IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:- 18.07.2023
Pronounced on:- 02.08.2023

(1) FAO-6143-2013 (O&M)

United India Insurance Company Limited

...Appellant

Versus

Mahesh Kumar and Others

...Respondents

(2) FAO-6318-2013

Mahesh Kumar

... Appellant

Versus

Raj Kumar and Others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. D.P. Gupta, Advocate
for the appellant – Insurance Company in FAO-6143-2013
and for respondent No. 3 in FAO-6318-2013.

Mr. Sanjiv Gupta, Advocate
for appellant – claimant in FAO-6318-2013 and
for respondent No. 1 in FAO-6143-2013.

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<u>AMARJOT BHATTI, J.</u>

1. The appellant – United India Insurance Company Ltd. in FAO-6143-2013 has filed the present appeal for setting aside the impugned award dated 10.09.2013 passed by learned Motor Accident Claims Tribunal, Sirsa, whereas, the appellant/claimant – Mahesh Kumar in FAO-6318-2013 has filed the present appeal for modification and

enhancement of compensation awarded by the Tribunal as referred above. Both these appeals have arisen out of the same award dated 10.09.2013, therefore, the appeals are taken up together for disposal.

2. The facts of the case are that Mahesh Kumar filed claim petition under Section 166 of Motor Vehicles Act, 1988 for grant of compensation of Rs. 15 lacs alongwith interest on account of injuries suffered by him in a Motor Vehicular accident. It is submitted that at the time of accident, he was 45 years old and was doing private job and was in the business of trading as part time job and earning Rs. 20,000/- per month. On the fateful day of 31.10.2011, at about 02:30 P.M. he was going on his motorcycle bearing No. HR-24-N-9860 on Dabwali road and when he reached near Model Senior Secondary School, Grain Market, Sirsa, a Tractor bearing No. HR-42-3075 alongwith Trolley was going ahead of him. The claimant/petitioner blew horn to take side and was in the process of crossing the Tractor Trolley, when the respondent No. 1 suddenly turned the Tractor towards the right hand side and hit the Tractor into his motorcycle. As a result, the motorcycle fell down and the tyre of trolley ran over his legs. The claimant/petitioner suffered serious injuries in this accident due to rash and negligent driving of respondent No. 1. Vinod Kumar – brother of the claimant/petitioner was also coming behind him. He took him to Civil Hospital Sirsa by arranging a vehicle. He was shifted to Jindal Hospital, Hisar. Regarding this accident, FIR No. 846 dated 05.11.2011 was registered under Section 279, 337 of the Indian Penal Code against the driver of offending Tractor Trolley i.e. respondent No. 1. He was medically examined at General Hospital, Sirsa and thereafter, he took treatment from Jindal Hospital, Hisar from 31.10.2011 to 11.11.2011.

He had suffered fractures and he was operated upon. He also took treatment from Apex Hospital, Sirsa from 14.11.2011 to 15.11.2011. He had spent Rs. 3 lacs on his treatment and he further required Rs. 2 lacs for future treatment. The said Tractor Trolley was owned by respondent No. 2 and it was insured by United India Insurance Company Limited – respondent No. 3. The claimant/petitioner also suffered permanent disability. Now, he is unable to do his job. He suffered pain and agony. He has claimed compensation of Rs. 15 lacs alongwith interest @18% per annum from the date of accident till realization from the respondents.

3. The claim petition was contested by respondents No. 1 and 2 i.e. Raj Kumar – Driver and Mahender Kumar – owner of the Tractor Trolley bearing No. HR 42-3075. They took preliminary objections and denied all the facts stated by the claimant/petitioner. It was alleged that claimant may be put to strict proof of the facts stated in the claim petition. A false FIR No. 846 dated 05.11.2011 has been registered against respondent No. 1 at the instance of claimant/petitioner and his relatives. They also connived with the police to lodge this false FIR in order to grab compensation. In fact, no accident took place with the Tractor Trolley in question. The claim of the claimant/petitioner regarding compensation is also denied. In case, the answering respondents are held responsible to pay the compensation then respondent No. 3 United India Insurance Company be directed to indemnify the answering respondents.

