IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 324 of 2012 along with FAO No. 307 of 2012.

Reserved on : 12th May, 2017.

Decided on : 21st June, 2017.

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1. **FAO No. 324 of 2012.**

Bajaj Allianz General Insurance Company Limited
…..Appellant.

Versus

Pankaj Sharma and others ….**Respondents.**

2. FAO No. 307 of 2012

Pankaj Sharma **...Appellant/Claimant.**

Versus

S.N. Sharma and others **….Respondents.**

Coram:

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

Whether approved for reporting?[1] *Yes.*

For the Appellant(s): Mr. Aman Sood, Advocate for the appellant in FAO No. 324 of 2012 and Mr. Neeraj Gupta, Advocate, for the appellant in FAO No. 307 of 2012.

For the Respondents : Mr. Neeraj Gupta, Advocate for respondent No.1 in FAO No. 324 of 2012.

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

Mr. Deepak Bhasin, Advocate, for respndent No.2 in FAO No. 307 of 2012 and for respondent No.3 in FAO No. 324 of 2012.

Mr. Aman Sood, Advocate, for respondent No.3 in FAO No. 307 of 2012.

Sureshwar Thakur, Judge.

Since, both these appeals arise out of an award pronounced by the learned Motor Accident Claims Tribunal, Shimla, H.P., (hereinafter referred as the learned Tribunal) upon M.A.C. Petition No. 38-S/2 of 2008, hence, both are liable to be disposed off by a common verdict.

2. Under the impugned award, pronounced by the learned Tribunal, it, assessed compensation in favour of the claimant, compensation whereof is constituted in a sum of Rs.2,95,000/- along with interest at the rate of 8% per annum w.e.f. 05.03.2011 till payment, alongwith costs quantified at Rs.5000/-, liability of indemnification whereof, stood fastened upon the insurer of the offending vehicle.

3. On standing aggrieved by the verdict of the learned tribunal, both the claimant as well as M/s Bajaj Allianz General Insurance Company, concert to assail it by preferring the instant appeals therefrom.

4. The brief facts of the case are that petitioner/claimant in April, 2008, had been 16 years of age. The petitioner had been a student and had also been helping his parents in attending to their household and holding. The petitioner had been in receipt of income of Rs.5000/- per month from all sources. On 21.04.2008, the petitioner had been on way from Nandla to Massali in vehicle No. HP-10B-0175. Respondent No.2(A), Sh. Mangat Ram had been on the wheel of the vehicle. Respondent No.2(A) had been driving rashly and negligently the offending vehicle as a result of which the vehicle had gone down the highway in the area of Khilocha at about 11.30 a.m. The petitioner/claimant had suffered multip[le injuries of serious nature. He had been

taken to Civil Hospital, Rohru for immediate medical aid, from wherein, on 21.04.2008, he was referred to IGMC, Shimla, whereat, he remained admitted till 30.04.2008. On 30.04.2008 he was discharged with the advice of necessary medical follow up. The petitioner had suffered multiple fractures of chest and his spleen stood removed. The petitioner had paid a sum of Rs.1,00,000/- for his treatment. Even after medical treatment of months together, the petitioner had not keeping good health. The petitioner had suffered permanent injury. He could not opt for career in police, army and para military forces. The petitioner had claimed compensation of Rs.10,00,000/- for the injuries suffered by him in the accident.

5. The respondents No.1, 2 and 2(A) resisted the claim petition. They admitted the ownership and possession of respondent No.1 qua the offending vehicle. Taking place of accident stood admitted by replying

respondents. However, they have denied that ill fated accident took place on account of rash and negligent driving of the offending vehicle by its driver. They pleaded that the claimant is not entitled to any compensation. However, it is averred that, compensation, if any, assessed, it was to be paid by the insurance company.

6. Respondent No.3, the insurance company admitted qua its having provided insurance cover to the offending vehicle at the time of the accident. However, it has been averred that respondent No.1 had contravened the terms and conditions of the insurance policy and the Act. Respondent No.2(A) has been alleged to not holding valid and effective driving licence. It expressed ignorance about the age, income and occupation of the petitioner. The petitioner had not suffered any injury in the accident, nor had paid Rs. One

lac for his medical treatment. The petitioner was not entitled to compensation from respondent No.3.

