

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**FAO No. 4142 of 2013 along
with FAO No. 4104 of 2013.**

Reserved on: 18th November, 2019.

Decided on : 29th November, 2019

1. FAO No. 4142 of 2013

United India Insurance Company Ltd.

.....Appellant.

Versus

Sh. Sanjay Kumar & Others

....Respondents.

1. FAO No.4104of 2013.

Sanjay Kumar

.....Appellant.

Versus

Jamna Devi and others

....Respondents.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

FAO No. 4142 of 2013.

¹ Whether reporters of the local papers may be allowed to see the judgment?

...2...

For the Appellant(s): Mr. Ashwani K. Sharam, Sr. Advocate with Mr. Ishan Sharma, Advocate.

For Respondent No.1: Mr. J. L. Bhardwaj, Advocate.

For Respondents No.2 & 3: Mr. B.C. Verma, Advocate.

FAO No. 4104 of 2013.

For the Appellant: Mr. J. L. Bhardwaj Advocate.

For Respondents No. 1 & 2: Mr. B.C. Verma, Advocate.

For Respondent No. 3: Mr. Ashwani K. Sharam, Sr. Advocate with Mr. Ishan Sharma, Advocate.

Sureshwar Thakur, Judge.

The insurer of the offending vehicle, through, FAO No. 4142 of 2013, hence, casts an onslaught, vis-a-vis, the award rendered by the learned Motor Accident Claims Tribunal, Shimla, H.P., upon, MACT Petition No. 44-S/2 of 2010, whereunder, compensation amount, borne in a sum of Rs.24,47,739/-, became assessed, vis-a-vis, the disabled claimant, and, thereon stood levied interest, at, the rate of 9% per annum, and, was ordered to commence from the date of petition, and, till realization,

...3...

of, the afore determined compensation amount. The apposite indemnificatory liability, stood fastened, upon, insurer of the offending vehicle.

2. Through, FAO No. 4104 of 2013, the disabled claimants rather strives for enhancement, of, hence compensation being made.

3. Since, both the FAO, arise, from a common award, hence, they are being adjudicated, upon, through, a common order.

4. The learned counsel appearing, for, the insurer of the offending vehicle, has, contended (i) that infirm findings become rendered, hence, by the learned tribunal, upon, the issue appertaining, to, the disabling injuries encumbered, upon, the disabled claimant, being a sequel of rash, and, negligent driving, of the offending vehicle, by its driver, as, the afore findings, are, a sequel, of, active *suppressio veri*, and, *suggestio falsi*, becoming deployed, by the disabled claimant. The afore

...4...

misdemeanor, is, contended, to, become starkingly highlighted, by the factum, qua no opportunity rather becoming granted, to the insurer, by the learned tribunal, for, therethroughs, the apt endeavour, becoming made before the learned tribunal, and, hence, necessitating, qua, his, thereafter hence by this Court, through, an application cast herebefore under order 41, Rule 27 of the CPC, rather becoming permitted, to adduce into evidence, the, proforma, of, own admitted claim, instituted before the insurer, by the owner of the offending vehicle, (I) wherein tenable, and, truthful echoings are borne, vis-a-vis, the mishap, involving the offending vehicle, being a sequel of a mechanical defect, hence, occurring therein, at, the relevant time. However, the afore submission, cannot be accepted by this Court, as under an order recorded, on 9.4.2013, hence, by the learned tribunal, rather on, a statement made therebefore, by the counsel for the insurer, hence,

...5...

containing projections qua the insurer, not intending, to adduce, any evidence, excepting its tendering into evidence Ex. R-3, hence, the insurer's evidence becoming closed. Consequently, the aforemade submission appears to be an afterthought.