4. The Insurance Company – respondent No. 3 also filed separate written reply taking the stand that claim petition is not maintainable in the present form. It is alleged that mere fact that FIR has been registered or a challan has been presented under Section 173 Cr.P.C.

does not establish that the accident took place due to rash and negligent driving of respondent No. 1. In fact, the accident took place due to rash and negligent driving of the claimant/petitioner himself who suffered alleged injuries when the tyre of Trolley ran over his legs. The claimant/petitioner failed to abide by the rules and regulations of the road regarding overtaking a vehicle. The FIR has been registered at the instance of claimant/petitioner against respondent No. 1, as a result of sympathy by the police with the injured. The other preliminary objections are also taken regarding the Driving License of respondent No. 1 by alleging that he was not holding valid effective Driving License at the time of said accident for driving the Tractor Trolley which is a goods carrying vehicle. It was being driven in violation of the terms and conditions of insurance policy. The petition is bad for mis-joinder or non-joinder of necessary parties. The owner and insurer of motorcycle was not impleaded as party to the said petition. No information was given to the insurance company about the said accident. Without admitting the liability, it was alleged that in case any liability is fastened on the shoulders of answering respondent, then claimant/petitioner is not entitled for the expenses of treatment allegedly taken from the private hospital, especially when competent doctors are available in Government Hospitals, Medical Colleges. On merits, all the facts were denied for want to knowledge with the prayer that the claimant/petitioner may be put to strict proof of his age, income and regarding the claim for compensation. It was prayed that the claim petition filed by the petitioner may kindly be dismissed qua the answering respondent – Insurance Company.

5. From the pleadings of the parties, following issues were

framed by the Tribunal on 25.10.2012:-

(1) Whether petitioner Mahesh Kumar has suffered injuries in an accident caused as a result of the use of a tractor bearing registration No. HR-42-3075 being driven by the respondent No. 1 in a rash and negligent manner? If so, its effect? OPP

(2) If issue No. 1 is proved, to what amount of compensation the petitioner is entitled to and from whom? OPP

(3) Whether the instant petition is not maintainable in the present form and the petitioner has no cause of action to file the instant petition? OPR

(4) Whether respondent No. 1 was not having a valid and effective driving license at the time of accident in question and the insured has violated any terms and condition of the insurance policy in question? If so, its effect? OPR-3

(5) Relief.

6. In order to prove the claim petition, the learned counsel for claimant himself stepped into the witness box as PW-4. He also examined Dr. Y.K. Chaudhary as PW-1, Shri Ram, Criminal Ahlmad of Chief Judicial Magistrate Court, Sirsa as PW-2 and Dr. Pawan Kumar as PW-3.

7. In order to rebut the case of the claimant, the learned counsel for respondents No. 1 and 2 has tendered document i.e. photo copy of insurance cover note Mark RX and learned counsel for respondent No. 3 tendered attested copy of insurance policy Ex.RY.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimant was allowed by passing award dated 10.09.2013 vide which the compensation was awarded to the tune of Rs. 1,99,000/- alongwith interest @7½% per annum from the date of filing of claim petition till realization, as detailed therein by holding the liability of respondents as joint and several.

Feeling aggrieved of this award, the appeal bearing FAO No.

6143 of 2013 has been preferred by appellant/United India Insurance Company Limited, whereas, the appeal bearing FAO No. 6318 of 2013 has been preferred by the appellant/claimant Mahesh Kumar.

9. The learned counsel for the Insurance Company firstly argued regarding the findings given by the learned Motor Accident Claims Tribunal regarding Issue No. 4 where it was held that respondent No. 1 was holding a valid Driving License to drive a Tractor Trolley. It is pointed out that the Driving License of Raj Kumar is Ex.R-1 vide which he was permitted to drive Tractor, Motorcycle, Scooter, Jeep. It was issued on 06.04.2010 and it was valid for driving Non Tansport Vehicle up to 05.04.2015. There is no endorsement in the said Driving License as required under Section 3 of Motor Vehicle Act to drive a transport vehicle. Therefore, Raj Kumar, the said driver was not competent to drive the Tractor Trolley. It was further argued that even if the weight of the Tractor and Trolley are taken together being less than 7500 Kg, still the vehicle would remain a Transport vehicle requiring necessary endorsement in the Driving License. It is pointed out that the learned Motor Accident Claims Tribunal failed to appreciate that when a Trolley is attached with a Tractor this one compact vehicle will become a Transport vehicle as defined in the Motor Vehicle Act. Therefore, there was breach of the terms and conditions of insurance policy on the part of owner as well as driver of the vehicle. Therefore, no liability could be fastened on the appellant/insurance company. Atleast the insurance company may be granted recovery rights from the insured.

Secondly, the learned counsel for insurance company pointed out that the claimant/petitioner had failed to prove rash and negligent driving on the part of driver of the said offending Tractor Trolley. It was the claimant/petitioner who was overtaking a Tractor Trolley and it was incumbent upon him to take proper care while overtaking any vehicle. Therefore, the accident had taken place because of his own negligence, therefore, he could not claim compensation for the injuries suffered by him in the said accident. The learned counsel for the insurance company has also referred to the application under Order 41 Rule 27 of CPC filed by the insurance company seeking permission to produce the copy of judgment in Criminal Case No. 54/1 of 23.01.2012 decided on 02.01.2014 (Annexure A-1) vide which Raj Kumar was acquitted of the charge framed against him under Section 279/337 of IPC in the aforesaid FIR. In that case, Mahesh Kumar the claimant in this case was examined as PW-2 and he did not identify the driver of the offending Tractor Trolley. Therefore, the claimant/petitioner Mahesh Kumar has failed to establish his own version when he appeared in the Court of learned Chief Judicial Magistrate, Sirsa. In the light of this neither accident nor rash and negligent driving on the part of Raj Kumar is proved on record.

The learned counsel for the insurance company further raised the issue that the treatment record relied upon by the claimant/petitioner is also doubtful. He referred to the testimony of Dr. Y.K. Chaudhary PW-1, the Orthopedic Surgeon, Sirsa who claimed that the claimant Mahesh Kumar had come to his hospital on 04.11.2011. He was having approximately 5 weeks old case of fracture of pelvis and fracture of shaft femur left side. As per the version of claimant, the accident took place on 31.10.2011, therefore, it is possible that the claimant might had suffered fracture prior to the said accident. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal regarding medical treatment as well as on account of disability is not justified. On these grounds, the learned counsel for the insurance company has assailed the award dated 10.09.2013 vide which compensation has been awarded in favour of the claimant Mahesh Kumar.

10. On the other hand, learned counsel for the claimant Mahesh Kumar argued that the facts of the case and the evidence on record were rightly appreciated by the learned Motor Accident Claims Tribunal regarding Issues No. 1 and 4. There is sufficient evidence on record to establish the accident as well as rash and negligent driving on the part of respondent No. 1 in which Mahesh Kumar had suffered serious injuries. In fact the compensation awarded by the learned Motor Accident Claims Tribunal is towards the lower side. The material facts to grant the compensation have been ignored. The Tribunal has granted meager compensation regarding the disability suffered by him, without considering his income and age. Similarly, meager compensation has been granted regarding pain and suffering and for the special diet and transportation. He remained under treatment for a long duration in different hospitals. He was unable to do his routine work as well as his job. Even then no compensation has been granted for the loss of income. No amount of compensation has been awarded regarding future medical treatment. Therefore, it is prayed that the claimant/petitioner Mahesh Kumar is entitled to receive enhanced amount of compensation and accordingly, the award dated 10.09.2013 passed by learned Motor Accident Claims Tribunal, Sirsa may kindly be modified.

