

and other connected cases

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2023:PHHC:084134

**103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.FAO-719-2013 (O&M)

Reliance General Insurance Co. Ltd.

....Appellant

Versus

Sanjay and others

..Respondents

2.FAO-216-2013 (O&M)

Reliance General Insurance Co. Ltd.

....Appellant

Versus

Ved Singh and others

..Respondents

3.FAO-2771-2013 (O&M)

Sanjay

....Appellant

Versus

Kunal and others

..Respondents

Date of decision: 04.07.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Tajender Joshi, Advocate for the Insurance Company

Mr. Surinder Saini, Advocate for
the appellant in FAO-2771-2013 and
for respondent no.1 in FAO-719-2013

Mr. R.S.Malik, Advocate for respondent no.2 and 3

ANIL KSHETARPAL, J (Oral)

1. By this order, three appeals, out of which two appeals i.e. FAO-719-2013, 216-2013 (filed by the Insurance Company) and one FAO-2771-2013 (filed by the claimant) shall stand disposed of.

2. In this particular case, in an automobile accident, a person died and injuries were caused to another namely Sanjay. Two appeals filed by the Insurance Company are liable to be dismissed as the Insurance Company though have disputed the correctness of the insurance cover note, however, they have failed to produce any material evidence in support of their contention..

3. Learned counsel representing the Insurance Company, despite his best efforts has failed to draw the attention of the Court to any material produced by the Insurance Company to prove that the insurance cover note was not issued by the Insurance Company. Hence, both the appeals filed by the Insurance Company are dismissed. Moreover, the Insurance Company did not take this defence before the Motor Accident Claims Tribunal (hereinafter referred to as ‘the Tribunal’). Hence, in appeal, such plea cannot be examined for the first time in the absence of such evidence, which the Insurance Company was unable to produce before the Tribunal despite due diligence.

4. FAO-2771-2013 has been filed by the injured-Sanjay for the modification of the amount awarded by the Tribunal. He filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988, which pertains to no fault liability. The amount of compensation is required to be calculated as per the provisions of the Employees Compensation Act, 1923. The Tribunal has awarded Rs.1,07,550/- in the following manner:-

(i)	Cost of medicines vide bills Ex.P-1 to P-31, P-33 to P-90, P-92 to P-97	Rs.73,549/- (rounded off to Rs.73550/-)
(ii)	Pain and sufferings	5,000
(iii)	20% disability	20,000

(iv)	Transportation, special diet and attendant's charges	5,000
(v)	Loss of income	4,000
	Total compensation	1,07,550/-

5. The learned counsel representing the injured/claimant contends that the Tribunal has erred in awarding the amount under the Heads of pain & suffering, transportation, special diet and attendant's charges, besides, the loss of income. He submits that the appellant who has suffered fracture of both the bones of his left leg was unable to work for a period of more than 6 months.

6. On the other hand, the learned counsel representing the Insurance Company submits that the claimant has failed to prove that he suffered any permanent disability. He submits that the Tribunal has already awarded the sufficient amount.

7. This Court has considered the submissions of the learned counsel representing the parties. The accident took place on 04.11.2010. The appellant was working as a Driver at that point of time. A surgical procedure had to be carried out at PGIMS, Rohtak to insert a rod in order to ensure that the appellant recovers. After discharge from PGIMS, Rohtak, the appellant remained under treatment from Shiva Hospital, Sonipat and LNJP Hospital, New Delhi. The treatment of the appellant continued for nearly six months. In such circumstances, the amount awarded under the Head of 'pain and suffering' is not adequate. If the appellant has suffered pain and suffering continuously for a period of six months then the amount awarded requires to be increased to atleast

Rs.50,000/-. At the time of accident, the appellant was 36 years old. In fact, the appellant will have to suffer throughout his life, particularly, in the winters.

8. As regards the disability, Dr. Sandeep Kumar has stated that the disability suffered by the appellant is temporary. Hence, no modification in the amount awarded under the head of disability is required to be made.

9. As regards the compensation under the head of transportation, special diet and attendant’s charges, only Rs.5,000/- have been awarded. As already observed, the appellant remained under treatment for nearly six months in three different hospitals. Hence, under the head of Transportation, the amount is increased to Rs.20,000/-. Same amount is payable under the head of ‘Special diet and attendant charges’. Thus, under the cumulative Head of transportation, special diet and attendant charges, a total amount of Rs.60,000/- is awarded. Therefore, the amount of compensation is re-assessed as under:-

Sr.No.	Head	Amount
(i)	Cost of medicines vide bills Ex.P-1 to P-31, P-33 to P-90, P-92 to P-97	Rs.73,549/- (rounded off to Rs.73550/-)
(ii)	Pain and sufferings	50,000
(iii)	20% disability	20,000
(iv)	Transportation, special diet and attendant’s charges	60,000 (Rs.20,000/- each for transportation, special diet and attendant’s charges)
(v)	Loss of income	4,000
	Total compensation	2,07,550/-

10. The enhanced amount of compensation shall be payable alongwith interest at the rate of 7.5% from the date of filing of the claim petition till its payment.
11. Learned counsel representing the parties did not address any other arguments. Hence, FAO-2771-2013 is disposed of in the aforesaid terms.
12. All the pending miscellaneous applications, if any, are also disposed of.

04.07.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE