IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. FAO-6029-2013(O&M)
Date of decision: 13.07.2022

UNITED INDIA INSURANCE CO. LTD **..Appellant**

Versus

PREETI BHATIA AND ORS **..Respondents**

2. FAO-6030-2013(O&M)

UNITED INDIA INSURANCE CO. LTD **..Appellant**

Versus

ASHWANI BHATIA AND ORS **..Respondents**

3. FAO-814-2014(O&M)

PREETI BHATIA **..Appellant**

Versus

KULDEEP SINGH AND ORS **..Respondents**

4. FAO-815-2014(O&M)

ASHWANI BHATIA **..Appellant**

Versus

KULDEEP SINGH AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.R. Bansal, Advocate
for the appellants (in FAO-6029 and 6030 of 2013)
for respondent No.3 (in FAO-814 and 815 of 2014)

Mr. Vivek Goyal, Advocate
for the appellants (in FAO-814 and 815 of 2014)
for respondent No.1. (in FAO No.6029 of 2013)

ANIL KSHETARPAL, J(Oral)

These four connected appeals arising from an automobile accident which took place between a car and a truck on 09.11.2012, shall stand disposed of.

Two of these appeals have been filed by the claimants, whereas, the remaining two have been filed by the Insurance Company.

As per the case of the claimants, the offending truck while coming from Indri side, dashed against the car in which the claimant was sitting by the side of her husband who was driving. They were going toward Karnal on Umri-Indri Road. The car occupied by the claimant after taking somersault two-three times, fell into the ditch and hit the eucalyptus trees standing therein. The Insurance Company while defending the case, denied the accident, whereas, neither the driver nor the owner of the truck appeared in evidence. The Motor Accident Claims Tribunal assessed the damages to the car at the rate of Rs.2,00,000/- after taking note of the fact that the total cost of the car assessed after estimated cost at the rate of Rs.2,72,346/-.

The claimant Ms. Preeti Bhatia suffered disability of 10%. She has been held entitled to Rs.4,27,913/-.

Both the vehicles were stated to be coming from opposite direction. It is the case of the claimants that the truck (offending vehicle) while coming from the opposite direction dashed on the side of the car, and the car went out of the driver's control. Then the car after taking two-three somersaults fell into the ditch and hit eucalyptus trees standing in the ditch resulting in injuries to the claimant who was sitting by the side of her husband (driver of the car). In order to prove the accident, the claimant as well as her husband appeared in evidence. Neither the owner of the truck nor the driver appeared in evidence. In fact, the driver of the truck also died.

The Insurance Company contested the case while denying the accident itself. However, the Insurance Company did not produce any evidence.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

The learned counsel representing the Insurance Company contends that from the perusal of the layout plan/site-plan produced by the Investigating Officer, it is evident that the car is shown to be lying on the one side on the *kacha* portion in a ditch, whereas, the truck is lying on the other side on the *kacha* portion of the road. He contends that if the accident had taken place in the manner as suggested, the truck and the car would have been on the one side. He submits that the truck in question was falsely implicated.

It is the case of the claimant that the truck had dashed against the car from its driver side which resulted in car going out of control and taking 2-3 somersaults. In such kind of situation, the car is likely to go to other side of the road. The Insurance Company has failed to prove the site plan prepared by the Investigating Officer during the investigation by the Police. Hence, there is no substance in the appeals filed by the Insurance Company.

As regards the appeal filed for enhancement of the compensation on account of damage to the car, the Tribunal had already assessed Rs.2,00,000/- after assessing its value at the rate of Rs.2,72,346/-. Hence, there is no scope for enhancement. The learned counsel representing the appellants contend that the Tribunal has reduced the disability from 10% to 7% while assessing compensation to the appellant without any sufficient evidence or reason. He submits that Smt. Preeti Bhatia aged about 29 years, mother of two children suffered disability of 10% as assessed by the

Medical Board. She was running a computer centre before the occurrence of incident. He submits that neither any amount has been awarded towards the transportation charges nor any amount for attendant or special diet has been awarded.

Per contra, the learned counsel representing the Insurance Company submits that the Tribunal has reduced the disability as the disability was assessed only qua one limb without assessing disability of the entire body. He further submits that the Court has wrongly enhanced the compensation by 50% on account of increase in the income due to future prospects, whereas, it should have been increased by 40%.

The claimant has remained admitted in the hospital for a period of three days. She was an Income Tax assessee. Her Income Tax assessment has been proved on the file. The Tribunal has calculated the disability by taking 7% of the Income of the claimant. In the opinion of this Court, the 7% shows physical disability. It does not necessarily reflect on the same percentage on account of loss of earning. She was not doing any manual work. She is running a computer centre being an educated woman. She suffered grievous injuries including a fracture in her left leg. Thus, the Court should have assessed the loss of income at the rate of 10%. Furthermore, no amount has been awarded towards the transportation, attendant and special diet. Hence, under the head of transportation and special diet, Rs.25,000/- is awarded.

She must have kept an attendant for a period of one year, under that head, Rs.36,000/- is awarded. On account of increase in the income due to future prospects, the maximum percentage permissible is 40% as per the

<u>National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC Online SC 1270.</u> Hence, the amount is recalculated in the following manner:-

Heads	**Amount awarded by the Motor Accidents Claims Tribunal (MACT).**	**Amount awarded by the High Court**
Annual Income	Rs.1,80,000	Rs.1,80,000/-
Loss of Income	-	-
Annual income + Future Prospects	Rs.1,80,000 + Rs.90,000 (50%) = Rs.2,70,000/-	Rs.1,80,000 + Rs.72,000 (40%) = Rs.2,52,000/-
Income (Annual) + Multiplier	Rs,2,70,000 X 17 =Rs.45,90,000/-	Rs,2,52,000 X 17 =Rs.42,84,000/-
Transportation and Special diet	-NIL-	Rs.25,000/-
For attendant	-NIL-	Rs.36,000/-
On account of permanent disability	7% of Rs.45,90,000 = Rs.3,21,000/-	10% of Rs. 42,84,000 = Rs.4,28,400/-
On account of hospitalization	Rs.4,500/-	Rs.4,500/-
Towards medical expenses	Rs.72,113/-	Rs.72,113/-
Towards pain and suffering	Rs.30,000/-	Rs.30,000/-
Total amount awarded (Award)	**Rs.4,27,913/-**	**Rs.5,96,013/-**

The enhanced amount shall be payable along with interest @ 7.5% per annum from the date of institution of the complaint till its realization.

With all these observations, the appeals are disposed of.

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

July 13th, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*