S. No.110

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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Date of Decision:12.5.2026

1. FAO No.5374 of 2018 (O&M)

Vijay Kumar **.....Appellant**
Vs.
Amit Kumar and others **.....Respondents**

2. FAO No.1210 of 2019 (O&M)

Amit Kumar **.....Appellant**
Vs.
Ravinder and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Prashant Singh Chauhan, Advocate
for the appellant in FAO No.5374 of 2018.

Ms. Bhumika Khatri, Advocate for
Mr. Ram Darshan Yadav, Advocate
for the appellant in FAO No.1210 of
2019.

Mr. Rajneesh Malhotra, Advocate and
Ms. Manvi Verma, Advocate for the respondent-
Insurance Company.

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Yashvir Singh Rathor, J. (Oral)

CM No.3605-CII of 2019 in
FAO No.1210 of 2019 (O&M)

1. This is an application filed under Section 5 of the Limitation Act for condonation of 95 days' delay in filing the appeal.

2. For the reasons mentioned in the application, the same is allowed and delay of 95 days in filing the appeal is hereby condoned.

FAO No.5374 of 2018 (O&M)
FAO No.1210 of 2019 (O&M)

3. This judgment shall dispose of above noted two appeals, as the same have emanated out of the same award.

4. Both the afore-said appeals have been instituted against award dated 19.7.2018 decided by the MACT, Rewari **(for short, "Tribunal")**. FAO No.1210 of 2019 has been instituted by the claimant – Amit Kumar for enhancement of compensation awarded in MACP case No.315 of 2015 in a petition under Section 166 of Motor Vehicles Act, 1988 vide which a sum of Rs.5,87,690/- has been awarded as compensation to the claimant/appellant alongwith interest at the rate of 7.5% per annum from the date of filing of claim petition till realization on account of injuries suffered by him due to rash and negligent driving on the part of the driver of the tractor No.HR-36S-5706 **(for short, `offending vehicle')** while FAO No.5374 of 2018 has been instituted by the owner/ insured whereby the Insurance Company has been given the right to recover the awarded amount from respondent No.2 on the ground that there was violation of the terms and conditions of the insurance policy.

5. From the pleadings of parties, following issues were framed:-

> *"1. Whether Amit Kumar suffered injuries in a vehicular accident that took place due to rash and negligent driving of offending vehicle No.HR-36S-5706 by respondent as alleged in petition? OPP*

2. *If issue no.1 is proved whether the petitioner is entitled to compensation? if so to what amount?OPP*
3. *Whether respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident? If so its effect?OPR*
4. *Relief.*

6. Thereafter, the parties led evidence in support of their case.

7. After hearing the parties and going through the material on the file, learned Tribunal awarded a sum of Rs.5,87,690/- as compensation to the claimant-Amit Kumar, on account of injuries suffered by him along with interest @ 7.5% per annum from the date of filing of claim petition till realization and it was held that insured has violated terms and conditions of the insurance policy and liability of respondents No.1 and 2 shall be joint and several but respondent No.3 shall first of all satisfy the award with a right to recover the same from the insured.

8. Feeling aggrieved, both the afore-said appeals have been instituted. The material on file has been perused and parties have been heard.

9. The only issue required to be determined in the present appeals relates to the assessment of compensation and fixing the liability to pay the compensation. Therefore, the entire facts regarding the manner of the accident are not required to be reproduced in detail, as the Tribunal has already held under issue No.1 that the accident in question had taken place due to rash and negligent driving on the part of respondent No.1. Accordingly, finding on issue No.1 is not required to be interfered with and the same is affirmed.

10. Learned counsel for appellant/ owner in FAO No.5374 of 2018 argued that the Tribunal has not appreciated the facts of the case and evidence on

