

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****237****FAO-7776-2014 (O&M)****Date of Decision : 18.02.2025**

Sandeep Singh

....Appellant

VERSUS

Amrik Singh and Others

....Respondents

237-1**FAO-3664-2015 (O&M)**

Amrik Singh

....Appellant

VERSUS

Sandeep Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh K. Sharma, Advocate for
Mr. K.K. Saini, Advocate
for the appellant in FAO-7776-2014
and for respondent No.1 in FAO-3664-2015.

Mr. Brijeshwar Vashist, Advocate
for the appellant in FAO-3664-2015
and for respondent No.1 in FAO-7776-2014.

Ms. Madhu Sharma, Advocate
for respondent No.3 in FAO-7776-2014 and
for respondent No.2 in FAO-3664-2015.

ALKA SARIN, J. (Oral)

1. This common order shall dispose of both the above-captioned appeals being FAO-7776-2014 filed by the claimant-injured aggrieved by the quantum of compensation and FAO-3664-2015 filed by the owner of the offending vehicle challenging the recovery rights granted to the Insurance

Company vide the impugned award dated 21.03.2014 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the 'Tribunal').

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity. The parties are being referred to as the claimant, Insurance Company and owner of the offending vehicle for the sake of clarity.

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3. In the present case the Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Compensation on account of Medical Treatment	Rs.25,273/-
2	Compensation on account of disability	Rs.1,70,000/-
3	Pain and mental agony	Rs.20,000/-
4	Transportation charges	Rs.10,000/-
5	Compensation on account of extra nourishment	Rs.10,000/-
	Total Compensation	Rs.2,35,273/-
	Interest	7.5% per annum

4. Learned counsel for the claimant would contend that the claimant was 32 years of age at the time of the accident, which took place on 06.03.2011. In the said accident the claimant-appellant sustained multiple grievous injuries as a result of which his right leg was amputated. He was admitted in Civil Hospital, Mandi Gobindgarh from where he was referred

to Rajindra Hospital, Patiala and then to PGIMER, Chandigarh. Learned counsel for the claimant would further contend that the amount of compensation awarded by the Tribunal is on the lower side inasmuch as the Tribunal has not assessed the income of claimant. The claimant was doing the work of sale of vegetables and fruits and was earning Rs.20,000/- per month. Further, the amount awarded on account of disability and under the heads of pain and suffering, attendant charges, special diet and transportation is also on the lower side. Further, no amount has been awarded towards attendant charges, loss of amenities of life and for the prosthetic limb. Learned counsel for the 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 that of the Delhi High Court in case of **Reliance General Insurance Co. Ltd. vs. Rohit Kumar & Ors. [2017 (7) AD (Delhi) 602]**.

5. *Per contra* learned counsel appearing on behalf of the Insurance Company and owner of the offending vehicle has contended that sufficient amount of compensation has already been awarded and there was no scope of any further enhancement.

6. I have heard learned counsel for the parties.

7. In the present case the claimant was admittedly 32 years of age and as a result of the accident his right leg was crushed under the tyre of the offending vehicle. In order to prove the disability of the claimant, Dr. Nitin Garg, Medical Officer, Ortho Specialist, Civil Hospital Khanna was examined as CW3 who proved on record the disability certificate of the

claimant as Ex.C3 ad further testified that the claimant suffered disability to the extent of 85%. He further testified that he had operated upon the claimant as regards his injuries vide Ex.C2 and his amputation through right thigh was done. Thus, keeping in view the nature of injury suffered by the claimant, his disability to the extent of 85% as assessed by the Tribunal is maintained. Though it has been pleaded by the claimant that he was doing the work of sale of vegetables and fruits, however, in the absence of any evidence the minimum wage for an unskilled worker, which was Rs.3,800/- per month, is assessed as the monthly income of the claimant. Keeping in view the fact that the claimant was 32 years of age and he had suffered 85% disability, a multiplier method ought to have been applied. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav (supra)** has held as under :

“12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle).

13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was

assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.”

8. In view of the law laid down in the case of **Pappu Deo Yadav** (supra), the Tribunal should have applied a multiplier method keeping in view the functional disability of the claimant by assessing his income according to the minimum wages prevalent at the relevant point of time. At the time of the accident the claimant was 32 years of age and hence a multiplier of '16' would be applicable and an addition of 40% is also to be made towards loss of future prospects.

9. The Tribunal has not awarded any amount towards attendant charges in the impugned award. The claimant himself stepped into the witness-box as CW2 and in his cross-examination he testified that he remained admitted in hospital for 15 to 20 days but he did not remember the name of the hospital. There is also nothing on record to specify the exact period for which the claimant remained admitted in the hospital. However, keeping in view the extent of disability suffered by the claimant, this Court deems it appropriate to grant attendant charges as per the minimum wages as assessed above for a period of one month i.e. Rs.3,800/-.

10. The Tribunal has not awarded any amount towards 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, I deem 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. The amount of Rs.20,000/- awarded by the Tribunal under the head pain and suffering is on the lower side and the same is enhanced to **Rs.2,00,000/-**. The amount of Rs.10,000/- awarded under the

head special diet is on the lower side and the same is enhanced to **Rs.20,000/-**. The amount of Rs.10,000/- awarded towards transportation charges is on the lower side and the same is enhanced to **Rs.30,000/-**. An amount of **Rs.5,00,000/-** is also awarded towards loss of amenities of life. The amount already awarded by the Tribunal towards medical bills is maintained.

11. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	[Rs.3,800 x 12] = Rs.45,600/-
2	Loss of annual Income on account of 85% permanent disability	Rs.38,760/- (Rs.45,600 – 6,840)
3	Future prospects @ 40%	[Rs.38,760 + 15,504] = Rs.54,264/-
4	Multiplier of 16	[Rs.54,264 x16] = Rs.8,68,224/-
5	Pain and suffering	Rs.2,00,000/-
6	Special Diet	Rs.20,000/-
7	Medical Bills as allowed by the Tribunal	Rs.25,273/-
8	Transportation charges	Rs.30,000/-
9	Loss of amenities of life	Rs.5,00,000/-
10	Costs of Artificial limb and its maintenance in future	Rs.10,00,000/-
11	Attendant charges as awarded by the Tribunal	Rs.3,800/-
	Total Compensation	Rs.26,47,297/-

12. 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 the realization of the entire amount.

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13. Coming now to the appeal filed by the owner of the offending

vehicle challenging the recovery rights granted to the Insurance Company.

14. Learned counsel for the owner of the offending vehicle has argued that the Tribunal while allowing compensation has fastened the liability upon the owner of the offending vehicle on the ground that he was not possessing a valid route permit. Learned counsel for the owner would further contend that under Section 149(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') certain defenses were made available to the Insurance Company and the absence of route permit or the fitness certificate are not the defenses as enumerated in Section 149(2) of the Act of 1988. It is further the contention that the Hon'ble Supreme Court in the case of **Kamala Mangalal Vayani & Ors. vs. United India Insurance Co. Ltd. & Ors. [2010 ACJ 1441]** has held that it is for the insurer, who denies its liability under the policy, to prove that inspite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. Similar is the view taken by a Division Bench of this Court in the case of **National Insurance Company Ltd. vs. Kamlesh Kaur & Ors. [2008 ACJ 927]**. Thus, learned counsel has contended that the finding of the Tribunal in this regard is erroneous.

15. Learned counsel appearing on behalf of the Insurance Company has argued that the Tribunal has rightly granted recovery rights to the Insurance Company and has rightly held that the owner and driver of the offending vehicle are primarily liable to pay the compensation and hence there is no error in the finding of the Tribunal in this regard.

16. Heard.

17. Section 149 of the Act of 1988 reads as under :

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks -

(1) XX XX XX XX

(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.”

18. A perusal of the Act of 1988 reveals that there were certain defenses which were available to the Insurance Company and the absence of a route permit is not a defense which is available under Section 149(2) of the Act of 1988. Though in its written statement the Insurance Company had taken a specific plea that the offending vehicle was not having a valid route permit at the time of accident, however, it failed to prove this plea before the Tribunal though the onus to prove the same was upon the Insurance

Company. Hon'ble Supreme Court in the case of **Kamala Mangalal Vayani** (supra) has held as under :

“4. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore, dated 7.7.1990 to show that the application for registration of the vehicle filed by the third respondent, was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident

occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the Tribunal in the absence of relevant evidence.”

19. A Division Bench of this Court in the case of **Kamlesh Kaur** (*supra*) has held as under :

“5. The argument that a route permit was required within the State of Haryana, raised by the learned Counsel for the Insurance Company is devoid of merit because it was not the pleaded case of the Insurance Company-appellant before the M.A.C.T. No witness or document has been produced on record by the Insurance Company-appellant to show that no 'permit' was obtained by the owner of the vehicle or any 'route permit' for a goods vehicle within the State of Haryana was required. The Insurance Company-appellant even failed to cross examine the Criminal Ahlmad, who had

appeared as PW-2 alongwith the Registration Certificate of the offending vehicle to show as to whether the vehicle was registered as a 'goods vehicle' or the vehicle was granted any permit. It may be true that a permit for goods carrier may be required Under Section 66 of the Act but there is no requirement of acquiring a route permit for such a vehicle within the State as projected by the Insurance Company-appellant. In any case it has to be proved on record that the vehicle was not granted any permit. The defences of the Insurance Company-appellant are confined to those which have been referred to in Sub-section (2) of Section 149 of the Act, particularly with regard to liability towards third party. In that regard reliance may be placed on a judgment of the Hon'ble Supreme Court in the case of National Insurance Company v. Swaran Singh 2004 ACJ 1 (SC). It has been laid down by the Hon'ble Supreme Court that breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes to avoid liability. In the summery of finding in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:

“(102) (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.”

6. In the present case, the Insurance Company-appellant has miserably failed to discharge the aforementioned onus. Neither any witness has been produced nor any document has been tendered in support of the aforementioned contention. The

Insurance Company-appellant has even failed to cross examine the witnesses of the claimant-respondents like PW-2 Shri Suman Jit Singh, Criminal Ahlmad, on the aforementioned issue, who had appeared alongwith the Registration Certificate of the offending vehicle. Therefore, the argument raised is completely devoid of merit and is hereby rejected.”

20. As per the law discussed above, since the Insurance Company has failed to discharge its onus by leading cogent evidence on record to the effect that the offending vehicle was not having any valid route permit at the time of accident, the primary liability to pay the compensation is upon the Insurance Company. There is merit in the arguments of learned counsel for the owner of the offending vehicle. Accordingly, the finding of the Tribunal to the effect that the driver and owner of the offending vehicle are liable to pay the compensation is erroneous and is set aside and hence the present appeal is liable to be allowed.

21. In view of the above discussion, the impugned award passed by the Tribunal is modified and the aforesaid appeals filed by the claimant and the owner of the offending vehicle stand allowed. Pending applications, if any, also stand disposed off.

18.02.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO