

FAO-4355-2015 (O&M)& FAO-5175-2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

**FAO No.4355 of 2015
Reserved on: 13.12.2022
Pronounced on:21.12.2022**

United India Insurance Company Ltd.

.....Appellant

vs.

Jagvinder Singh and others

.....Respondents

2.

FAO No.5175 of 2016

Jagvinder Singh

.....Appellant

vs.

Devi Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. K.S. Siwach, Advocate for
Mr. Ashish Gupta, Advocate
for the appellant in FAO-5175-2016 and respondent No.1 in
FAO- 4355-2015

Mr. Paul S. Saini, Advocate for
the appellant- Insurance Company
in FAO-4355-2015

Ms. Lipika, Advocate for Mr. R.S, Mamli,
Advocate for respondents No.2 & 3

HARKESH MANUJA, J

CM-17638-CII-2016 in FAO-5175-2016:-

This is an application seeking condonation of delay of 298 days
in filing the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, sufficient cause has been shown that due to
paucity of funds and medical condition, applicant could not file the present
appeal within the prescribed period of limitation. Thus, the same is allowed
and delay of 298 days in filing the appeal is condoned.

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Main Case:

This order of mine shall dispose of two appeals i.e.FAO No.4355 of 2015& FAO No.5175 of 2016 filed at the instance of claimant-injured and Insurance Company respectively, impugning the award dated 05.05.2015 passed by Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as “the Tribunal”).

For convenience, facts are taken from FAO No. 4355 of 2015.

Respondent No.1- injured (hereinafter referred to as “respondent No.1”), on account of having sustained injuries in a road accident on 03.12.12, filed a claim petition alleging rash and negligent driving on part of respondent No.2while driving the offending vehicle i.e. Tractor No. HR-08-F-7762. The learned Tribunal vide impugned award dated 05.05.2015 granted Rs.9,17,840/- with interest @7.5% per annum as compensation in the following manner:-

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
	<i>Pecuniary damages</i>	
1.	<i>Loss of income</i>	<i>Rs.32,400/-</i>
2.	<i>Transport to hospital, attendant charges, diet and nutrition.</i>	<i>Rs.20,000/-</i>
3.	<i>Medical expenses</i>	<i>Rs.83,940/-</i>
	<i>Non- pecuniary damages</i>	
4.	<i>Pain and sufferings (Three operations and three fractures)</i>	<i>Rs.52,500/-</i>
5.	<i>Loss of income due to functional disability of 76% in loss of earning power (5400 X 12 X 0.75 X 15)</i>	<i>Rs.7,29,000/-</i>
	<i>Total Compensation</i>	<i>Rs.9,17,840/-</i>

It is the aforesaid award, which has been impugned by way of present appeals.

Learned counsel for the appellant/ Insurance Company (hereinafter referred to as “appellant”) contends that the alleged offending vehicle was falsely involved in the accident as a result of collusion between the respondents herein, hence, appellant cannot be held liable to indemnify

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the owner. He further contends that otherwise also, since the said accident took place as a result of head-on-collision, therefore, it was a case of contributory negligence and amount of compensation ought to have been reduced to the extent of 50%.

On the other hand, learned counsel for respondent No.1, apart from denying the factum of collusion and non-involvement of offending vehicle, contends that learned Tribunal has rightly held that accident occurred due to rash and negligent driving of respondent No.2 and mere fact that there was a head-on-collision was not enough to establish any negligence on part of respondent No.1. He further contends that compensation awarded by learned Tribunal was not just and fair and thus, liable to be enhanced. He also contends that learned Tribunal awarded a meager amount of Rs.20,000/- under the head of transportation, attendant charges, diet and nutrition; besides awarding a sum of Rs.52,500/- on account of pain and sufferings and thus, the same was liable to be enhanced appropriately. Learned counsel also contends that nothing has been awarded on account of future medical expenses (for artificial limb), loss of amenities and permanent disability, therefore, adequate amount as compensation should be awarded under these heads as well.

Having heard learned counsel for the parties and gone through the paper-book as well as records of the case, I do not find any force in the arguments advanced by learned counsel for the appellant. While denying involvement of offending vehicle in the accident in question, learned counsel relied upon the fact that the FIR was registered against an unknown vehicle after two days from the accident i.e. on 05.12.2012 and registration number of the alleged offending vehicle was disclosed by respondent No.1 after a period of about 35 days i.e. on 11.01.2013.

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In the facts and circumstances of the present case, considering nature of injuries inflicted upon respondent No.1, delay of two days in registration of FIR cannot be held to be fatal. In order to substantiate his submission qua collusion between the respondents, learned counsel places reliance upon the cross-examination of respondent No.1, who testified it by way of an affidavit (annexure PW1/A), wherein he admitted respondent Nos.2 &3 (driver and owner respectively) to be his neighbours. Relevant portion of abovementioned cross-examination has been reproduced hereinafter for reference:-

“.....I came to know the registration number of the tractor on the next day of the alleged accident as the registration number was told to me by my family after enquiry. It is correct that I did not note the registration number of the alleged tractor. It is wrong to suggest that no accident took place with tractor bearing registration no. HR-08F-7762 and it also incorrect that due to collusion with respondents no.1 and 2 and tractor in question has been falsely involved just to extract the compensation from the insurance company. It is also correct that at the time of lodging FIR. I did not know the registration number of the tractor in question and name of driver not known to me. Devi son of Mahavir and Mahavir son of Shri Dani Ram-respondent no.2 is our neighbourer as his Dhani is situated at 2K.m. from our Dhani. But we have no visiting terms.....”

