IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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(1) **FAO-675-2018 (O&M)**
Date of decision: 11.10.2022

Anita .....Appellant

Versus

Mohammad Azam and another .....Respondents

(2) **FAO-6872-2017 (O&M)**

Magma HDI, General Insurance Company Limited .....Appellant

Versus

Anita and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Ms. Amrita Nagpal, Advocate
for the appellant in FAO-675-2018 and
for respondent No.1 in FAO-6872-2017.

Mr. Vishal Aggarwal, Advocate
for the appellant in FAO-6872-2017 and
for respondent No.2 in FAO-675-2018.

Mr. Sukhdeep Singh, Advocate
for respondent No.1 in FAO-675-2018 and
for respondent No.2 in FAO-6872-2017.

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MANJARI NEHRU KAUL, J. (ORAL)

The above referred appeals are being disposed of by this common order as they arise out of the same accident and impugned award dated 24.08.2017 passed by learned Motor Accidents Claims Tribunal, Karnal (for short, 'the Tribunal'). FAO-675-2018 has been preferred by the injured appellant/claimant for enhancement of the compensation whereas FAO-6872-2017 has been preferred by the insurance company for setting aside of the impugned award.

For the sake of convenience, the facts are being taken from FAO-675-2018.

As per the pleaded case of the claimant in her claim petition, on 19.10.2015, the claimant and her husband Harbir Singh were going towards Karnal on motorcycle bearing registration No.UP-12H-2976. They were hit by tractor trolley bearing registration No.UK-8AD-3519 (hereinafter referred to as 'the offending vehicle') which was being driven by its driver in a rash and negligent manner. On account of the collision between the above two vehicles, the claimant and her husband Harbir Singh sustained multiple grievous injuries. The claimant was hospitalized and operated upon. As a result of the injury sustained by the claimant on her right femur, in the accident in question, she suffered permanent disability to the extent of 8%.

On the basis of the material and other evidence led, the Tribunal awarded the following compensation to the claimant:-

Sr. No.	Head	Amount
1.	Medical bills	Rs.62,089/-
2.	Loss of future earnings on account of permanent disability	Rs.16,000/-
3.	Physical and mental pain suffered	Rs.5,000/-
4.	Special diet	Rs.3,000/-
5.	Transportation charges	Rs.3,000/-
6.	Attendant charges	Rs.3,000/-
	Total compensation	Rs.92,089/-

Learned counsel appearing for the appellant claimant submits that the compensation awarded by the Tribunal was meagre and required to be reassessed and enhanced. She further submits that on account of the permanent disability suffered by the claimant, she was unable to work properly and faced difficulty in carrying out even routine activities. Learned counsel has, thus, urged that on account of the hardship faced by the claimant due to the permanent disability suffered by her, compensation under the heads of loss of future income, pain and suffering, special diet and transportation charges be enhanced.

On the other hand, learned counsel appearing for the insurance company submits that the trolley attached to the tractor was not insured and it was being used for commercial purposes rather than the agriculture purposes, as it was carrying paddy at the time of accident in question. It has been further vehemently argued that the Tribunal had failed to appreciate that since the offending vehicle was being used as a goods carriage vehicle for carrying paddy, it was evident that the driver of the offending vehicle was not holding a valid driving licence as it lacked the requisite endorsement of a transport vehicle. Learned counsel also argues that in the aforesaid circumstances, liability could not have been fixed on the insurance company, as had been erroneously done by the Tribunal. It has also been vehemently urged that even otherwise the compensation assessed was not in consonance with the settled law, being on the higher side, and thus was liable to be modified.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court, however, finds no merit in the submissions made by the learned counsel for the insurance company that the trolley attached to the tractor was being used for commercial purpose. Material on record shows that the offending vehicle was carrying paddy at the time of accident in question and hence it can be clearly discerned that the vehicle was being used for agricultural purposes.

This Court also finds no force in the contentions of the learned counsel for the insurance company that the driving licence of the driver was invalid as it lacked the requisite endorsement of a transport vehicle. It is settled law that when a driver is holding a licence to drive Light Motor Vehicle (LMV), no specific endorsement would be required to drive the transport vehicle of the same category. Ex.R5 shows that the driver was holding a valid driving licence at the time of the accident in question and still further, Ex.R3 clearly reveals that the offending vehicle was duly insured with the insurance company. In the light of the above, the insurance company cannot be absolved of its liability to satisfy the claim of the claimants.

Therefore, the insurance company has been rightly held liable to pay the amount of compensation to the claimant.

This Court, however, is of the opinion that on account of the permanent disability suffered by the injured claimant on her right femur, she requires to be adequately compensated. Accordingly, the amount of compensation is reassessed as follows:-

Sr. No.	**Head**	**Amount**
1.	Medical bills	Rs.62,089/-
2.	Loss of future earnings on account of permanent disability	Rs.36,000/-
3.	Physical and mental pain suffered	Rs.35,000/-
4.	Special diet	Rs.7,000/-
5.	Transportation charges	Rs.7,000/-
6.	Attendant charges	Rs.10,000/-
	Total compensation	Rs.1,57,089/- (rounded off to Rs.1,57,100/-)

Therefore, the claimant is held entitled to a total sum of Rs.1,57,100/- along with interest @ 8% per annum from the date of filing of the claim petition till realization.

The appeal filed by the claimant i.e. FAO-675-2018 stands disposed of in the above terms whereas the appeal filed by the insurance company i.e. FAO-6872-2017 stands dismissed.

11.10.2022 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

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