

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO-9993-2014 (O&M)**

Future Generali India Insurance Co. Ltd.
...Appellant

VERSUS

Banto Devi and others
...Respondents

(ii) **FAO-3911-2015 (O&M)**

Banto Devi
...Appellant

VERSUS

Ishwar Chand and others
...Respondents

Date of Decision: April 30, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vishal Aggarwal, Advocate
 for the appellant (in FAO-9993-2014) and
 for respondent No.3 (in FAO-3911-2015).

 Mr.Arjun Attri, Advocate for
 Mr.Nitin Mittal, Advocate
 for the appellant (in FAO-3911-2015) and
 for respondent No.1 (in FAO-9993-2014).

 Mr.Ishan Cooner, Advocate for
 Mr.J.S.Cooner, Advocate
 for respondent No.2 (in FAO-9993-2014) and
 for respondent No.1. (in FAO-3911-2015).

ARCHANA PURI, J.

These are two appeals filed to assail the Award dated
18.10.2014 passed by Motor Accident Claims Tribunal, thereby granting

compensation to Banto Devi, on account of injuries sustained by her, in a motor vehicular accident, which took place on 27.01.2013.

FAO-9993-2014 has been filed by the insurance company, thereby questioning the factum and manner of accident as well as liability fastened upon it.

FAO-3911-2015 has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation awarded by learned Tribunal.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 27.01.2013, claimant Banto Devi had proceeded to village Bahloli, Tehsil Naraingarh to attend function of younger son of Ram Lal. After attending the function, she along with Seema Devi, Amandeep, Shubham and Kartik, was travelling in car bearing registration No.HR-01AE-0543, being driven by Tara Chand, on correct left side of the road. When they reached in the area of village Dehri, a pick-up Mahindra bearing registration No.CH-03N-9351, being driven by respondent No.1 Ishwar Chand, in a rash and negligent manner, came from behind and while going on extreme wrong side of the road, hit against the car, as a result whereof, the occupants of the car suffered injuries. Even, claimant Banto Devi suffered injuries, including fracture of ribs of right side of chest. She was taken to Kapoor Hospital, Ambala City, from where, she was referred to GMCH, Sector-32, Chandigarh, where she remained admitted till 09.02.2013.

Further, it is the pleaded case of the claimant that she had spent Rs.2 lakh, on her treatment, special diet, transportation etc. She was 48 years old, at the relevant time and she was employed with Bhandari Export Pvt. Ltd and was earning Rs.5,000/- per month.

In pursuance of the notice issued, respondent No.2-Jagmohan Kumar, owner of the Mahindra pick-up, did not make appearance and was proceeded against ex-parte. However, respondent No.1-Ishwar Chand, in his reply, had denied about the accident to have taken place, due to his rash and negligent driving of offending vehicle and furthermore, also took the plea that a false case has been planted upon him. Likewise, the insurance company, in its reply, also denied about involvement of the vehicle in question and further also raised a plea about respondent No.1 to be not having any valid and effective driving licence, at the time of accident.

On appraisal of the evidence, brought on record, vide impugned Award, learned Tribunal had granted compensation to the extent of Rs.73,000/- to injured-claimant Banto Devi and the same, in tabular form, is reproduced, as herein given:-

Sr. No.	Nature	Amount in Rupees
1.	Medical Expenses	25,000-00
2.	Pain & Suffering and Disability	25,000-00
3.	Loss of income during treatment	10,000-00
4.	Nutritious diet	04,000-00
5.	Attendant Charges	04,000-00
6.	Transportation charges	05,000-00
Total		73,000-00

Even, the liability was held to be joint and several of the driver, owner and insurer of the offending vehicle.

Not satisfied with the extent of compensation, Banto Devi has filed the appeal for seeking enhancement of the compensation, whereas, the insurance company has filed the appeal to assail the rashness and negligence, imputed upon respondent No.1-Ishwar Chand. In fact, it took the plea that it was contributory negligence, which fact, has been erroneously overlooked by learned Tribunal.

So far as, the factum and manner of taking place of the accident is concerned, suffice to consider the testimony of Banto Devi, who in her affidavit Ex.PW1/A, had categorically deposed in consonance with the pleaded case and also pleaded about rashness and negligence, to be there, on the part of respondent No.1, while driving Mahindra pick-up bearing registration No.CH-03N-9351. However, she faced cross-examination, but nothing material came forth, in the cross-examination, to dislodge the version about the manner of taking place of the accident. In fact, in the cross-examination, she had stated the offending vehicle had come from behind and struck against the side portion of the car. Furthermore, she also denied that there was no fault on the part of Maxicab,

Besides the claimant, Arun Kumar, Criminal Ahlmad, had also, on the basis of the record, brought by him relating to the case titled 'State vs. Ishwar' categorically stated about charge having framed against respondent No.1 and that the case is fixed for prosecution evidence.

To counter the aforesaid evidence, no evidence, as such, has been adduced by the respondents. In fact, respondent No.1, who was the most material witness, being driver of the offending vehicle, could have deposed about manner of taking place of the accident and about there to be

contributory negligence, as alleged, on the part of the driver of the car also, but however, he had chosen to remain away from the witness box. In fact, owner of the offending vehicle was proceeded against ex-parte.

