IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2581-2017 (O&M)
Reserved on : 28.11.2024
Date of Decision : 10.12.2024

Tata AIG General Insurance Company Ltd. ....Appellant

VERSUS

Rajesh and Others ....Respondents

FAO-4360-2017 (O&M)

Rajesh ....Appellant

VERSUS

Aamin Khan @ Lila @ Sanjay and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sachin Ohri, Advocate
for the appellant-Tata AIG General Insurance Company
in FAO-2581-2017 and for respondent No.4 in FAO-4360-2017

Mr. S.S. Khurana, Advocate
for the appellant in FAO-4360-2017 and
for respondent No.1 in FAO-2581-2017,

Mr. Vinod Chaudhri, Advocate
for respondent No.4 in FAO-2581-2017 and
for respondent No.3 in FAO-4360-2017.

ALKA SARIN, J.

1. Present order shall dispose off the above-captioned appeals. FAO-2581-2017 has been filed by Tata AIG General Insurance Company Ltd., while FAO-4360-2017 has been filed by injured-Rajesh, both aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal') vide award dated 05.12.2016. The parties are being referred to as the injured-

claimant, driver, owner, Tata AIG General Insurance Company Ltd. and Oriental General Insurance Company Ltd., for the sake of clarity.

2. The brief facts relevant to the present *lis* are that on 13.11.2012, Rajesh (injured-claimant) alongwith one Madan Lal was coming to village Sudharana, Tehsil Kosli on a motorcycle bearing registration No.HR-43A-7220 which was being driven by Madan Lal at a normal speed and by observing all traffic rules. At about 02.15 pm, when they reached near Kavita Nursing Home, a truck bearing registration No.HR-61-9071 (hereinafter referred to as the 'offending vehicle') came from behind and hit the motorcycle in a rash and negligent manner resulting in the death of Madan Lal and multiple injuries to the injured-claimant. FIR No.245 dated 13.11.2012 under Sections 279, 337, 338, 304-A of the Indian Penal Code, 1860 was registered at Police Station Kosli.

3. The claim petition filed by the injured-claimant was contested by the driver and owner of the offending vehicle by filing a joint written statement wherein it was averred that no accident as alleged had taken place with the offending vehicle and that the offending vehicle was comprehensively insured with the Oriental General Insurance Company Ltd. and further that a false FIR was got registered against them just to get the compensation. Tata AIG General Insurance Company Ltd. filed its separate written statement averring therein that the policy No.0100687813 was issued by them in the name of Rajbir Singh qua the vehicle bearing registration No.HR-61-9071 for a period commencing from 13.12.2012 to 12.12.2013. It was further averred that since the accident took place on 13.11.2012, therefore, the cover-note was not valid on the date of the accident. It was further averred that during investigation it was found

that the offending vehicle was insured with M/s Oriental General Insurance Company Ltd. vide policy No.215390/31/2012/2445 from 13.12.2011 to 12.12.2012. It was further pleaded that on the basis of the policy issued by the Oriental General Insurance Company Ltd., the Tata AIG General Insurance Company Ltd. had issued a cover-note on 12.12.2012. In the written statement filed by the Oriental General Insurance Company Ltd. it was averred that on 13.11.2012 the driver of the offending vehicle did not have a valid and effective driving licence and that the particulars of the policy have not been confirmed till date and hence the offending vehicle was not insured with them.