7. On the pleadings of the parties, the learned tribunal struck the following issues inter-se the parties at contest:-

1. Whether the petitioner had suffered injuries due to rash and negligent driving of Mahindra Bolero Camper No. HP-10B-0175 being driven by the respondent No.2(A)?OPP
2. If issue No.(1) is proved, to what amount of compensation the petitioner is entitled and from which of the respondents?OPP
3. Whether the claim petition is not maintainable, as alleged?OPR
4. Whether the vehicle in question was being driven in contravention of the terms and conditions of the Insurance Policy?OPR-3
5. Whether the respondent No.2(A) was not having a valid and effective driving licence to drive the vehicle at the relevant time?OPR-1
6. Whether the petition is bad for misjoinder and non joinder of parties?OPR-3
7. Relief.

8. On an appraisal of evidence adduced before the learned tribunal, the latter allowed the apposite petition

and assessed compensation in favour of the claimant, constituted in a sum of Rs.2,95,000/- along with interest at the rate of 8% per annum w.e.f. 05.03.2011 till payment alongwith costs quantified Rs.5000/-, liability qua indemnification whereof stood fastened upon the insurer concerned.

FAO No.324 of 2012.

9. Mr. Aman Sood, Advocate appearing for the insurance company has assailed the award rendered by the learned tribunal, on the ground that the assessment of compensation made therein with respect to the expenses incurred towards the medical treatment of the claimant, expenses whereof are borne on Exts. PW5/A-1 to Ex.PW5/A-40, warranting reversal, given the fact that the father of the claimant was evidently a government employee, hence, was entitled to claim reimbursement of amount(s) borne in the aforesaid exhibits. However, the mere fact that the father of the claimant was a

government employee and was hence entitled to seek reimbursement from his employer, the amount(s) borne in Ex.PW5/A-1 to Ex.PW5/A-40, comprising the expenses incurred by him towards the medical treatment of the claimant, yet the best evidence in respect of the father of the claimant availing the benefit of reimbursement of medical expenses comprised in the aforesaid exhibits, “stood comprised” in the counsel for the insurance company requisitioning the relevant record from the department concerned, wherein personifications occurred with respect to the father of the claimant making a claim for reimbursement of the medical expenses incurred by him for the treatment of the claimant also stood comprised in the relevant record making reflections that his claim for reimbursement of medical expenses detailed in Ex.PW5/A-1 to Ex.PW5/A-40 standing approved and money(s) standing disbursed to him. However, the aforesaid best evidence remains

unadduced. Consequently, a sum of Rs.20,000/- assessed in favour of the claimant, on account of costs of medical treatment, “past and prospective”, in sequel to his suffering the apposite injuries in pursuance to the motor vehicle accident involving the offending vehicle, does not warrant any interference also when PW-1 has deposed that he had removed the injured spleen of the claimant besides when he has further testified that thereupon the claimant is perennially prone to gather certain infections, entailing hence, incurring of expenses for their mitigation.

10. The learned counsel appearing for the insurance company has also contended that a sum of Rs. one lac awarded to the claimant, on account of loss of his valuable two academic years, is not borne by the evidence on record, especially, when there is no iota of any echoings in the respective depositions of the claimant, his father or in the deposition of PW-3, in

respect of the claimant, in sequel to the relevant injuries sustained on his person, being hence disabled to attend school for two years. However, the aforesaid submission is not acceptable, as the claimant while testifying as PW-5, has in his examination-in-chief made a communication that in sequel to the ill-fated accident, whereupon, he stood entailed with the relevant injuries, he stood disabled to attend school. The aforesaid testification occurring in his examination-in-chief remains unshred of its efficacy, during the ordeal of a rigorous cross-examination to which he stood subjected to by the learned counsels appearing for the respondents, thereupon it acquires a halo of sanctity. Consequently, it is to be concluded that a sum of Rs. One lac computed as compensation by the learned tribunal, on account of loss of studies entailed upon the claimant, in sequel to the injuries which befell upon him in pursuance to the ill-fated accident also does not warrant any interference.

