IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-6449-2016 (O&M)
Date of Pronouncement: 03.03.2023

Oriental Insurance Company Ltd.

...Appellant

Versus

Harshdeep Singh and others

...Respondents

(2) FAO-6766-2016 (O&M)

Harshdeep Singh

...Appellant

Versus

Naveen Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Lalit Garg, Advocate for the appellant in FAO-6449-2016 and for respondent No.3 in FAO-6766-2016.

Mr. Ashwani Arora, Advocate with Mr. Ashish Singh, Advocate for the appellant in FAO-6766-2016 and for respondent No.1 in FAO-6449-2016.

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H.S. MADAAN, J.

This order of mine shall dispose of above mentioned two appeals arising out of the same award.

Petitioner/claimant Master Harshdeep Singh, aged about 17 years had unfortunately suffered injuries in a motor vehicular

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accident which took place on 12.01.2015 at about 8.17 pm in the area near light point of Sector 44/45/50/51 statedly on account of rash and negligent driving of Tata Indigo car bearing registration No.CH-01-AW-7521 (for brevity 'offending car') by respondent No.1 Naveen Kumar, as such Master Harshdeep Singh minor through his father and natural guardian Balvinder Singh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Naveen Kumar-driver, Jang Singh owner and Oriental Insurance Company Ltd., Chandigarh-insurer of the offending car.

2. On getting notice, respondents No.1 and 3 appeared and filed written statements contesting the claim petition whereas respondent No.2 did not appear despite service, as such, was proceeded against ex parte.

3. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal') vide award dated 27.07.2016 allowed the claim petition and awarded compensation of Rs.18,17,610/- with interest @ 7.5% p.a from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several of all the three respondents. The details of such compensation worked out are as follows:-

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Sr. No.	Category	Amount
1	On account of loss of earnings	Rs.8,10,000/-
2	On account of medical expenses	Rs.9,47,610/-
3	On account of loss of comforts throughout life, special diet, transportation, pain and sufferings, attendants, mental agony etc.	Rs.60,000/-(on guess work)
	Total	**Rs.18,17,610/-**

4. Feeling aggrieved, respondent No.3 insurance company has approached this Court by way of filing an appeal, notice of which was given to the respondents, however, only respondent No.1/claimant has put in appearance through counsel.

5. The claimant has also filed separate appeal seeking enhancement of compensation, notice of which has been given respondent No.3-insurance company and counsel in the connected appeal has accepted notice on its behalf.

6. I have heard learned counsel for the parties besides going through the record.

7. The limited question to be seen in this case is whether an amount of Rs.9,47,610/- received by the claimant under mediclaim policy is to be deducted from the compensation payable to the petitioner/claimant. As per counsel representing the petitioner/claimant, this amount is not to be adjusted, whereas, submission made by learned counsel for the appellant-insurance company is otherwise. Both the counsel have placed reliance upon various judgments in support of their respective case.

8. However, I find that a single judge of this Court in bunch

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of appeals (04 in number) having main FAO bearing No.4755-2016 decided on 17.08.2018 had taken a view that the amount received by the claimant under a mediclaim policy is required to be adjusted. The SLP filed against that order is also shown to have been dismissed. Even otherwise, it does not appear to be plausible and convincing that once the injured/claimant has received an amount towards medical expenses, the same should be got paid to him again, putting forward some technical point. Therefore, the prayer by the appellant-insurance company that this amount be deducted from the compensation payable since the appellant has already been paid this amount under the mediclaim policy purchased by him is accepted. Therefore, the appeal filed by insurance company i.e. **FAO-6449-2016**, is allowed partly and compensation of Rs.18,17,610/- awarded to the claimant is to be reduced, leaving the balance to Rs.8,70,000/- Rs.18,17,610 – 9,47,610/-)

9. With regard to appeal filed by the claimant, the tribunal has awarded a sum of Rs.8,10,000/- towards loss of future earnings. This amount is kept as intact. Under the head special diet, he is awarded a sum of Rs.15,000/- and for pain and suffering, another sum of Rs.1 lakh is awarded to him; towards transportation charges, a sum of Rs.50,000/-, a similar amount under the head attend charges is awarded to the claimant.

10. The petitioner/claimant would not be able to lead normal life as he would have done before suffering injures in the accident,

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therefore, Rs.1 lakh is awarded to him towards loss of amenities and Rs.1 lakh under the head shortening of life on account of suffering injuries. His marital prospects are definitely affected on account of receiving injuries, a sum of Rs. 3 lacs is awarded to him under that head. Thus, the total compensation comes out to Rs.15,25,000/-. The Tribunal has awarded compensation of Rs.18,17,610/- which has been reduced to Rs.15,25,000/- payable with interest @ 7.5% p.a from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several of all the three respondents.

11. Accordingly, the appeal filed by the claimant i.e. **FAO-6766-2016** stands disposed of.

03.03.2023 **(H.S. MADAAN)**
sumit.k **JUDGE**

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

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