5. Dehors, the above, the afore submission, as, made before this Court, would hold immense vigour, only upon, the FIR, vis-a-vis, the incident, and, as embodied in Ex.PW3/A becoming lodged at the instance, of, the registered owner, of, the offending vehicle, and, also the registered owner, of the offending vehicle, one Jamna Devi, being, an, ocular witness to the occurrence. Contrarily, hereat, the informant, of the relevant incident, as, unfolded, by the apposite FIR, embodied in Ex.PW3/A, is, one Balwant Verma, who, however, never stepped into the witness box, rather, for, belying the echoings borne therein, rather ascribing rash, and, negligent manner, of driving, of, the offending vehicle,

...6...

vis-a-vis, respondent No.2, one Uma Dutt, and, hence, the ill fated mishap becoming begotten. Moreover, with the registered owner of the offending vehicle, one Jamna Devi, in her cross-examination, acquiescing, to a suggestion put to her, vis-a-vis, hers not ocularly witnessing, the occurrence, (a) and, contrarily, upon, the victim stepping, into the witness box, and, his, in his examination-in-chief, rendering, a, testification, carrying echoings, vis-a-vis, at the relevant time, the offending vehicle, becoming negligently, driven by its driver, arrayed, as respondent No.2, (b) and, with the afore echoing occurring in his, examination-in-chief, remaining uneroded, vis-a-vis, its vigour, despite, his being subjected, to, a rigorous cross-examination, by the learned counsel for the insurer, (c) thereupon, when the fullest opportunity to scuttle, the vigour, of, the testification of the victim, as, comprised, in, his examination-in-chief, became also availed, and, rather

...7...

did not yield, the, apposite results, (d) thereupon, it would be inappropriate, for this Court, to, at this stage, allow the learned counsel, for the insurer to contend, that, the claim petition, is, mis-constituted, given, it becoming ingrained, with, vices, of, *suppressio veri, and, suggestio falsi*, (e) besides when, he is not a mechanical expert, to hence gather, in, quick spontaneity, of, the injuries befalling, upon, him at the relevant time, in sequel to his colliding, with, the offending vehicle, vis-a-vis, its thereat rather becoming entailed, with, any latent or patent mechanical defence, (f) thereupon, it would be inapt for this Court to conclude, that, he was enjoined to make averments, in his claim petition, that, the accident involving the offending vehicle, in sequel whereto, hence, disabling injuries befell upon him, were rather, a, sequel, of, eruption, of, a mechanical defect, in, the offending vehicle. Even if assumingly, the afore sudden eruption, of, a mechanical defect, latent or patent, became prima

...8...

facie, the, propelling cause, of, the offending vehicle, hence, colliding against the person, of, the disabled claimant, (g) thereupon, too, also when the afore collision which occurred, inter se, the claimant, and, the offending vehicle, as, driven by respondent No.2 one Uma Dutt, was a sequel, of, hence the offending vehicle, becoming used, in a public place, and, when other than proof, of, negligence, also proof of user, of, the, offending vehicle, hence, by its driver, in, a public place, becomes, the, preeminent activating cause, for, the claimant concerned, to, institute the claim petition, before the learned tribunal concerned, (h) hence, on the afore anvil also, any purported, hidings by the claimant, vis-a-vis, the authentic reason, for, the offending vehicle, driven, at the relevant time by respondent No.2, (i) rather colliding against his person, is, in significant, hence for fastening, of, the apposite indemnificatory liability, upon, the

insurer, given also its conspicuously, working only against, the, registered owner.

6. The learned counsel appearing, for, the insurer has also contended, that, the compensation amount, as, assessed, vis-a-vis, the disabled claimant, being excessive, as, there was no proof of any income, drawn at the relevant time, by the disabled claimant, excepting, the affidavit sworn, by, his employer. However, the afore submission, cannot be accepted, for hence tearing apart, the, testification, of, the employer, of, the disabled claimant, wherein, he echoed, vis-a-vis, the income, of, the disabled claimant, at the relevant time, being pegged in a sum, of, Rs.15,000/ per month. The counsel, for the insurer, though, subjected the employer, of, the disabled claimant, to, an ordeal, of, a scathing cross-examination, yet even in the afore endeavour, the employer of the disabled claimant, remained unscathed. Even if thereafter, the insurer became aggrieved, vis-a-vis, the

...10...

echoings appertaining, to, the income of the disabled claimants, as, embodied, in, the examination-in-chief, of the employer, yet it was open, for the insurer to elicit, from, the employer, ather the apt records, maintained by him, vis-a-vis, the salary disbursed, by him, to the disabled claimant. However, the afore recourse rather remained unavailed, by the insurer, whereas, it constituted, the, best evidence, for firmly concluding the trite factum, vis-a-vis, the exact income, drawn by the disabled claimant, hence, at the relevant time. Consequently, non recorusing thereto, constrains this Court, to draw, an adverse inference against the insurer, and, also this Court rather estops, the, counsel for the insurer, to contend, that, no reliance can be placed, upon, the testification of the employer, of, the disabled claimant, wherein, he testified qua his defraying hence salary, vis-a-vis, the disabled claimant, and, borne in a sum of Rs.10,000/- per month.