11. I have considered the arguments advanced by learned counsel

for both the sides and have perused the record carefully. The learned counsel for the insurance company has firstly assailed the findings of learned Motor Accident Claims Tribunal pertaining to Issue No. 4. So far as the documents are concerned, the same are not disputed. Admittedly, Raj Kumar the driver was holding Driving License bearing No. 149044/SSA dated 06.04.2010 valid up to 05.04.2015 for Tractor, Motorcycle, Scooter, Car and Jeep only, which is Ex.R-1. This document was produced on record during the cross-examination of Shri Ram, Ahlmad Criminal recorded as PW-2. Therefore, the driver was holding a Driving License for driving a Tractor. The learned counsel for the insurance company has tried to raise the issue that this Tractor was attached with a Trolley, therefore, there should have been an endorsement in the Driving License for driving a goods carrying vehicle. The learned Motor Accident Claims Tribunal while dealing with this proposition has rightly considered the endorsement in the Registration Certificate, according to which Unladen Weight is mentioned as 2250 Kgs. Section 2(21) of Motor Vehicles Act, 1988 defines "light motor vehicle" as under :-

> *"a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 Kgs."*

Therefore, it is rightly pointed out that even if the Unladen Weight of Trolley is also considered, it will not exceed 7500 Kgs and the said Tractor Trolley was rightly considered as light motor vehicle. Moreover, the Tractor Trolley is used for agricultural purposes. There is nothing on record to show that it was being used for any other purpose. There is copy of insurance policy Mark RX, according to which the

Tractor Trolley was insured for the period 19.10.2011 to 18.10.2012, whereas the accident had taken place on 31.10.2011. The learned Motor Accident Claims Tribunal also considered that the owner had paid premium for the Tractor as well as Trolley at the time of getting the insurance policy. Therefore, the insurance company cannot escape its liability. All the facts were duly considered by the Motor Accident Claims Tribunal and the finding given by the Tribunal pertaining to Issue No. 4 does not require any interference.

12. The learned counsel for the insurance company also raised the issue that the accident had taken place due to rash and negligent driving of the claimant himself, therefore, he has no right to claim compensation from the driver and owner of the Tractor Trolley nor the insurance company can be held liable to pay the same to the claimant. It is pointed out that on the basis of registration of FIR or presentation of challan, no presumption can be raised regarding the accident having caused due to rash and negligent driving of Raj Kumar – Driver. I have considered the stand taken by learned Counsel for insurance company. In this case, the accident and the manner in which it took place is proved on record by examining the claimant himself as PW4. He categorically stated that while overtaking the offending Tractor Trolley, he had applied horn for giving a side and thereafter, when he started overtaking the Tractor Trolley, it suddenly turned towards its right side and hit the motorcycle, as a result of which he fell down and the tyre of the Trolley ran over his both legs. The learned counsel for the claimant before the learned Motor Accident Claims Tribunal further examined Shri Ram, Ahlmad Criminal as PW-2 who has proved the copy of FIR Ex.PW2/A, copy of challan report Ex.PW2/B, the

memo Ex.PW2/E vide which the Tractor Trolley was taken into police possession as well as the arrest memo of the driver of said Tractor Trolley Ex.PW2/C. Therefore, apart from the testimony of Mahesh Kumar PW-4, the aforesaid documents are also proved on record.

