petitions? OPR.*
- 5. Whether the petitions are bad for non-joinder of necessary parties? OPR.*

6. *Whether the insured violated any of the terms and conditions of the Insurance Policy in question, if so, it effect? OPR3*
7. *Relief.”*

7. The scope of the appeals is confined to the enhancement of compensation.

8. Ld. Counsel for the appellant/claimant-Sunil @ Shillu asserts that it has been proved on record that the appellant suffered fracture of Right Humerus and suffered permanent disability to the extent of 10%. He submits that it stands proved on record that the appellant remained admitted in hospital from 9th of March, 2009 to 11th of March, 2009 and thereafter from 13th of March, 2009 to 18th of March, 2009. He has drawn attention of this Court to the statement of Dr. Pawan Kumar, Medical Officer, who appeared as PW-1 and stated that the claimant was operated for fracture of Humerus. The claimant is a Halwai by profession and owing to disability suffered by him that too in right arm, his capacity to earn has been reduced considerably. It has been further claimed that the claimant was earning Rs.20,000/- by doing work of Halwai and, thus, Tribunal ought to have applied multiplier method instead of granting lump sum compensation of Rs.20,000/-.

9. Ld. Counsel for the respondent/Insurance Company on the other hand disputes the fact of income of the claimant and submits that there is no evidence on record to prove the same. However, she is not in a

position to deny the fact that as per record the claimant suffered 10% permanent disability.

10. I have heard Ld. Counsel for the parties and have carefully perused the evidence on record.

11. In the considered opinion of this Court, Ld. Tribunal ought not have assessed the compensation payable to the claimant by guess work.

12. The appellant-Sunil @ Shillu is stated to have been working as Halwai. Thus, he needs to be assessed as a skilled labour. For the relevant period of time as per the notification issued by the State of Haryana, minimum wages payable to a skilled worker/labour have been notified to be Rs.4490/- per month. The same is taken to be Rs.5,000/- per month. The claimant has undergone surgery for the fracture suffered in the accident. He remained hospitalized from 9th of March, 2009 to 18th of March, 2009 i.e. for 10 days. Keeping in view the vocation of the appellant, the nature of his job and injury resulting in permanent disability assessed at 10%, the loss of earning capacity of the appellant is assessed to the extent of 20%. Thus, the monthly loss of income to the appellant/claimant-Sunil @ Shillu will be Rs.1000/- and yearly loss comes to $\text{Rs.1000} \times 12 = \text{Rs.12,000/-}$. Keeping in view the age of appellant/claimant Sunil @ Shillu at the time of accident i.e. 22 years, multiplier of 18 will be applicable. Resultantly, the total loss of income comes to Rs.2,16,000/-. He is also awarded Rs.10,000/- as attendant charges and Rs.10,000/- as special diet. Rs.20000/- for pain and

suffering on account of surgery. He suffered loss of income for 10-15 days, thus, he is further awarded a sum of Rs.2500/- on account of loss of income. Ld. Tribunal has rightly held that medical bills of Rs.1605/- have been proved on record.

13. In FAO No.3712 of 2012, claimants are claiming compensation on account of death of Nand Lal. The Tribunal erred in assessing the income of deceased Nand Lal as equivalent to that of a casual labour. Nand Lal was working as Halwai. Thus, keeping in view the minimum wages prescribed by the State of Harana for the relevant period of time *qua* skilled worker, the same is enhanced to Rs.5000/- per month. Keeping in view the age of the deceased i.e. 50 years, the claimants are entitled for future prospects to the tune of 25% as per the law laid down by the Supreme Court in **‘National Insurance Company Limited vs. Pranay Sethi and others’, (2017) 16 SCC 680**. They are further entitled for enhancement under the heads of funeral expenses and transportation etc. which is enhanced from Rs.10,000/- to Rs.15,000/-. Claimants are awarded Rs.15,000/- on account of Loss of Estate. Each of the claimants shall also be entitled for Rs.44,000/- on account of loss of consortium.

14. As a sequel of the aforesaid discussion, the present appeals are allowed. The impugned Award dated 2nd January, 2012 (in both the appeals) passed by the Tribunal stands modified to the extent as stated herein above.

15. The total compensation be calculated accordingly and paid to the claimant(s)/appellant(s), respectively.

16. Needless to say that any amount already paid to the claimant(s)/appellant(s) shall be set off.

17. Ordered accordingly.

July 21, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No