7. The learned counsel, appearing, for the aggrieved disabled claimant, has vociferously, made an address before this Court, for enhancing, the compensation qua him, and, has contended, qua, with the disability certificate borne in Ex.PW1/A, making vivid pronouncement, (a) vis-a-vis, 75% permanent disability, becoming entailed, upon, the disabled claimant, and, it appertaining, to, the whole body, (b) besides when PW-1, testifies with candour qua the petitioner becoming entailed, with, paraplegia, of, both lower limbs, (c) and, further thereonwards with the insurer, not dispelling, the vigour, of, the arguments made before this Court, by the learned counsel appearing, for, the aggrieved disabled claimant, that thereafter the disabled claimant, has become fully incapacitated, to, in future rear any income, from, any avocation, rather his becoming totally dependent, upon, others, (d) as apparently, the afore nature, of, hence permanent disability encumbered,

...12...

upon, him, rather forbidding, the, facile movement of his lower limb, (e) thereupon, it is concluded that the afore quantum of permanent disability, encumbered, upon, the disabled claimant, squarely prohibiting him, to, throughout his life time, take any employment, and, also to rear any income therefrom, hence, the afore disability is construed, to be encumbering, hence, a, cent per centum permanent disability, upon, the disabled claimant, in sequel, whereof, rather, a, cent per centum loss of income, becomes encumbered upon him, and, in consonance therewith, just, and, reasonable compensation, is, assessable qua him.

8. Naturally, with the passage of time, the salary of the disabled claimant, would beget, increase(s) or escalation(s), thereupon, the requisite addition(s) rather towards accretions thereof, are to be meted thereto, and, in the afore endeavour, an allusion is made to the age, of disabled claimant, age whereof stand recited, in the

prescription slip to be 24 years, and, hence, in consonance, with the verdict, of, the Hon'ble Apex Court rendered in a case titled as ***National Insurance Co. Ltd. vs. Pranay Sethi and others***, reported in **2017 ACJ 2700**, the relevant paragraph No.61, extracted hereinafter:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. "

he, is, hence, entitled for 40% increase, in his apposite per mensem income, borne in a sum of Rs.15000/-, increases whereof, are, computed to stand borne, in a, sum of Rs.6000/-. Consequently, the, per mensem loss of salary, vis-a-vis, the disabled claimant, stands computed in a sum of Rs.21,000/-. In sequel whereto, the annual loss of income, of the disabled claimant, is, computed, at Rs.21000/- x 12=Rs.2,52,000/-. After applying thereto, the apposite multiplier of 17, the total compensation amount, is assessed in a sum of Rs.2,52,000/- x 17=Rs.42,84,000/-, (Rs. Forty two lacs, eighty four thousand only). Accordingly, the compensation assessed,

vis-a-vis, the disabled claimant, by the learned tribunal, under the head “compensation, for, 75% permanent disability paraplegia”, is, modified in the afore manner.

9. However, the compensation, as assessed, by the learned tribunal under other heads, is, maintained. Consequently, the disabled claimant is held entitled, to, a total compensation of Rs.44,36,739/- (Rs.forty four lacs, thirty six thousand, seven hundred thirty nine only).

10. For the foregoing reasons, the appeal filed by the insurer bearing FAO No. 4142 of 2013 is dismissed, whereas, the appeal filed by the disabled claimant, bearing FAO No. 4104 of 2013, is allowed, and, the impugned award, is, modified in the afore manner. Consequently, the disabled claimant, is, held entitled to a total compensation, borne in a sum of Rs.44,36,739/- (Rs.forty four lacs, thirty six thousand, seven hundred thirty nine only), along with interest @ 9% per annum, hence, commencing from the date of petition, till

...16...

realization thereof. The indemnificatory liability, vis-a-vis, the afore compensation amount, is, saddled, upon, the insurer of the offending vehicle. The amount of interim compensation, if awarded, be adjusted in the aforesaid compensation amount, at the time of final payment. All pending applications also stand disposed of. Records be sent back forthwith.

29th November, 2019.
(jai)

(Sureshwar Thakur)
Judge.