The learned counsel for the insurance company during the pendency of present appeal also filed application under Order 41 Rule 27 of CPC in which he has placed on record copy of judgment in Crl. Case No. 54/1 of 23.01.2012 decided on 02.01.2014 in case titled "State Versus Raj Kumar" in FIR No. 846 dated 05.11.2011 under Section 279/337 of IPC, registered at Police Station City Sirsa, where the driver of the offending Tractor Trolley has been acquitted of the charge framed against him as the prosecution had failed to prove guilt of accused beyond the shadows of reasonable doubt. I have considered the aforesaid judgment of acquittal decided in favour of driver Raj Kumar. In para No. 9 of the judgment, it is mentioned that Mahesh Kumar as PW-2 in that case explained the manner in which the accident took place but did not identify the accused Raj Kumar as driver of the Tractor Trolley. The prosecution closed the evidence and after appreciation of the evidence on record acquitted Raj Kumar by giving him the benefit of doubt. Firstly, the statement of Mahesh Kumar recorded in the aforesaid criminal case is not proved on record nor Mahesh Kumar as PW-4 was confronted with the said statement. It is settled proposition of law that the judgment passed in a criminal case is not binding in a civil case. The criteria for the decision of civil case and criminal case is altogether different. In civil case, the findings are recorded on the principle of preponderance of probabilities, whereas, in the criminal case, the prosecution is to prove the guilt of accused beyond the shadows of reasonable doubt. Therefore, the judgment of acquittal in favour of Raj Kumar – driver in the aforesaid criminal case will not help the case of insurance company. The testimony of Mahesh Kumar as PW4 recorded before the learned Motor Accident Claims Tribunal cannot be brushed aside. Thus taking into account the testimony of Mahesh Kumar PW4, learned Motor Accident Claims Tribunal rightly concluded that the accident as well as rash and negligent driving on the part of Raj Kumar while driving the Tractor Trolley bearing No. HR-42-3075 was duly proved on record. The findings given by the Tribunal pertaining to Issue No. 1 are accordingly, upheld.

13. The learned counsel for the insurance company also raised the issue that there is no convincing evidence on record to establish that the claimant had suffered injuries, fracture of pelvis bone or left side shaft femur bone, as a result of the accident which allegedly took place on 31.10.2011. He has relied upon the testimony of Dr. Y.K. Chaudhary, Orthopedic Surgeon, Sirsa PW-1 and on that basis argued that the claimant is not entitled to claim compensation regarding medical treatment or the alleged disability suffered by him. On the other hand, the claimant Mahesh Kumar has claimed enhanced amount of compensation.

I have considered the arguments and have gone through the record. Mahesh Kumar PW-4 during his statement has tendered the medical bills Ex.C1 to Ex.C68, medical report and various tests Ex.C69 to Ex.C89 and the MLR prepared from General Hospital, Sirsa dated 31.10.2011 as Ex.C90. As per the aforesaid MLR, Mahesh Kumar arrived in the hospital on 31.10.2011 at 03:00 P.M. and he was examined on 31.10.2011 at 03:10 P.M., whereas, the accident had taken place on the same day at about 02:30 P.M. Therefore, the claimant was brought in the hospital for treatment within half an hour. In the MLR, there is reference of two injuries over left thigh region, right knee and thigh for which he was advised X-Ray. There is final bill of Jindal Hospital, Hisar Ex.C59, according to which he took treatment from Jindal Hospital, Hisar from 31.10.2011 to 11.11.2011. He also took treatment from Apex Hospital, Sirsa from 14.11.2011 to 15.11.2011. Therefore, one line in the statement of Dr. Y.K. Chaudhary PW1 that it was approximately five weeks old case of fracture of pelvis and fracture shaft femur left cannot brush aside the MLR Ex.C90 which was prepared promptly as well as the final bill of Jindal Hospital, Hisar, according to which the treatment had started on the same day when the accident had taken place. Therefore, the arguments advanced by the learned counsel for the insurance company does not hold any ground.

