FAO No.4301 of 2015 (O&M) &
FAO No.1140 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Reserve: 10.09.2024
Date of Decision: 18.11.2024

1. FAO No.4301 of 2015 (O&M)

RELIANCE GENERAL INSURANCE CO. LTD. ......Appellant(s)
Vs
SURESH KUMAR AND OTHERS ....Respondent(s)

2. FAO No.1140 of 2016 (O&M)

SURESH KUMAR ......Appellant(s)
Vs
ASHOK @ BALLI AND OTHERS ....Respondent(s)

CORAM: ***HON'BLE MR. JUSTICE HARKESH MANUJA***

Present: Mr. Sanjeev Kodan, Advocate
for the appellant in FAO No.4301 of 2015 and
for respondent No.3 in FAO NO.1140 of 2016.

Mr. Parveen Sharma, Advocate
for the appellant in FAO No.1140 of 2016 and
for respondent No.1 in FAO No.4301 of 2015.

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<u>HARKESH MANUJA, J.</u>

[1]. This order of mine shall dispose of the aforesaid two appeals arising out of an award dated 17.10.2014, pertaining to same motor vehicular accident, passed by learned Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as “learned Tribunal”)while awarding Rs.17,33,000/- as compensation to the injured/claimant along with interest @ 7.5% per annum; with following prayer:-

i) **FAO No.4301 of 2015 (O&M)** titled as “**RELIANCE GENERAL INSURANCE CO LTD vs SURESH KUMAR AND OTHERS”** has been filed by the Insurance Company against fastening of liability on it while alleging contributory negligence and on the question of quantum of compensation along with assessment of income of injured/claimant, and

ii) **FAO No.1140 of 2016** (O&M) titled as **"SURESH KUMAR AND OTHERS vs ASHOK KUMAR ALIAS BALLI AND OTHERS"** has been filed by the claimant/injured for enhancement of compensation.

For sake of brevity facts are being taken from FAO No.4301 of 2015 filed by Insurance Company whereby challenge was made to an award dated 17.10.2014 passed by the learned Tribunal.

BRIEF FACTS

[2]. Respondent No.1, Suresh Kumar, being injured filed a claim petition before the learned Tribunal praying for grant of compensation to the tune of Rs.2,00,00,000/- (Rs. 2 Crores) along with interest @ 18% per annum on account of having sustained injuries in a motor vehicular accident which took place on 29.07.2008; alleging rash and negligent driving by respondent No.2/driver.

[3]. After going through the pleadings, records and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred on account of rash and negligent driving of respondent No.2/driver; holding the appellant and respondent Nos.2 and 3 jointly and severally liable and awarded compensation in the following manner: -

S.No	Heads of Claim	Amount (in Rs)
1.	Cost of Medicines	Rs.5,20,000/-
2.	Pain and Sufferings	Rs.50,000/-
3.	For 60% disability	Rs.1,20,000/-

4.	Loss of Income	Rs.10,08,000/-
5.	Special diet, attendant and transportation	Rs.35,000/-
	Total	Rs.17,33,000/-

[4]. Being aggrieved of the award dated 17.10.2014, the present appeal was preferred by the appellant/Insurance Company, against fastening of liability for making payment of the whole compensation amount on it while alleging contributory negligence and also seeking reduction of compensation.

ARGUMENTS

[5]. Learned counsel for the appellant submitted, that the present being a case of head-on collision, both the drivers were jointly responsible for the accident and thus, the liability for payment of compensation was not to be solely fastened upon appellant-Insurance Company jointly and severally with respondent No.2 and respondent no.3, in view of the decision rendered by the Hon'ble Supreme Court in case of ***"Bijoy Kumar Dugar vs Bidyadhar Dutta & Ors."***, reported as ***(2006) 3 SCC 242***. He further argued that income of respondent No.1 was assessed on the higher side as according to the pay bill register(Ex.PW-3/B) it was on the lower side and, as such, respondent No.1 was granted compensation in excess, thus, the amount awarded was liable to be reduced.

