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

Reserved on: November 10, 2022

DATE OF PRONOUNCEMENT: **November 30, 2022**

1. **FAO-1458-2016(O&M)**

United India Insurance Co. .....Appellant
Versus
Daljit Singh and others .....Respondents

2. **FAO-2019-2016(O&M)**

Dilawar Singh .....Appellant
Versus
Paramjit Singh and others .....Respondents

3. **FAO-3119-2016(O&M)**

United India Insurance Co. .....Appellant
Versus
Dilawar Singh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Rishabh Jain, Advocate, for the appellant
(in FAO-1458-2016) and for the appellant
(in FAO-3119-2016).

Mr. B.S. Baath, Advocate,
for respondent No.2 (in FAO-1458-2016),
for respondent No.1 (in FAO—3119-2016)
and for the appellant (in FAO-2019-2016)

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HARKESH MANUJA, J.

This order of mine shall dispose of the following three appeals arising out of awards dated 17.10.2015 and 05.11.2015,pertaining to same accident,passed by learned Motor Accident Claims Tribunal, Gurdaspur (for short 'the Tribunal'):-

i) &(ii) FAO-1458-2016(O&M) titled as "**United India Insurance Co. Versus Daljit Singh and others"** and FAO-3119-2016(O&M) titled as "**United India Insurance Co. Versus Dilawar Singh and others"** have been filed by the Insurance Company against fastening liability on it;

iii) FAO-2019-2016 titled as "**Dilawar Singh Vs. Paramjit Singh and others"** has been filed by the injured/ claimant for enhancement of compensation as awarded in MACT case no. 97 of 2015.

Brief facts of the case, as taken from FAO-1458-2016, are that on 20.07.2014, Shiv Singh was travelling on motorcycle as pillion rider which was being driven by Dilawar Singh. At about 06:30 am, when they reached near gurudwara Angitha Sahib in the area of Kotli Surat Malhi, a Maruti Van bearing registration No. PB-02-BB-5008 (hereinafter referred as 'Offending Vehicle') being driven by respondent No.3/ driver came from opposite side and hit the motorcycle on which Shiv Singh and Dilawar Singh were travelling.

As a result of this accident, both of them suffered grievous injuries whereas, later on Shiv Singh succumbed to the same on 05.08.2014. Matter was reported to the police and an FIR No.42 dated22.07.2014 was registered against respondent No. 3/ driver u/s 279, 337, 338 and 427.

On account of death of Shiv Singh, a claim petition (MACT Case No. 33 of 2014) was filed by his dependents. Another claim petition (MACT Case No.97 of 2015) was filed by injured/ Dilawar Singh on account of injuries suffered by him in this accident.

In claim petition filed by the dependent of deceased Shiv Singh, learned Tribunal vide award dated 17.10.2015 granted compensation of Rs.10,41,614, whereas in claim petition filed by injured- Dilawar Singh, learned Tribunal vide award dated 05.11.2015 granted compensation of Rs.4,45,000. In both these petitions, learned Tribunal held that the accident occurred due to the rash and negligent driving of respondent No. 3/ driver and as he was holding a valid license at the time of accident, compensation was ordered to be paid by the respondents jointly and severally.

A perusal of all these appeals show that common questions of law and facts are involved which can be divided in two categories. The first question to be decided is regarding the liability i.e.who shall be held responsible for the payment of the compensation amount i.e. insurance company or the driver/owner of the vehicle. The second question is regarding the quantum of compensation awarded to the claimants. Hence, there will be two prong discussions.

A- <u>FASTENING OF LIABILITY</u>:

FAO-1458-2016(O&M) and FAO-3119-2016(O&M)

FAO-1458-2016(O&M) and FAO-3119-2016(O&M) have been filed by the insurance Company against fastening of liability on it and, therefore, qua this aspect both these appeals are being decided together.

Learned counsel for the appellant/Insurance Company contends that registration of the offending vehicle reflects that it was being used as an ambulance i.e. as a transport vehicle and a PSV endorsement was required to drive such vehicle,whereas the license held by respondent No.3- driver only pertained to LMV without there being any such endorsement. Therefore, the license was notin consonance with section 3 of Motor Vehicles Act,1988, and as the offending vehicle was being driven in violation of the terms and conditions of the Insurance policy, the same could not be burdened with the liability. In support of his arguments, he places reliance on the judgment of Hon'ble Apex Court in **"Oriental Insurance Co. Ltd. Vs Angad kol and others**", reported as 2009(11) SCC 356.

Per contra, learned counsel for the claimants contends that this issue has been put to rest by the judgment of Hon'ble Apex Court in the case of "**Mukund Dewangan vs Oriental Insurance Co. Ltd.**", reported as 2017(14) SCC 663, wherein it has been held that if a driver is holding a license to drive light motor vehicle, he is competent to drive a transport vehicle of that category without specific endorsement to drive the transport vehicle. He, therefore, contends that in view of the above mentioned judgment, it is the insurance company which shall be liable to pay the compensation.

Having heard learned counsel for the parties and gone through the paper-book,I do not find any force in the argument raised by learned counsel forthe appellant/ insurance company. The judgment relied upon by appellant/ Insurance Company has been taken into consideration by Hon'ble Apex Court in **Mukund's case** (supra) and after discussing conflicting judgments and various provisions of the Act, Hon'ble Apex Court held as below:-

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> *"……(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form……"*

As the offending vehicle was a Maruti Van/ omnibus i.e. light motorvehicle, and the driver was holding a license to drive such vehicle, therefore, in view of above judgment, he was competent to drive a transport vehicle of the said category without specific endorsement to that effect.

Apart from that, no such ground was taken by the appellant/ Insurance Company before the learned Tribunal and rather a verification report of driving license was brought on record by it in claim petition MACT case No. 97 of 2015 as Ex.-R1. Therefore, at this stage they cannot be allowed to take this plea, as the same was required to be substantiated by evidence and after affording an opportunity to the respondents/ claimants to counter the same.

Thus, **FAO Nos.1458-2016 and 3119-2016** filed by the Insurance Company on the aspect of fastening the liability are hereby dismissed and it shall be liable to pay the compensation in both the claim petitions jointly and severally.

B- <u>QUANTUM OF COMPENSATION AMOUNT</u>:

FAO-2019-2016

By way of FAO-2019-2016the injured/ claimant has claimed enhancement of the compensation.

Learned counsel for the appellant/claimant contends that despite the disability certificate brought on record as Ex-C55, learned Tribunal failed to assess the functional disability as well as, future loss of income, though as per the disability certificate, claimant/appellant suffered 50% disability in right lower limb. He also contends that after taking into consideration the fact that injured/ appellant was 22 years of age at the time of accident and has completed B.Com., learned Tribunal should have granted appropriate compensation under this head. He further contends that compensation awarded under other pecuniary as well as non-pecuniary headings are on extremely lower side and specifically on account of loss of marriage prospects, no compensation has been awarded.

On the other hand, learned counsel for Insurance Company contends that the disability caused to the injured/ appellant was not permanent and it was reviewable after 5 years,therefore, as no permanent disability was caused to the injured/ appellant, the compensation awarded by learned Tribunal has been just and proper.

I have heard learned counsel for the parties and perused the paper-book as well as the records of the case.As the injured/ appellant at the time of accident was 22 years of age; completed his graduation and probably would have pursued higher studies as claimed by him, it cannot be denied that on account of his injuries, he must have suffered loss of studies and therefore, Rs.30,000/- is granted under this head.

In the disability certificate, it is mentioned that the disability of the injured/ appellant is reviewable after 5 years, thereby meaning that there were sufficient chances of his improvement and the disability caused was only temporary. No recent disability certificate has been brought on record by the injured/ appellant to show that he still suffers from any disability. However, at the same time, this fact is also required to be taken into consideration that the injured/ appellant was approaching the age of gaining employment and probably after post graduation; he would have pursued employment opportunities and would have contributed towards the needs of his family. Therefore, in my considered opinion, for last 2 years out of 5 years, compensation should be granted for loss of future income on account of this disability.

As the injured/ appellant has completed B.Com. and was intending to pursue higher studies, it would not be too much to assume that after completing his higher studies, he would have at-least earned income equal to the minimum wages for a skilled labour in the year 2017. Hence, his notional income is taken as Rs.9,600/-

per month and in 2 years he would have earned Rs 2,30,400 (Rs. 9600 X 12 X 2). As per disability certificate, he suffered 50% temporarily disability in right lower limb on account of restricted movements in knee and hip joints. Further, due to foot drop at the right side, there was problem in coordination and he was unable to stand on his right leg. As the income of the injured/ appellant has been taken as a laborer, restriction in his movements and specifically on right side would substantially affect his efficiency and therefore, functional disability can be taken @50% and so loss of future income would be Rs. 1,15,200/- (i.e. 50% of Rs. 2,30,400).

Further, the compensation of Rs. 20,000 each is awarded under the joint heads of transportation, special diet and attendant charges as well as for “pain and sufferings”, whichis extremely on lower side as injured/ appellant remained hospitalized for almost a month i.e. from 20.07.2014 to 18.08.2014. Therefore, compensation awarded under these joint heads and for “pain and sufferings” is enhanced to Rs. 50,000/- each.Apart from that,Rs. 20,000 is being granted for ‘loss of amenities and enjoyment of life’,injured/ appellant would have been able to continue in his life with ease, had this accident not taken place.

As the injured/ appellant is near the age of getting married and in view of the disability suffered at this age, sight cannot be lost of the fact that Indian Society is very conservativewhile arranging the marriages and the physical status and the avocation ofthe prospective groom are prime considerations. In my considered opinion, on this count as well, the appellant should be adequately compensated andaccordingly Rs.1,00,000/- is granted on account of loss of prospect of marriage.

In view of the discussions made hereinabove, the injured/ appellantis entitled for following enhanced compensation, as detailed in the table:-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Medical Expenses (as awarded by Ld. Tribunal)*	*Rs.3,76,568/-*
2.	*Special Diet, Attendant Charges and Transportation Charges*	*Rs.50,000/-*
3.	*Loss of Income for 4 months (as awarded by Ld. Tribunal)*	*Rs.28,000/-*
4.	*Future loss of income*	*Rs. 1,15,200/-*
5.	*Loss of Amenities and Enjoyment of Life*	*Rs.20,000/-*
6.	*Loss of Studies*	*Rs.30,000/-*
7.	*Loss of Marriage Prospects*	*Rs.1,00,000/-*
8.	*Pain and Suffering*	*Rs.50,000/-*
	Total Compensation	*Rs.7,69,768/-*
	Amount Awarded by the Tribunal	*Rs.4,45,000/-*
	Enhanced Amount	*Rs.3,24,768/-*

The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case, therefore, rate of interest is enhanced to 9% per annum on the amount of compensation awarded to them from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

In view of the above, **FAO-2019-2016 is disposed of** in the aforesaid terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the files of other connected cases.

November 30, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*