

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

**FAO (MVA) No. 52 of 2014 a/w
FAO (MVA) No. 180 of 2014.
Reserved on: 16.12.2016
Date of decision: 30.12.2016.**

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1. **FAO No.52 of 2014.**
Oriental Insurance CompanyAppellant
Versus
Sh. Roop Singh and others ...Respondents.
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2. **FAO No 180/2014.**
Sh. Roop SinghAppellant
Versus
Sh. Baldev Singh Thakur and others
...Respondents.
-

Coram:
The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

Whether approved for reporting ?¹ Yes

For the appellant(s): Mr. G.C. Gupta, Sr. Advocate with Ms. Meera Devi, Advocate, for the appellant in FAO No. 52 of 2014 and Mr. Lakshay Thakur, Advocate, for the appellant in FAO No. 180 of 2014.

For the respondent(s): Mr. Lakshay Thakur, Advocate, for respondent No. 1 in FAO No. 52 of 2014.
Mr. Rajiv Sood, Advocate, for respondents No. 2 and 3 in FAO No. 52 of 2014 and for respondents No. 1 and 2 in FAO No. 180 of 2014.
Mr. G.C. Gupta, Sr. Advocate with Ms. Meera Devi, Advocate, for respondent No. 3 in FAO No. 180 of 2014.

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ?.*

Mansoor Ahmad Mir, Chief Justice .

These two appeals are outcome of a common judgment and award dated 2.12.2013, passed by the Motor Accident Claims Tribunal (III), Shimla, H.P., hereinafter referred to as “the Tribunal”, for short, in MAC Petition No.136-S/2 of 2012/10, titled *Sh. Roop Singh versus Sh. Baldev Singh Thakur and others*, whereby compensation to the tune of Rs.10,16,800/- alongwith 9% interest came to be awarded in favour of the claimant and insurer came to be saddled with the liability, for short “the impugned award” on the grounds taken in the memo of appeal.

2. The insurer has filed appeal being FAO No. 52 of 2014, on the ground that the Tribunal has fallen in an error in saddling it with the liability and the claimant has filed appeal being FAO No. 180 of 2014, for enhancement of compensation, on the grounds taken in their respective appeals.

3. This judgment shall govern both these appeals.

4. The owner/insured and the driver have not questioned the impugned award on any ground, thus

the same has attained finality so far as it relates to them.

5. Following two points are to be determined in these appeals.

(i) *Whether the Tribunal has rightly saddled the insurer with the liability, and;*

(ii) *Whether the amount awarded is inadequate?*

6. In order to determine both these points, it is necessary to give a brief resume of relevant facts herein.

7. The claimant/injured Roop Singh, being the victim of a vehicular accident, filed claim petition before the Tribunal for the grant of compensation to the tune of Rs.15,00,000/- as per the break-ups given in the claim petition on account of the injuries suffered by him on 31.3.2009 at 9.30 P.M. near Harabag Tehsil Sunder Nagar, District Mandi, H.P. in a motor vehicular accident caused by driver Khajana Ram while driving vehicle bearing registration No. HP-65-0644, rashly and negligently due to which he sustained grievous injuries on his right arm and right leg, i.e., compound

fracture. He took first aid at Government Hospital, Sunder Nagar and thereafter referred to I.G.M.C. Shimla where he remained admitted w.e.f. 1.4.2009 to 13.4.2009 and from 22.10.2009 to 31.10.2009. He was operated upon his right leg and arm at IGMC Shimla. It is stated that he has spent a sum of Rs.3,20,000/- on his treatment at IGMC Shimla and an amount of Rs.1,50,000/- is required for his further treatment.

8. The claim petition was resisted by all the respondents by filing replies. The Tribunal, on the pleadings of the parties framed following issues.

1. *Whether petitioner suffered injuries on account of rash and negligent driving of respondent No.2 on 31.3.2009? OPP.*
2. *If issue No. 1 is proved to what amount of compensation the petitioner is entitled to and from whom? OPP.*
3. *Whether the respondent No. 2 was not holding valid and effective driving licence at the time of accident? OPR.*
4. *Whether truck No. HP-65-0644 was being plied in violation of RC, route permit? OPR.*
5. *Relief.*

9. The claimant/injured, in support of his case, examined as many as seven witnesses and

respondents on the other hand examined as many as five witnesses.

10. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimant/injured has proved that the driver, namely, Khajana Ram had driven the offending vehicle rashly and negligently. The driver has not questioned the said findings and insurer has no right to question the said findings.

11. I.O. HHC Durga Singh appeared in the witness-box as RW2 and has also stated that the driver of the offending vehicle has driven the same rashly and negligently. There is sufficient proof on the file indicative of the fact that the driver of the offending vehicle has driven the said vehicle rashly and negligently. Having said so, the findings returned by the Tribunal on issue No. 1 are upheld.

12. Before dealing with issue No. 2, I deem it proper to deal with issues No. 3 and 4.

Issue No.3.