[6]. Per contra, learned counsel of respondent No.1 argued that learned Tribunal rightly assessed the income of the injured and the award warrants no interference in this regard. Further, he argued that respondent No.1 was due to retire on 31.10.2018, however, on account of injuries suffered by him in the motor vehicular accident he had to compulsorily retire on 04.03.2011 and thus, he suffered loss of income for approximately 7 years. Even further, he argued that

respondent No.1 suffered 60% permanent disability along with mild intelligence impairment which rendered him unfit for any kind of job and as such, learned Tribunal erred while not granting any compensation towards future loss of income. He also argued that respondent No.1 became permanently disabled and would require attendant for life and, thus, he ought to be compensated for attendant charges and further that the compensation under the conventional heads was on the lower side and thus, liable to be enhanced. Learned Counsel for respondent No.1/claimant also submitted that the issue of liability was rightly decided and no case of contributory negligence was made out against respondent No.1/claimant.

[7]. I have heard learned counsel for the parties and perused the paper book of the case. I find force in the arguments advanced by the learning counsel for respondent No.1.

DISCUSSION ON FASTENING OF LIABILITY

[8]. A perusal of record shows that in the present case eyewitness, Jagmohan, who also happened to lodge the FIR, while deposing as **PW-2** in his affidavit **Ex. PW2/A** stated that respondent No.2-driver of the offending vehicle was driving in a very rash and negligent manner and had come onto wrong side of the road while hitting the vehicle of the deceased.

On the issue of contributory negligence, learned counsel for the appellant-Insurance Company relied on ***Bijoy Kumar Duggar***'s case (supra) to contend that in the present case offending vehicle was coming in a zigzag manner; there was a head-on collision and therefore, the injured was also required to have taken precaution as a prudent man and accordingly, the accident in question was to be considered as an act of contributory negligence. Para 12 of the ***Bijoy Kumar Duggar*** (supra) being relevant is extracted hereunder: -

> *"Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the MACT recorded under Issue No.2. It is the evidence of Rajesh Kumar Gupta-P.W.2 who was travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head- on collision. The MACT has not accepted the evidence of P.W. 2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as P.W. 2 wanted to believe the Court, it was, but natural, as a prudent man for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus from a long distance coming from the opposite direction. It was head-on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of the MACT on this point. The MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the MACT and, in our view, the discretion exercised by the MACT cannot be said to be inadequate and inappropriate."*

However, the principle laid down in ***Bijoy Kumar Duggar***'s case (supra) is not applicable on all fours to the present facts as in this case it was the injured eye-witness who in his deposition stated that the offending vehicle was coming in a zigzag manner at a high speed and the accident resulted on account of head on collision between car and bus and the Hon'ble Supreme Court went on to hold that if the injured-eye-witness was conscious of the fact that offending vehicle was coming in a zigzag manner at a high speed, then as a prudent person, he was required to take precautions and to get away from the alignment of the offending vehicle. On the contrary, in the case in hand the facts are not similar. The fact that PW-2 i.e. the eye witness was merely 20-25 feet away from the offending vehicle and clearly described its colour, make and registration number while registering the FIR and even stood by it during his lengthy cross-examination established that the version given by PW-2/eye-witness about the accident in question pointing out towards the negligence of offending vehicle driven by respondent No.2-driver was having credence. Moreover, the case of contributory negligence was never put-up by the appellant/Insurance Company to the PW2/eye-witness even during his cross-examination. Thus, the findings of the learned Tribunal regarding liability to pay compensation fastened upon appellant-insurance company warrants no interference and the appeal filed by appellant-insurance company on the question of joint-liability based on contributory negligence, in the present case is decided against it.

QUESTION OF INCOME ASSESSED AND COMPENSATION

[9]. A bare perusal of salary certificate **Ex.PW3/A** showed that the respondent No.1 received Rs.29,625/- as salary in the month of July 2009 and the

contention raised by learned Counsel for the appellant-Insurance Company that according to pay bill register **Ex.PW3/A** respondent No.1 received salary of Rs.28,693/- per month holds no good as in **Ex.PW3/A** it was clearly mentioned that date of increment was 01.07.2009 and thus, learned Tribunal rightly assessed the income of respondent No.1 and the same accordingly warrants no interference.

Also, testimony of Sh. K.D Sharma, record clerk, Maharaja Aggarsein Hospital, Punjabi Bagh, Delhi, who appeared as PW-4 proved that respondent No.1 remained as an indoor patient from 29.07.2008 to 14.10.2008 (78 days). Further, as per Ex.PW3/C it was evident that respondent No.1 had to take compulsory voluntary retirement on 04.03.2011,whereas, as per Ex.PW3/B his date of superannuation in normal course was 31.10.2018, therefore, due to the injuries suffered by him in the motor vehicular accident the loss of income in the present case would be the period of hospitalization and the years of service lost on account of having been compulsorily retired i.e. 2,877 days {78 days + 2,799 days (04.03.2011 to 31.10.2018)}.

Now, considering the salary of respondent No.1 being Rs.29,625/- per month (Rs. 987.50 per day) and the reasoning recorded by the learned Tribunal that he would have received pension of half the amount of last drawn salary, the loss of income for years of lost service is assessed as Rs.13,82,006/- (rounded off) (493.75 per day x 2,799 days). Therefore, total loss of income including the hospitalization period is assessed as Rs.14,69,031/- (13,82,006 + 78 x 987.50).

In the present case respondent No.1 suffered 60% permanent disability along with mild intelligence impairment reducing his I.Q to 63 (Ex.P2). Even the wife of respondent No.1 in her affidavit (Ex.PW1/A) claimed that her husband was unable to take any kind of job. Thus, in the given facts and circumstances of the present case, functional disability suffered by respondent No.1 could be safely assessed as 60%.

Respondent No.1 was 51 years of age at the time of motor vehicular accident as such, his future loss of income while applying the multiplier of 11 is assessed as Rs.23,46,300/- (60% of 29,625 = 17775 x 12 x 11).

COMPENSATION UNDER OTHER HEADS

[10]. In the present case, respondent No.1 remained in hospital for 78 days; suffered 60% permanent disability along with mild intelligence impairment and even had to opt for early compulsory voluntary retirement on medical grounds. Thus, compensation awarded by the learned Tribunal under the heads of “pain and sufferings”, “special diet”, “attendant charges” and “transportation” seems to be on the lower side and are thus, required to be reassessed. Accordingly, the compensation for “pain and sufferings” is assessed as Rs.2,00,000/-; “special diet” as Rs.50,000/- and “transportation” as Rs.50,000/-.

In the given circumstances coupled with the averments made in the affidavit of the wife of respondent No.1 (Ex.PW1/A), it would be prudent to assume that he would require attendant for life. The minimum wages for unskilled labourer in the year 2008 in the State of Haryana was Rs.3,586/- per month and after relying on the decision rendered by the Hon’ble Supreme Court in the case of ***“Kajal vs. Jagdish Chand”***, reported as ***(2020) 4 SCC 413***, compensation for attendant charges in the present case after applying the multiplier of 11 is assessed as Rs.4,73,352/- (3,586 x 12 x 11).

[11]. In view of what has been discussed hereinabove, the respondent No.1/injured shall be entitled for the grant of following compensation: -

Sr.No.	Nature	Amount in Rupees
1.	Loss of Income (during hospitalization and loss in years of service due to compulsory voluntary retirement on medical grounds)	*Rs.14,69,031/-*
2.	Loss of future earning capacity/income [60% (percentage disability) of total income]	Rs.23,46,300/-
3	Medical Expenses/Hospitalization (as awarded by ld. Tribunal)	Rs.5,20,000/-
4.	Pain & Sufferings	Rs.2,00,000/-
5.	Transportation and Special Diet (Rs.50,000 + Rs.50,000)	Rs.1,00,000/-
6.	Attendant charges (including future attendant charges)	Rs.4,73,352/-
	Total Compensation	Rs.51,08,683/-
	Amount Awarded by the Tribunal	Rs.17,33,000/-
	Enhanced Amount	Rs.33,75,683/-

[12]. The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in ***Smt. Supe Dei and others Vs. National Insurance Company Limited and other, (2009) (4) SCC 513*** approved in a subsequent judgment titled as ***Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443***, the interest is enhanced to 9% per annum on the amount of compensation awarded to respondent No.1/injured from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant/injured shall be deducted from the enhanced compensation.

CONCLUSION

[13]. In view of aforesaid modification, FAO No.4301 of 2015 filed by Insurance Company is hereby dismissed and FAO No.1140 of 2016 filed by injured/claimant is disposed of in above terms.

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

(HARKESH MANUJA)
JUDGE

November 18, 2024
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No