In the light of the same, the plea of contributory negligence, so raised, at the instance of the insurance company, is quite vague and the same also does not stand substantiated. Rather, the findings of rashness and negligence, on the part of respondent No.1, in causing the accident, which resulted into injuries on the person of Banto Devi, as recorded by learned Tribunal, are hereby affirmed.

Now, coming to the extent of compensation, payable to the injured-Banto Devi. As noted above, on the basis of the bills, proved in evidence, the compensation was granted to the extent of Rs.25,000/-. However, from the discharge and follow up card Ex.P2, it is evident that injured Banto Devi remained admitted in GMCH, Sector-32, Chandigarh, w.e.f. 30.01.2013 to 09.02.2013. She had also undergone surgery and follow up was also advised. Bed rest was advised for four weeks. Even, physiotherapy was advised. During this period and some time thereafter, as advised bed rest for four weeks, obviously, the injured-claimant, ought not to be in a position to carry out the routine work, which in routine is looked after by the lady of the house. Very true, as submitted by learned counsel for the claimant that it has to be 'just' compensation, which is to be awarded by the Tribunal.

For working upon the same, it is essential to take note that each case has to be decided on its own facts and circumstances. The Court cannot overlook the gratuitous services rendered by the wife, with true love and

affection, to her children and her husband and managing the household affairs, which in itself, cannot be equated with the services rendered by any other person. There cannot be any fixed approach to assess the notional income of a homemaker, but however, the Court has to make approximate economic value for all the work that a homemaker, in routine do, while looking after the home and family.

Therefore, considering the same, the compensation awarded by learned Tribunal is on lesser side.

PW-3 Dr.Ravi Kumar Preenja, Assistant Professor, Department of Orthopedics has been examined, who, on the basis of the record brought by him, had stated that patient was treated case of fracture superior and inferior pubic rami right side with pain right hip. Further also, he deposed about being member of the board of doctors, who examined the claimant for assessment of the disability, which was found to be 10% with respect of whole body and that was permanent in nature. He proved the disability certificate, which is Ex.PW3/1. Very true, as pointed out by learned counsel for the insurance company that the said doctor, while facing cross-examination had stated that with this disability, the patient would not have any difficulty in pursuing her day to day activities. But anyhow, fact remains that claimant remained admitted in the hospital, as evident from Ex.P2, from 30.01.2013 to 09.02.2013 and thereafter, as per discharge card, she was advised bed rest for four weeks and furthermore, physiotherapy was also advised and follow up treatment was also advised.

Considering the same, the compensation awarded, do call for further enhancement.

So far as, the medical expenses to the extent of Rs.25,000/-, as worked upon by learned Tribunal, the same is just and reasonable. But however, on the count of 'pain and suffering' as well as the disability, as assessed, the amount of Rs.25,000/-, so awarded, do call for enhancement. Similarly, loss of income, while taking the notional income as Rs.5,000/-, also calls for enhancement. Other counts, like 'nutritious diet', 'attendant charges' and 'transportation charges' do call for further enhancement.

Considering all the aforesaid facts and considering the kind of injuries sustained by the appellant-claimant Banto Devi, in the fitness of the circumstances, grant of **Rs.20,000/-**, over and above the compensation awarded by the Tribunal, is just and reasonable and it is accordingly, so ordered.

Now, coming to the question of the liability fastened upon the insurance company, together with the driver and owner of the offending vehicle. However, in this regard, it is pertinent to mention that no satisfactory evidence, at the instance of the insurance company has been led. Even though, plea had been taken that respondent No.1-Ishwar Chand was not holding valid and effective driving licence, at the time of accident, but however, no evidence, so substantiate this plea, as such, has been led by the insurance company. The driving licence of respondent No.1-Ishwar Chand, has been proved in evidence, which covers the date of accident. Also, no evidence has come forth to challenge the recitals of the said driving licence, which is Ex.R1 and R5.

In the grounds of appeal, the insurance company had taken the plea that in fact, notice/summons were sent at the instance of the insurance

company, to the Licencing Authority, Fatehgarh-Farukhabad, U.P., to come along with the record, with regard to the driving licence of the driver, but however, they did not turn up to depose or prove the driving licence. Even, learned Tribunal had not ensured the presence of the concerned Clerk, to produce the record to show that alleged driving licence was genuine. However, the submission so made, in the grounds of appeal, is palpably wrong.

Perusal of the record of learned Tribunal reveals that the insurance company, in fact, had not led any evidence. The case was fixed for recording of the evidence of the respondents, but however, no evidence, as such, was led by the insurance company to summon any witnesses. From the record, it is evident that no application for summoning of any witness was filed. Consequently, the evidence of respondent-insurance company was closed by order, vide order dated 14.10.2014. This order, as such, has also not been challenged before any superior Court.

In the given circumstances, no steps were taken by the insurance company to establish about the driving licence coming on record, which seemingly was genuine and covered the date of accident, to be not valid. In the light of the same, learned Tribunal had appropriately fastened the liability upon the insurance company, together with the driver and owner of the offending vehicle, to pay the compensation granted to the claimant-Banto Devi.

In the light of the aforesaid discussion, the appeal filed at the instance of the insurance company i.e. **FAO-9993-2014**, as such, is hereby dismissed. However, the appeal filed at the instance of the appellant-

claimant i.e. FAO-3911-2015 is hereby allowed.

On the enhanced amount of **Rs.20,000/-**, as now awarded, the appellant-claimant Banto Devi shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The residue terms of the Award, shall remain the same.

April 30, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No