14. So far as the quantum of compensation is concerned, the learned Motor Accident Claims Tribunal has granted Rs. 1,28,904/- rounded off as Rs. 1,29,000/- towards the medical bills, Rs. 20,000/- on account of pain and sufferings, Rs. 10,000/- for diet and transportation charges and Rs. 40,000/- for 20% permanent disability, total compensation of Rs. 1,99,000/- alongwith interest as mentioned in the impugned award. It cannot be ignored that Mahesh Kumar took treatment from two hospitals i.e. Jindal Hospital, Hisar and Apex Hospital, Sirsa. The initial MLR was prepared from General Hospital, Sirsa. He was operated upon. The period of medical treatment and the time period consumed for recovery has not been considered while granting the compensation under various heads. As per the disability certificate proved on record by Dr. Pawan Kumar,

Medical Officer, posted at CMO Office, Fatehabad PW3, the claimant had suffered 20% disability falling under the category of physical impairment on account of fractures suffered by him. The disability certificate is Ex.PW3/A. The claimant Mahesh Kumar as PW4 during his cross-examination could not produce any record regarding his profession and income. He claimed that he was filing Income Tax Returns for the last 15-20 years but no such Income Tax Return has been placed on record to establish his income. Therefore, the income of Mahesh Kumar PW4 is to be assumed by way of guess work. In order to assess the quantum of compensation on account of permanent disability, I put reliance upon the authority cited in ***2011(2) R.C.R. (Civil) 101***, ***Supreme Court of India***, in case titled "**Raj Kumar Versus Ajay Kumar and anothers**". In the claim application, it is alleged that he was 45 years old, earning Rs. 20,000/- per month by doing private job and business of trading as part time job. The accident took place on 31.10.2011. In the absence of any document proof regarding income, his monthly income is assumed as Rs. 6,000/-, annual income Rs. 72,000/-. Considering the nature of profession of the claimant, the functional disability is taken as 12% and considering his age as 45 years, multiplier of 14 is applied in this case and the amount of compensation on account of permanent disability comes out to be Rs. 1,20,960/-, rounded off to Rs. 1,21,000/-. The claimant must have remained bed ridden for considerable time period. Even after discharge from hospital, it would have not been possible for him to start his work as per his previous routine. He took treatment from different hospitals. However, there is no evidence on record to show that the claimant had taken physiotherapy during treatment nor there is any evidence regarding expenditure of future treatment during this period. Therefore, considering all the aspects of the case, the claimant Mahesh Kumar (appellant in FAO-6318-2013) is granted enhanced amount of compensation as under :-

SR. No.	**Head**	**Enhanced amount of compensation in FAO-6318-2013 (Rs.)**	**Awarded by Tribunal (Rs.)**
1.	Medical expenditure	1,29,000/-	1,29,000/-
2.	Compensation on account of permanent disability	1,21,000/-	40,000/-
3.	Pain and suffering	50,000/-	20,000/-
4.	Loss of income for a period of 3 months	6,000/- X 3 = 18,000/-	NIL
5.	Special diet and Transportation	10,000/- + 10,000/- = 20,000/-	10,000/-
	TOTAL	3,38,000/-	1,99,000/-
Difference of compensation Rs. 1,39,000/- (Rs. 3,38,000/- - Rs. 1,99,000/-)			

Therefore, considering these facts, the claimant is entitled to receive difference of compensation by way of enhancement to the tune of Rs. 1,39,000/- alongwith interest at the rate of 6% per annum from the date of filing of appeal bearing FAO No. 6318 of 2013, filed by claimant Mahesh Kumar till realization of the amount from the respondents No. 1 to 3 joint and several as per the terms of impugned award dated 10.09.2013.

Consequently, the appeal (FAO-6143-2013) filed by the appellant/insurance company is dismissed in toto. Whereas, the appeal (FAO-6318-2013) filed by the appellant/claimant Mahesh Kumar is allowed.

The copy of record received from the Tribunal be sent back to the concerned quarter.

Pending application(s), if any, also stand disposed off.

Photocopy of this order be placed on the connected file.

02.08.2023 **(AMARJOT BHATTI)**
lalit **JUDGE**

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