4. On the basis of the pleadings of the parties the following issues were framed :

> 1. Whether deceased Madan Lal died and injured Rajesh sustained injuries and damage was caused to motorcycle no.HR-43A-7220 belonging to Madan Lal (deceased) in a motor vehicle accident that occurred on 13.11.2012 due to rash and negligent driving of offending vehicle truck/dumpher bearing registration no.HR-61-9071 by respondent no.1 ? OPP
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> 2. Whether the petitioners are entitled to get compensation, if so to what amount and from whom ? OPP
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> 3. Whether the respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident ? OPR-3

4. Whether the respondent no.3-A is not liable to pay any amount of compensation as pleaded? OPR-3A

5. Relief.

5. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Medical expenses	Rs.1,20,000/-
2	Loss of earning capacity	Rs.6,04,800/-
3	Pain and suffering	Rs.50,000/-
4	Nutritious diet	Rs.12,000/-
5	Transportation charges	Rs.30,000/-
6	Attendant Charges	Rs.40,000/-
	Total Compensation	**Rs.8,56,800/-**
	Interest	**7.5% per annum**

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6. The argument of learned counsel for Tata AIG General Insurance Company Ltd. is that the cover-note which had been issued by them was not valid on the date of the accident and that the offending vehicle was insured with the Oriental General Insurance Company Ltd. for the said period. It is further the contention that a copy of the cover-note, which is retained by the Insurance Company and was produced on the record, showed that the validity of the said cover-note was from 13.12.2012 to 12.12.2013 and therefore, for the accident that took place on 13.11.2012, the Tata AIG General Insurance Company Ltd. could not be held liable.

7. *Per contra* Mr. S.S. Khurana, Advocate appearing on behalf of the injured-claimant and Mr. Vinod Chaudhri, Advocate appearing on behalf of the Oriental General Insurance Company Ltd. have argued that the Tribunal had categorically held that the cover-note (Ex.R1), which was

found in the offending vehicle, was never denied by the Tata AIG General Insurance Company Ltd. The said cover-note showed that the offending vehicle was insured from the period 04.11.2012 to 03.11.2013 thereby covering the period when the accident took place. It is further the contention that neither in the written statement nor in the statement of the Manager of the Tata AIG General Insurance Company Ltd. it was ever denied that the cover-note (Ex.R1) was issued. Infact, it was never the case of the Tata AIG General Insurance Company Ltd. that the cover-note (Ex.R1) was forged, fabricated or manipulated in any manner. Learned counsel have further argued that a categoric finding has been recorded by the Tribunal after affording due opportunity to Tata AIG General Insurance Company Ltd. to lead their evidence that the cover-note (Ex.R1) was not valid however it never denied having issued the same. Further still, no evidence was led by the Tata AIG General Insurance Company Ltd. to show that the document was forged, fabricated or manipulated.

8. Heard.

9. In the present case, dealing with the argument raised by learned counsel appearing on behalf of Tata AIG General Insurance Company Ltd. that the offending vehicle was never insured with it, the said argument deserves to be rejected on the ground that the cover-note (Ex.R1), which was found in the offending vehicle, was never denied by Tata AIG General Insurance Company Ltd. The cover-note (Ex.R1) reveals that the offending vehicle was insured from 04.11.2012 to 03.11.2013 thereby covering the period when the accident took place. Neither in the written statement nor in the statement of the Manager of the Tata AIG General Insurance Company Ltd. was it ever denied that the cover-note (Ex.R1) was not issued by them.

It is further to be noted that it has never been the case of Tata AIG General Insurance Company Ltd. that the cover-note (Ex.R1) was forged, fabricated and manipulated in any manner. That being so, the argument of learned counsel for the Tata AIG General Insurance Company Ltd. cannot be accepted. Accordingly, the appeal being FAO-2581-2017 is dismissed.

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10. Learned counsel for the injured-claimant would contend that though income of the injured-claimant has rightly been assessed and a multiplier method has correctly been applied, however, no amount has been awarded towards loss of future prospects, which ought to have been 25% keeping in view the age of the injured-claimant who was about 44 years of age. It is further the contention of learned counsel for the injured-claimant that the injured-claimant was working as a Security-Guard in M/s Chandra Services (Man Power and Securiuty Services), Rewari and that on account of suffering a disability to the extent of 60% on account of amputation of his right lower limb he was not fit to work as a security personnel. Bhim Singh, HR of M/s Chandra Services (Man Power and Securiuty Services), Rewari has stepped into the witness-box as PW-6 and deposed qua the services of the injured-claimant. It is further the contention that the amounts awarded under the heads pain and suffering, special diet, attendant charges and transportation are on the lower side and that no amount has been awarded towards loss of amenities of life and for the prosthetics. Learned counsel for the injured-claimant has relied upon judgments of the Hon'ble Supreme Court in the cases of **Pappu Deo Yadav Vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** and **Erudhaya Priya vs. State Express Transport Corporation Ltd. [2020 (3) RCR (Civil) 374]** and that of the Delhi High