record in the correct perspective and has wrongly granted right to the Insurance Company to recover the awarded amount. A wrong finding has been given that the vehicle was being used for commercial purposes and there was violation of terms and conditions of the insurance policy. Learned Tribunal wrongly came to the conclusion that bricks were loaded in the trolley and as such, the tractor was being used for commercial purposes whereas no such evidence has been led by the Insurance Company to prove violation of terms and conditions of the insurance policy and infact the bricks were being transported for constructing a kothra and nala for irrigation purposes in the agricultural land owned by the owner i.e. for agricultural purposes. Learned counsel contended that the Tribunal thus erred in law as well as facts while exonerating the Insurance Company. Learned counsel next contended that the plea of breach of condition of policy was raised by the Insurance Company but neither any issue was framed by the Tribunal in this regard nor any evidence was led to prove the alleged breach. Insurance Company also failed to prove the said breach whereas heavy onus was upon the Insurance Company to prove the same. Learned counsel contended that the finding of the Tribunal in this regard is thus liable to be set aside and Insurance Company be held liable to indemnify the insured. In support of his contention, learned counsel has relied upon a judgment of Hon'ble Supreme Court in 2014(2) Law Herald 1437 – **Fahim Ahmad and others Vs. United India Insurance Co. Ltd. and others.**

11. Learned counsel for the appellant/claimant argued that the Tribunal has not appreciated the facts of the case and evidence on file in the correct per-spective while assessing the compensation which is grossly inadequate. The

claimant had suffered 65% permanent disability and he has been awarded a total compensation of Rs.5,87,690/-, for medical expenses, permanent disability, nutritious diet, pain and sufferings and attendant charges. No future prospects have been added to the income of the deceased and since deceased was 26 years of age and was a Carpenter, 40% amount should have been added to the monthly income towards future prospects. Learned counsel further argued that adequate compensation has not been awarded under pecuniary and non-pecuniary heads. Learned counsel prayed that impugned award is thus liable to be set modified and appellant/claimant is entitled to enhanced amount of compensation. In support of his contentions, learned counsel for the appellant has relied upon 2014 (1) RCR (Civil) 914 **Sanjay Verma Vs. Haryana Roadways** and 2017 (16) SCC 680 **National Insurance Co. Ltd Vs. Pranay Sethi and Others**.

12. On the other hand, learned counsel for Insurance Company argued that the impugned award is well reasoned and justified and does not call for any interference. The Tribunal has rightly come to the conclusion that by transporting bricks in the trolley, the owner has violated the terms and conditions of the insurance policy and insurance company is thus not liable to indemnify the insured and he prayed that both the appeals be dismissed.

13. **FAO No.5374 of 2018**

First of all, the issue relating to violation of terms and conditions of the Insurance Policy shall be decided. It is pertinent to mention that issue No.3 has been framed only to the effect whether driver possessed a valid and effective driving licence or not and no issue has been framed with regard to breach of terms

and conditions of insurance policy but finding has been given under Issue No.3 itself that the owner has violated terms and conditions of the insurance policy by transporting bricks in the trolley. The finding of learned Tribunal under Issue No.3 is reproduced as under:-

> *Issues No.3.*
>
> *28. Under this issue respondent No.3 has to establish that driver of offending vehicle was not holding a valid & effective driving licence and that insured has violated the terms & conditions of insurance policy. To prove the same learned counsel for respondent No.3 examined Vivek Kumar, Legal Retainer, Reliance General Insurance Company as RW2 who by way of affidavit has deposed that respondent No.1 Ravinder was not holding valid & effective license a the time of alleged accident. As per the endorsement, the license Ex.R3 was issued for Sctooer, Motor-cycle, Car, Jeep, Tractor only. He deposed that as per version of claimant and FIR, tractor trolley was loaded with bricks. He further deposed that tractor in question was used for commercial purpose and same was insured only for agricultural purpose. The respondent No.2 has not tendered in evidence any purchase receipt of bricks. The respondent No.2 has failed to lead any cogent, credible and reliable evidence that tractor in question was being used for agricultural purposes. Hence, plea taken by counsel for respondent No.2 i.e. tractor in question was being used for agricultural purposes is without any force of law and*

cannot reliable. The respondent No.1 also failed to disclose the name of brick-kiln from where he brought the bricks. Thus respondent No.2 has violated the terms and conditions of the insurance policy. So, the insurance company is not liable to indemnify the insured.

Since, the offending vehicle was being used for commercial purpose as the same was loaded with bricks which amounts the violation of terms and conditions of the insurance policy.

In view of above discussion, respondent No.3 being the insurer is hereby held liable to pay the amount of compensation to the claimant with a right to recover the same from respondent No.2 (insured/owner of the offending vehicle/tractor) as insurer is hereby discharged from the liability to indemnify the insured. In other words, respondents No.1 to 3 being driver, owner & insurer of the offending vehicle are jointly & severally liable to pay the compensation amount, however, first liability shall be of respondent No.3 being the insurer of the offending vehicle and respondent No.3 shall have a right to recover the same from respondent No.2, owner of the offending vehicle. Issue No.3 is, accordingly, decided in favour of claimant."

14. A perusal of the afore-said reasoning recorded by the Tribunal shows that the Tribunal came to the conclusion that the tractor was being used for commercial purposes whereas it was insured for agricultural purposes. It has been further observed that the owner/ respondent No.2 has not tendered in evidence any

purchase receipt of bricks and has also not led any credible evidence to establish that the tractor in question was being used for agricultural purposes. However, the findings of the Tribunal in this regard are erroneous and not sustainable. The plea regarding breach of terms and conditions of insurance policy was raised by the Insurance Company to the effect that bricks were being transported for commercial purposes whereas as per version of owner/ insured, bricks were being transported for constructing a kothra and drains in the agricultural land and tractor was thus being used for agricultural purposes only. The Tribunal has thus placed the onus upon the owner to prove that he was not using the tractor for commercial purposes whereas it is the Insurance Company which was required to prove the alleged breach. In **Fahim Ahmad's case (supra)** cited by learned counsel for appellant- owner, sand was being carried in the trolley attached with the tractor for the purpose of construction of underground tank near the farm land for irrigation purposes and it was held by the Hon'ble Supreme Court that merely because sand was being carried in the trolley would not mean that tractor was being used for commercial purposes or that there was breach of condition of policy on the part of the insured or that the tractor was being used for hire or reward and for commercial purposes. Relevant portion of the judgment of Hon'ble Supreme in **Fahim Ahmad's case (supra)** is reproduced as under:-

> "*5. A perusal of the records shows that, at the time of the accident, a trolley was attached with the tractor, which was carrying sand for the purpose of construction of underground tank near the farm land for irrigation purpose(s). However, merely because it was carrying sand would not mean that the*

tractor was being used for commercial purpose and consequently, there was a breach of the condition of policy on the part of the insured. There is nothing on record to show that the tractor was being used for commercial purpose(s) or purpose(s) other than agricultural purpose(s), i.e., for hire or reward, as contemplated u/s 149(2)(a)(i)(a) of the said Act.

6. Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor any evidence led to prove the same. In our opinion, it was mandatory for Respondent No. 1-Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the Appellants herein."

15. In the present case also, no issue was framed regarding breach of terms and conditions of the insurance policy. No doubt, both the parties had set up their respective plea in the written statement and as such they were alive to the controversy and in these circumstances, it is of no consequence whether a specific issue was framed or not. Infact, heavy onus lay upon the Insurance Company to prove the alleged breach and to establish that the bricks were being transported by the owner/ insured for commercial purposes & for hire or reward. Learned Tribunal thus wrongly placed the onus upon the owner/ insured to establish that he

was not using the tractor for commercial purposes whereas he was not required to prove the same. Except the oral testimony of RW2 Vivek Kumar, Legal Retainer of the Insurance Company, no evidence was led to prove the alleged breach which in my opinion was not sufficient to establish the alleged breach. No cogent and credible evidence was led by the Insurance Company to prove the breach of the terms and conditions of the Insurance Policy and as such, Insurance Company has been wrongly exonerated of its liability to indemnify the insured and finding on Issue No.3 to that extent is reversed.

16. **FAO No.1210 of 2019**

As per version of claimant- Amit, he had suffered multiple injuries in the accident in question. He was hospitalised in Aditya Hospital, Rewari from 15.11.2014 to 26.11.2014 and at Paras Hospital, Gurgaon from 28.4.2015 to 2.5.2015. He had suffered 65% permanent disability and was not in a position to work as a Carpenter. The MLR of claimant has been tendered in evidence as Ex.P4, according to which, he was medico legally examined at General Hospital, Rewari and he had suffered injuries in the road-side accident.

17. Claimant has examined Kapil Chaudhary, Sr. Executive, MRD, Paras Hospital, Gurgaon as PW4 who deposed that claimant- Amit Kumar remained admitted in their hospital from 28.4.2015 to 2.5.2015 and he tendered the discharge summary Ex.P5 and final bill amounting to Rs.1,48,321/- Ex.P6 as well as bills Ex.P7 to Ex.P12.

18. Claimant has also examined Narender Kumar, Accountant, Aditya Hospital as PW5, who deposed that claimant Amit was admitted in their hospital

on 15.11.2014 and discharged on 26.11.2014 and he proved discharge summary Ex.P13 and bills Ex.P14 to Ex.P39. Claimant has also tendered the medical bills as under:-

Ex.P6	Rs.1,48,321/-
Ex.P7 to Ex.P12	Rs.4517/-
Ex.P14	Rs.1,63,200/-
Ex.P15 to Ex.P39	Rs.88272/-
Ex.P41 to Ex.P50	Rs.15380/-
Total	Rs.4,19,690/-

19. Learned Tribunal after going through the bills produced on file held that claimant had spent Rs.4,19,690/- on his treatment. No interference in the same is thus called for as the compensation of the expenses incurred on treatment has been assessed as per the bills produced on file.

20. As per version of claimant, he was working as a Carpenter and was getting salary of Rs.10,000/- per month and he also used to earn Rs.10,000/- from additional work at home. He has examined PW6 Desh Raj, who deposed that claimant – Amit was working with him as a Carpenter at Ram Niwas Parkash Chand Timber Merchant,Kathmandi, Rewari and was getting Rs.10,000/- per month as salary. Hon'ble Supreme Court while deciding Civil Appeal No.15021 of 2024 titled **Karamjit Singh Vs. Amandeep Singh and another** vide judgment

dated 17.12.2024 has held that a carpenter has to be treated as a skilled person and it will be unfair to classify a carpenter as an unskilled worker. Hon'ble Supreme Court in 2019(5) RCR (Civil) 884, **Chameli Devi and others Vs. Jivrali Mian and others,** has assessed the monthly income of a carpenter to be Rs.5000/- per month in the year 2001 and it was further held that in such cases where deceased is engaged in such type of profession, claimants can only lead oral evidence.

21. In the present case also, the claimant was working as a Carpenter and this fact has gone controverted and there is thus no reason to discard his testimony that he used to earn Rs.10,000/- per month while working as a Carpenter and his income is taken as Rs.10,000/- per month.

22. PW7 – Dr. R.K. Yadav, Medical Officer, General Hospital, Rewari deposed that he along with other members of the board had examined claimant and assessed his permanent disability to the extent of 65% on account of post-traumatic right Flail Upper Limb and left shoulder stiffness with right hip and right knee stiffness and he tendered the disability certificate Ex.P40. The Tribunal after taking into consideration his permanent disability to be 65% awarded him compensation of Rs.1,30,000/- on account of permanent disability by awarding Rs.2,000/- per percent of disability. However, the compensation under the head Loss of Income on account of permanent disability has not been assessed as per settled provisions of law. Rather, on account of permanent disability to the extent of 65% suffered by the claimant, his earning capabilities will be diminished. The compensation under the head 'loss of income' thus has to be assessed keeping in view the percentage by which his earning capability has been diminished and by

applying a suitable multiplier in view of law laid down by Hon'ble Supreme Court in 2010(4) PLR 242- **Yadava Kumar Vs. The Divisional Manager, National Insurance Company Limited**. The law is well settled that the compensation to be awarded for injuries suffered by victim in a motor vehicular accident should be just and equitable. Courts have consistently held that while money cannot erase the pain, suffering, or trauma but it is the only legal means to provide restitution and restore the victim to his previous position as far as possible for which 'just compensation' has to be assessed. It is also well settled that while it is impossible to fully compensate for the loss of limb, life, or quality of life, the compensation must be 'Just', meaning thereby, that it should be fair, reasonable, and equitable based on the evidence and not merely a 'Windfall' or a 'Pittance'. The core objective is to put the injured/victim in the same position he would have been if the accident had not taken place, to the extent money can do so. This approach ensures that the law provides a realistic recompense for the trauma endured, rather than just providing normal relief.

23. Besides this, Hon'ble Supreme Court in 2013 (3) RCR (Civil) 934 - **G.Ravindranath @ R. Chowdary Vs. E. Srinivas and another**, has held that in a case of accident resulting in injuries to the victim, the compensation in personal injury cases should be determined under the following heads:-

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing expenditure. food and miscellaneous

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded under heads (i), (ii) (a) and (iv) It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

24. In the present case also, the disability suffered by the claimant was on account of post-traumatic right Flail Upper Limb and left shoulder stiffness with right hip and right knee stiffness. As such, the disability suffered by him will certainly diminish his earning capability as he will not be able to do his job or routine work and lead his life in the same manner as he was leading prior to the accident.

25. In the present case, the accident had taken place in the year 2014 and the income of the claimant is assessed as Rs.10,000/- per month. Claimant was 26 years of age and in view of law laid down in **Sanjay Verma's case (supra)** and

Pranay Sethi's case (supra), 40% amount has to be added to his monthly income towards future prospects which brings his monthly income to **Rs.14,000/- per month (Rs.10,000/- + Rs.4000/-)**.

26. Claimant has suffered permanent disability to the extent of 65% and the monthly loss of income will thus come to **Rs.9,100/- (Rs.14,000/- X 65%)** and '**annual loss of income**' will come out to **Rs.1,09,200/- per annum (i.e. Rs.9,100/- X 12)**.

27. The claimant was 26 years of age and in view of law laid down in **Pranay Sethi's case (supra),** the multiplier of 17 has to be applied which takes the compensation to **Rs.18,56,400/- (Rs.1,09,200/- X 17)** on account of '**loss of income**' due to permanent disability.

28. The claimant had suffered 65% permanent disability and had suffered multiple injuries including fractures and remained admitted in the hospital for a long period initially from 15.11.2014 to 26.11.2014 at Aditya Hospital, Rewari and thereafter from 28.4.2015 to 2.5.2015 at Paras Hospital, Gurgaon. However, the Tribunal has awarded him only a sum of Rs.20,000/- on account of **Mental Pain and Agony** which is grossly inadequate and taking into consideration the severity of injuries, claimant is held entitled to a sum of **Rs.1 lakh** on account of **Pain and Sufferings**.

29. Claimant remained under treatment for a long time for about six months and during this period, he must have engaged an attendant, spent huge amount on special diet and on transportation. However, he has been awarded only **Rs.9,000/- each** for e**ngaging an attendant and for nutritious diet** which too is

on lower side and he is accordingly held entitled to **Rs.30,000/- towards Attendant Charges** and **Rs.20,000/- towards nutritious diet** besides **Rs.20,000/- for expenses incurred on transportation.**

30. Resultantly, the compensation to be awarded by this Court is assessed as under:-

Sr. No.	Head	This Court (₹)
1.	Loss of Income	Rs.18,56,400/-
2.	Pain & suffering	Rs.1,00,000/-
4.	Attendant Charges, Nutritious Diet and Expenses incurred on Transporation	Rs.30,000/- Rs.20,000/- Rs.20,000/- (respectively)
	Total	**Rs.20,26,400/-**
	Interest	**9%**

31. As a result of afore-said discussion, the appeal bearing FAO No.5374 of 2018 is accepted in view of finding on Issue No.3 and it is ordered that the liability of respondents shall be joint and several and the direction issued by the Tribunal that the Insurance Company shall satisfy the award but shall have a right to recover the awarded amount from the insured is set aside. Appeal bearing FAO No.1210 of 2019 is also partly allowed with costs and the claimant is held entitled to enhanced compensation of **Rs.14,38,710/- (Rs.20,26,400/- - Rs.5,87,690/-) (Rounded off to Rs.14,39,000/-)** over and above the compensation awarded by Tribunal, payable by respondents jointly and severally, along with interest @ 9% per annum, from the date of filing of claim petition i.e. 2.7.2015, till realization, payable by respondents No.1 to 3 jointly and severally.

32. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of directions issued by the Hon'ble Supreme Court in Writ Petition (Civil) No.534 of 2020 titled **Bajaj Allianz General Insurance Company Versus Union of India and others,** decided on 16.03.2021 and Insurance Company shall comply with the directions as issued under Clause (F) of the said judgment.

33. Pending miscellaneous application(s), if any, shall also stand disposed of.

34. A photocopy of this order be placed on the file of connected case.

(Yashvir Singh Rathor)
Judge

May 12, 2026
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No