11. Furthermore, the learned counsel appearing for the insurance company has contended, that a sum of Rs.10,000/- awarded as compensation on account of services of attendant, warrants reversal, as there is evident bespeaking by the relevant evidence, of the claimant being attended upon by the members of his family, hence, with the latter gratuitously serving the claimant during the period of his ailment, a sum of Rs.10,000/- assessed as compensation, on account of services of an attendant, is, as such grossly inappropriate. However, the aforesaid submission is not acceptable, as PW-5, the claimant in his examination-in-chief “through” has articulated that he during his ailment was attended upon by his mother and grand-mother, yet he has also deposed that on theirs being detained to attend upon him “resulted” in theirs being precluded to engage themselves in agricultural pursuits, for performance whereof they were enjoined to engage

labourers, wheretowhom wages were defrayed. The aforesaid deposition occurring in the examination-in-chief of the claimant is not concerted to be shred of its efficacy, by any counsel appearing for the respondents, comprised in theirs in respect thereof during their respective cross-examination putting apposite suggestion to them. Consequently, even if, the claimant during the period of his ailment was attended upon by his mother and grand-mother, hence, even if they performed gratuitous services, nonetheless, when they were evidently forbidden to perform their agricultural pursuits, for performance whereof, they engaged labourers, wheretowhom, they defrayed expenses, thus, constrains this Court to conclude that a sum of Rs.10,000/- assessed as compensation, on account of services of an attendant also not warranting any interference.

12. RW-1 Shri Parkash Panta, Licence Clerk in the Office of RLA/SDM, Rohru has testified that the driver concerned one Mangat Ram had been on 1.7.2003 issued a licence to drive a light motor vehicle. He has also testified that the driving licence of Mangat Ram had been endorsed for light transport vehicle w.e.f. 23.01.2009 and the aforesaid licence of Mangat Ram, whereupon he stood authorised to drive a light transport vehicle remained valid upto 22.01.2015 “whereas” his licence for driving a non transport vehicle is valid upto 30.06.2023. The accident involving the offending vehicle, vehicle whereof stood driven by respondent No.2(A), occurred on 21.04.2008, whereat the driver concerned was authorised to drive a light motor vehicle, consequently, it is submitted that the driver concerned of the offending vehicle, was not authorised to drive a light motor vehicle “for” commercial purpose, thereupon, it is contended that the fastening of liability upon the insurance company

to pay the compensation amount, warrants interference. However, the aforesaid submission also falters in the face of the clerk concerned of the Licencing Authority concerned, testifying in his cross-examination that when the gross unladen weight of a vehicle is upto 7500 kgs or less, thereupon, unless the RC of the relevant vehicle characterises it to be a commercial vehicle, thereupon, dehors want of any endorsement in the relevant licence comprised in Ex.RW1/B qua its holder being authorised to drive a transport vehicle, would yet empower the holder to drive a light motor vehicle. Since, the Insurance company has not placed on record the R.C. of the relevant vehicle with reflections therein that the relevant vehicle stood classified therein as a commercial vehicle nor also when any evidence stands adduced qua the unladen weight of the offending vehicle being not upto 7500 kg or its unladen weight exceeding 7500 kg, in sequel, it has to be concluded that the driver concerned

stood authorised by his licence, comprised in Ex.RW1/B, to drive the offending vehicle, especially when the offending vehicle hence falls within the aforesaid category, wherefrom it is befitting to derive an inference that in his driving the offending vehicle, he has not breached any term and condition of the insurance policy. Consequently, the fastening of the apposite liability upon the insurance company by the learned tribunal, is not wanting in any legality.

FAO No. 307 of 2012.