Court in the case of **Reliance General Insurance Co. Ltd. vs. Rohit Kumar & Ors. [2017 (7) AD (Delhi) 602]**.

11. *Per contra* learned counsel appearing on behalf of the Tata AIG General Insurance Company Ltd. has contended that sufficient amount has already been awarded as compensation and no further enhancement is called for.

12. Heard.

13. In the present case the injured-claimant was 44 years of age and as a result of the accident his right lower limb was amputated and his permanent disability was assessed as 60%, which is not in dispute. He was proved on record to have been working as a Security-Guard and his monthly income was assessed as Rs.6,000/-. As per the law laid down in case of **Pappu Deo** (supra), the injured-claimant would also be entitled to an addition of 25% towards loss of future prospects. No amount has been awarded by the Tribunal for a prosthetic limb. Taking a cue from the judgment in the case of **Rohit Kumar** (supra) wherein an amount of Rs.7,00,000/- was awarded towards cost of the artificial limb in the year 2017, this Court deems it appropriate to award an amount of Rs.10,00,000/- towards costs of the artificial limb and future maintenance of the said artificial limb. It has come on record that the injured-claimant remained admitted in PGIMS, Rohtak from 13.11.2012 to 19.11.2012. Thereafter, he was shifted to Khandaka Hospital, Tonk Road, Jaipur where he was operated upon on 20.11.2012 and 05.12.2012 and was discharged on 07.12.2012. He was again admitted on 12.12.2012 and was discharged on 23.12.2012. He remained hospitalized for a total period of 37 days and was operated upon thrice. The Tribunal has awarded a sum of Rs.40,000/- as attendant charges,

which is on the lower side. Keeping in view the period for which the injured-claimant remained admitted in hospital, the amount awarded by the Tribunal towards attendant charges is enhanced to Rs.50,000/-. The amount awarded by the Tribunal under the head special diet is on the lower side and the same is enhanced to Rs.25,000/-. The amount awarded under the head pain and suffering is on the lower side and the same is enhanced to Rs.2,00,000/-. An amount of Rs.30,000/- awarded by the Tribunal towards transportation charges is enhanced to Rs.40,000/-. An amount of Rs.5,00,000/- is also awarded towards loss of amenities of life. The amount awarded by the Tribunal towards medical expenses is maintained.

14. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Annual income	[Rs.6,000 x 12] = Rs.72,000/-
2	Loss of annual Income on account of 60% permanent disability	Rs.43,200/- (Rs.72,000 - 28,800)
3	Future prospects @ 25%	[Rs.43,200 + 10,800] = Rs.54,000/-
4	Multiplier of 14	[Rs.54,000 x14] = Rs.7,56,000/-
5	Special Diet	Rs.25,000/-
6	Medical Bills as allowed by the Tribunal	Rs.1,20,000/-
7	Transportation charges	Rs.40,000/-
8	Attendant charges	Rs.50,000/-
9	Pain and suffering	Rs.2,00,000/-
10	Loss of amenities of life	Rs.5,00,000/-
11	Costs of Artificial limb and its maintenance in future	Rs.10,00,000/-
	Total Compensation	**Rs.26,91,000/**

15. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till realization of the entire amount.

16. In view of the above discussion, the appeal being FAO-2581-2017 filed by the Tata AIG General Insurance Company Ltd. is dismissed and the appeal being FAO-4360-2017 filed by the injured-claimant is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
10.12.2024 **JUDGE**
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NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO