IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO -1542 of 2016 (O&M)
Date of decision : 15.12.2022
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United India Insurance Company Limited
................Appellant

vs.

Naveen and others
.................Respondents

2) FAO -312 of 2016 (O&M)
...

Naveen
................Appellant

vs.

Yusuf and others
.................Respondents

3) FAO -1927 of 2016 (O&M)
...

United India Insurance Company Limited
................Appellant

vs.

Anand Yadav and others
.................Respondents

4) FAO -311 of 2016 (O&M)
...

Anand Yadav
................Appellant

vs.

Yusuf and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajnish Malhotra, Advocate
for the appellant-Insurance company
in FAO 1542-2016 and FAO 1927-2016 and
for respondent No.3 in FAO 312-2016 and FAO 311-2016 .

Mr. Narender Kaajla, Advocate for
Mr. Amit Singla, Advocate for the appellant
in FAO-312 and FAO 311-2016 and
for respondent No.1 in FAO 1542-2016 and FAO 1927-2016

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H. S. Madaan, J. (Oral)

By this judgment, I propose to dispose of four appeals bearing FAO No. 1542 of 2016 titled as 'United India Insurance Company Limited versus Naveen and others'; FAO No. 312 of 2016 titled as 'Naveen versus Yusuf and others'; FAO No. 1927 of 2016 titled as 'United India Insurance Company Limited versus Anand Yadav and others'; FAO No. 311 of 2016 titled as 'Anand Yadav versus Yusuf and others', arising out of the same award passed by Motor Accidents Claims Tribunal, Hisar.

Briefly stated, facts of the case are that on 24.4.2013 at about 11.00 P.M in the area of 5/6 kilas ahead of village Garhi towards Hansi while Naveen, aged about 19 years, resident of Village Rampura, Tehsil Hansi, District Hisar alongwith his friend Anand was coming from Village Badala to village Rampura on a motorcycle bearing registration No. HR-16J-5826 being driven by Naveen, a Jeep bearing registration No. UP-25F-8906, being driven in a rash and negligent manner by respondent No. 1 Yusuf came from opposite side and struck the motorcycle being driven by Naveen. Resultantly both the riders fell down and suffered multiple injuries. Both the injured - Naveen and Anand Yadav, filed separate claim petitions against the respondents- Yusuf - driver, Ikram - Owner and United India Insurance Company Limited, Hisar - insurer of Jeep bearing registration No. UP-25F-8906, craving for grant of compensation.

After contest by the respondents, both the claim petitions were disposed of vide single Award passed by Motor Accidents Claims Tribunal, Hisar on 28.10.2015. A compensation of Rs.14,03,620/- with interest at the rate of 7.5% was awarded to appellant claimant Anand Yadav whereas compensation of Rs.3,56,946/- along with interest at the rate of 7.5% per annum was awarded to Naveen payable by respondent No.3 – United India Insurance Company Limited, first. However, recovery rights were granted to the Insurance Company for the reason that respondent No.1 was authorized to drive motorcycle/LMV. However, he was driving Jeep by attaching a Thrasher and said Thrasher hit the motorcycle which was found to be in violation of terms and conditions of the Insurance Policy. Reliance was placed upon judgment ***Oriental Insurance Company Ltd. Versus Nanjappan etc. 2004(13) SCC 224*** by the Apex Court that when there is violation of terms and conditions of the Insurance Policy, the Insurance Company is held to be not liable but such company has to pay the awarded compensation and can recover the same from insured by initiating proceedings before the Executing Court. With regard to contention made by learned counsel for the Insurance Company that it should have been absolved of liability to pay compensation in totality instead of issuing a direction to it to pay the compensation amount to the claimant at first instance and then to recover it from the insured I do not find myself in agreement with learned counsel for the appellant on that point since the Tribunal in para No. 49 of the Award has dealt with that aspect in detail and has relied upon judgment by the Apex Court in ***Nanjappan's case (Supra)*** in that regard.

Feeling dissatisfied with the amount of compensation awarded to him by the Tribunal claimant Naveen has approached this Court by way of filing appeal bearing FAO-312-2016, seeking enhancement of compensation, whereas the Insurance Company being of the view that compensation awarded to Naveen is on the higher side and on account of violation of terms and conditions of the insurance policy it should have been totally absolved of liability to pay compensation has also filed a separate appeal bearing FAO 1542-2016, notice of which was given to respondents in both the appeals who have put in appearance through counsel.

Similarly, the other injured Anand Yadav, has filed an appeal, bearing FAO 311-2016 seeking enhancement of compensation, whereas respondent-Insurance company has also come up with a separate appeal bearing FAO 1927-2016, claiming recovery rights from the insured and also seeking reduction of compensation.

Firstly, taking up the appeal filed by appellant – Anand Yadav, seeking enhancement of compensation, as well as appeal filed by the Insurance company, regarding reduction in compensation payable to him. Appellant -Anand Yadav had suffered multiple injuries in a roadside accident resultantly his right lower limb had to be amputated which caused permanent disability to the extent of 75% as per certificate Ex.P1. The Tribunal considering the minimum wages fixed by State Government at relevant time had awarded compensation of Rs.9,72,000/- on account of earning capability of petitioner having got diminished.

In my view considering the age of the deceased the nature and extent of disability and other facts and circumstances this amount is inadequate and requires enhancement and the same is enhanced to Rs.11,50,000/-.

As far as medical expenses are concerned considering the facts brought on file by the claimant a sum of Rs.3,96,620/- has been granted under that Head. The Tribunal has not taken into consideration the fact that the claimant injured may have to get the artificial leg to facilitate his moments and further future medical expenses have not been granted. Considering those aspects and the medical expenses already incurred, a sum of Rs.2,35,000/- is granted towards future medical expenses and an addition of Rs.55,000/- is made towards the cost of artificial leg which the claimant may have to bear. The compensation awarded under the Head special diet to the tune of Rs.5,000/- and on account of transportation is on very lower side. Those are enhanced to Rs.32,000/- each. Similarly under the

Head of compensation for pain and suffering only small amount of Rs.25,000/- has been awarded. However, considering the nature and extent of injuries suffered by the claimant resulting in his permanent disablement and that he had to undergo surgeries for five times, the amount needs to be enhanced. The same is increased to Rs.1 lakh. The Tribunal has failed to take into view the fact that the claimant at the time of accident was teenager and on account of amputation of his right limb, his marriage prospects has been adversely effected and he needs to be compensated in that regard. Accordingly, a sum of Rs.5 lakh is awarded to him.

Accordingly, the compensation awarded to the claimant to the tune of Rs.14,03,620/- is enhanced to Rs.25 lakhs payable by all the respondents jointly and severally with interest at the rate of 7.5% from the date of filing of claim petition till actual realization. The other terms and conditions shall remain the same as directed by the Motor Accidents Claims Tribunal, Hisar, in the original award.

Accordingly, the appeal filed by Anand Yadav i.e. FAO 311-2016 is allowed.

As far as, the appeal filed by the Insurance company, is concerned, I find that no reduction in the compensation is called for since the Tribunal on proper analysis of evidence and correct interpretation of law has arrived at the compensation awarded under different Heads. It has to be taken into view that the claimant had suffered crush injury on right leg with fracture to pelvis and his right leg had been amputated below knee. He had to undergo surgeries repeatedly. Therefore, the compensation awarded is certainly not on high side rather it appears to be some what on lower side. Thus no ground is made out for reducing the compensation. Reliance was placed upon judgment in ***Nanjappan's case (Supra)*** as detailed above.

Therefore, I do not find any merit in the appeal filed by the Insurance company. Therefore FAO 1927-2016 stands dismissed accordingly.

Now coming to the appeal filed by appellant – Naveen seeking enhancement of compensation, as well as appeal filed by the respondent – Insurance company in his case, during the course of proceedings of the appeal before this Court claimant Naveen has filed an application under Order 41 Rule 27 CPC for leading additional evidence regarding his medical treatment after decision of claim petition and to prove his disability certificate mentioning permanent disability to the extent of 24% due to shortening of leg by 2 - 1⁄2 inches. Though application is being opposed by the respondents in the appeal but I find that those documents are necessary to be taken into consideration for deciding the entitlement of the claimant for compensation. To prove the disability certificate the claimant shall have to call the doctor who had examined him and then issue a medical certificate and for proving the medical bills to call some official from the shop of Chemist to prove such bills. In that way evidence is required to be adduced for proof of the documents and then in rebuttal the respondents may have to be granted an opportunity to lead evidence, if they so desire. This can be only done by the Tribunal in a proper and effective manner.

Therefore, the appeal filed by appellant claimant Naveen bearing FAO No. 312 of 2016 and consequent appeal FAO No. 1542 of 2016 are disposed of. Both the cases are remanded to Motor Accident Claims Tribunal, Hisar, for the limited purpose of granting opportunity to the claimant to lead evidence to prove disability certificate and the medical bills and thereafter to afford reasonable opportunity to the respondents to lead evidence in rebuttal, if they so desired. However, since findings on other issues are kept intact the Tribunal may not go into the same again. The parties through counsel are directed to appear before Motor Accidents Claims Tribunal, Hisar on 9.1.2023. The Tribunal shall then fix a date for recording evidence of claimant.

(H.S. Madaan)
Judge

15.12.2022
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No