13. Driving licence Ext. RW3/A is on record, which does disclose that the driver was competent to

drive the offending vehicle. The Tribunal has made discussion in para 29 of the impugned award and has rightly held that the driver was having a valid and effective driving licence at the time of accident. It is apt to record herein that the learned counsel for the insurer has not questioned the said findings. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

Issue No.4.

14. It was for the insurer to prove that the owner has committed willful breach, has not led any evidence. Insurance policy, registration certificate and other documents are on record. Tribunal has rightly made discussion in para 30 of the impugned award. Accordingly, the findings returned by the Tribunal on issue No. 4 are upheld.

Issue No.2.

15. Factum of insurance is not in dispute. Claimant/injured was driver by profession and was driving another vehicle No.HP-69-0819, which was hit by offending vehicle, as discussed hereinabove, thus, fall within the definition of third party and his risk is

covered. Learned counsel for the insurer has not disputed the liability. Disability certificate Ext. PW1/C, is on the record, which does disclose that the claimant/injured has suffered 30% permanent disability which has affected his professional capability. His right leg has shortened, cannot drive the vehicle, the way he was driving before the accident. Thus, it can be safely held that it has affected his earning capacity to the extent of 50%. The Tribunal, after making discussion in paras 14 to 18 has rightly held that the injured has lost earning to the tune of Rs.7800/- per month.

16. The age of the claimant/injured was 34 years at the time of accident. The multiplier applicable is "15" in view of the 2nd Schedule attached to the Motor Vehicles Act, 1988 for short "the Act", read with ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104*** and upheld in ***Reshma Kumari and others versus Madan Mohan and another***, reported in ***2013 AIR SCW 3120***. Thus, the Tribunal has fallen in an error in applying the multiplier of "16".

17. At the cost of repetition, claimant/Injured was driver by profession and he cannot drive the way

he was driving before the accident. But it can be held that he can do the work as a labourer and can perform other jobs. Thus, the Tribunal has rightly deducted 50% towards the personal expenses of the claimant/injured and held that the claimant/injured has lost source of dependency to the tune of Rs.3900/- per month. Viewed thus, it can be safely held that the claimant/injured has lost source of dependency to the tune of Rs.3900/-x12x15= Rs.7,02,000/-.

18. The Tribunal has rightly awarded the amount on other heads, i.e., Rs.50,000/- under the head "pain and suffering during treatment", Rs.50,000/- "loss of enjoyments of life" Rs.60,000/- under the head "loss of earning capacity during treatment", Rs.83,000/- under the head "medical expenses" and Rs.25,000/- under the head "Special diet and attendant charges", needs no interference.

19. Thus, in all, the claimant/injured is held entitled to compensation to the tune of Rs.7,02,000/- +Rs.50,000+ Rs,50,000/-+Rs.60,000/-+ Rs.83,000/-+ Rs. 25,000/-. Total Rs. 9,70,000/-.

20. The Tribunal has awarded interest @9% per annum. However, the interest was to be awarded at the rate of 7.5% per annum, for the following reasons.

21. It is a beaten law of the land that the rate of interest should be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as *United India Insurance Co. Ltd. and others versus Patricia Jean Mahajan and others*, reported in (2002) 6 SCC 281; *Satosh Devi versus National Insurance Company Ltd. and others*, reported in 2012 AIR SCW 2892; *Amrit Bhanu Shali and others versus National Insurance Company Limited and others* reported in (2012) 11 SCC 738; *Smt. Savita versus Binder Singh & others*, reported in 2014, AIR SCW 2053; *Kalpanaraj & others versus Tamil Nadu State Transport Corpn.*, reported in 2014 AIR SCW 2982; *Amresh Kumari versus Niranjana Lal Jagdish Pd. Jain and others*, reported in (2015) 4 SCC 433, and *Mohinder Kaur and others versus Hira Nand Sindhi (Ghoriwala) and another*, reported in (2015) 4 SCC 434, and discussed by this Court in a batch of FAOs, FAO No. 256 of 2010, titled as *Oriental Insurance Company versus Smt. Indiro and others*, being the lead case, decided on 19.06.2015.

22. Accordingly, interest @7.5% per annum instead of 9% is awarded from the date of claim petition till realization of the amount.

23. Having glance of the above discussion, the appeal being FAO No. 52 of 2014, filed by the insurer is allowed, the impugned award is modified as indicated hereinabove and the appeal being FAO No. 180 of 2014, filed by the claimant/injured for enhancement of compensation is dismissed.

24. The points are answered accordingly.

25. Registry is directed to release the amount alongwith interest @ 7.5% per annum in favour of the claimant, strictly, in terms of the conditions contained in the impugned award, through payees' cheque account or by depositing the same in his bank account and excess amount, if any, be released in favour of the insurer alongwith interest accrued thereon, through payees' cheque account, after proper verification.

26. Send down the record forthwith, after placing a copy of this judgment.

December 30, 2016,
(cm Thakur)

(Mansoor Ahmad Mir)
Chief Justice.