On a careful perusal of facts as well as the evidence available on record, I am unable to accept the reasoning put forth by learned counsel for the appellant. It is settled proposition of law that Motor Vehicles Act, 1988, (for short ‘the act’) is a beneficial legislation and as such strict proof of liability cannot be made applicable under the said Act. From a careful examination of the records, it can be reasonably traced out that initially respondent No.1 was aware about the description of the offending vehicle i.e. a tractor, but was not knowing about its registration number.

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However, after an effort being made by his family, he came to know the registration number of the offending vehicle. Furthermore, respondent No.1 throughout remained consistent in his cross-examination about involvement and negligence of the offending vehicle. Mere fact that he admitted respondent No.2 and 3 to be his neighbours was not enough to impeach his credibility. Moreover, plea of appellant regarding contributory negligence cannot be believed merely on the ground that accident occurred due to head-on-collision without there being any further evidence led in this regard so as to establish the negligence on the part of respondent No.1, hence, the same is discarded.

So far as argument of learned counsel for the appellant that respondent No.1 failed to discharge his burden of proof regarding involvement of offending vehicle is concerned, in my view, the same is devoid of merit since the burden to establish collusion was upon appellant regarding which he never even tried to summon/ call upon any witness (including respondents No.2 & 3) in order to prove the same.

On the issue of quantum, I find substance in the submissions made by learned counsel for respondent No.1. Learned Tribunal awarded a sum of Rs.20,000/- under the joint head of transportation, attendant charges, diet and nutrition. As a result of the aforesaid accident, respondent No.1 suffered permanent disability to the extent of 76% and his right leg was amputated below knee due to vessel injuries. While calculating compensation under the said head, it was required to be taken into consideration that respondent No.1, who under normal circumstances would have been a support for his family, now required assistance of another person throughout his life. Further, considering the condition of respondent No.1, it cannot be denied that expenses must have been

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incurred and will even be incurred in future on special diet, transportation and other ancillary activities. Therefore, Rs.1 Lakh is awarded under the joint head of transportation, attendant charges, diet and nutrition.

Further, a meager amount of Rs.52,500/- has been awarded under the head of “pain and suffering”. However, it also needs to be considered that a serious injury not only permanently imposes physical limitations; but also inflicts deep mental agony upon the victim. The victim’s trauma of living in the world different from the one he or she was born into, should always be kept in mind while adjudicating such claim petitions. Therefore, considering the fact that as a result of said accident, right leg of respondent No.1 got amputated and he remained admitted in the hospital from 04.12.2012 to 28.12.2012 due to the said injuries, compensation awarded under the head of pain and suffering is to be enhanced to Rs.2 lakh.

Apart from that, since respondent No.1 would have been able to continue his life with ease, had this accident not taken place, therefore, Rs. 50,000 is being granted for ‘loss of amenities and enjoyment of life’. Further, considering his permanent disability to the extent of 76%, a sum of Rs.1,50,000/- is being awarded on this account.

Moreover, considering the fact that respondent No.1 might have to change his artificial leg from time to time, I deem it appropriate to award an amount of Rs.1,00,000/- under the head of medical cost and incidental expenses to include future medical expenses.

In view of what has been recorded hereinabove, respondent No.1 shall be entitled for the grant of following compensation:-

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	<i>Loss of income</i>	<i>Rs.32,400/-</i>
2.	<i>Transportation, attendant charges, diet and nutrition.</i>	<i>Rs.1,00,000/-</i>

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3.	Medical expenses	Rs.83,940/-
4.	Pain and sufferings (Three operations and three fractures)	Rs.2,00,000/-
5.	Loss of income due to functional disability of 76% in loss of earning power (5400 X 12 X 0.75 X 15)	Rs.7,29,000/-
6.	Loss of amenities & enjoyment of life	Rs.50,000/-
7.	Permanent disability	Rs.1,50,000/-
8.	Future medical expenses	Rs.1,00,000/-
	Total Compensation	Rs.14,45,340/-
	Amount Awarded by the Tribunal	Rs.9,17,840/-
	Enhanced Amount	Rs.5,27,500/-

The grant of interest @ 7.5% per annum is not just in view of facts and circumstances of the present case; rather as per the observations made by the Hon’ble Supreme Court in case of “**Smt. Supe Dei and others Vs. National Insurance Company Limited and other**”, reported as 2009(4) SCC 513, approved in a subsequent judgment titled as “**Puttamma and others Vs. K.L.Narayana Reddy and another**”, reported as 2014 (1) RCR (Civil) 443, interest needs to be enhanced to 9% per annum on the amount of compensation awarded to the claimants 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.

Consequently, the present appeals are disposed of in the above terms.

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

(HARKESH MANUJA)

December 21, 2022
Sanjay

JUDGE

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