13. Mr. Neeraj Gupta, the learned counsel appearing for the claimant, has claimed enhancement of compensation vis-a-vis the claimant upto a sum of Rs.ten lacs. The anchor for his claim rests upon the learned tribunal “not” considering the monetary value of services rendered at his house by the claimant “both” during the period of his undergoing treatment nor its considering the value of rendition by him “of” services in future,

especially when in sequel to the removal of his injured spleen, he would be deterred to assist his family members in domestic chores or in agricultural pursuits. However, the aforesaid submission is rejected, as the expert concerned has not pronounced that the removal of the injured spleen of the claimant, would forbid him throughout his life, to engage in domestic chores or in agricultural pursuits. Consequently, the monetary value(s) thereof in future does not warrant any assessment also since the learned tribunal has assessed compensation upon the claimant for loss of two academic years, for span whereof he stood evidently dissuaded to engage himself in academic pursuits also constrains this Court, to not assess compensation vis-a-vis the claimant in respect of loss of his assisting services to his family members in theirs performing the domestic chores, alongwith him or in his performing conjointly with them any agricultural pursuits.

14. The learned counsel appearing for the petitioner has, highlighted upon testimonials, comprised in Mark -A and Mark-B, to contend that given the excellence in sports of the claimant, his standing entailed with the ill consequence of removal of his injured spleen, would mar his career in sports also would mar his prospects for employment in armed forces. He, hence, contends that compensation be assessed upon the claimant for the loss of his future prospect in sports and for loss of future prospects of employment in the armed forces. However, any assessment of compensation on anvil aforesaid would be an extremely hazardous surmisal exercise also would remain unrested upon hard evidentiary strata, especially when there is no evidence of the expert concerned that the removal of the injured spleen would bar the claimant to perform either agricultural pursuits or would deprive him from government or private employment, hence, when it is

open to the claimant to seek employment either in the government or in the private sector, by his applying in the relevant quota meant for handicaps, if the claimant falls within the aforesaid category, thereupon this Court is constrained to hence upon anvil of his career in sports or his prospects in his seeking employment in the armed forces being purportedly diminished by the injuries entailed upon him in the ill-fated accident, “not” assess compensation upon him.

15. The learned counsel appearing for the claimant has placed reliance upon decisions of various High Courts reported in Ravichandaran versus Managing Director, Pallavan Transport Corporation Ltd, 2004 (2) ACC 10, Netram versus Vijay Kumar and others, 2006 (2) MPHT 94, Arvinder Singh versus Kajodmal and others, 2005(2) DNJ 1073, Usman versus Afroz Khan and others, 2009 (4) AICJ 506 and Ku. Kavita Shama versus Ashwani Kumar, 2008 (1) MPHT 280, to contend that the removal

of the injured spleen begets acute critical consequences upon the sufferer, whereupon, the impugned award warranting assessment of compensation “solitarily” on its account also “whereas” no compensation “solitarily” on account of removal of injured spleen standing assessed by the learned tribunal, hence, to this extent the impugned award warrants modification. However, none of the aforesaid decisions of the various High Courts relied upon for the relevant purposes by the learned counsel appearing for the claimant, make any communication therein that per se for removal of the injured spleen “compensation” is to be awarded, rather, the decisions as relied upon by the learned counsel appearing for the claimants make a cumulative computation of compensation, arising from the removal of the injured spleen including therein the heads appertaining to the loss of earning capacity, pain and suffering, medical expenses, special diet and

conveyance, expenditure on attendant etc.. In sequel, the learned tribunal concerned has likewise computed compensation in a sum of Rs.1,50,000/- arising from the removal of the injured spleen, figure whereof comprises compensation assessed on account of loss of future income, loss of amenities of life, loss of expectation of life, inconvenience, hardship, mental stress, dejection frustration etc. In aftermath, it is apt to conclude that all the relevant facets have been taken into consideration by the learned tribunal while assessing compensation upon the claimant arising from removal of the injured spleen. Preeminently, also hence, when within the aforesaid figure is comprised the loss of future income being hence entailed upon the claimant, corollary whereof is that the preceding submission addressed by the learned counsel for the claimant that the removal of the injured spleen warrants assessment of compensation upon the claimant

for loss of future income, suffers aggravated enfeeblement.

16. The above discussion unfolds the fact that the conclusions as arrived by the learned tribunal are based upon a proper and mature appreciation of the relevant evidence on record. While rendering the findings, the learned tribunal has not excluded germane and apposite material from consideration.

17. For the foregoing reasons, there is no merit in the instant appeals which are accordingly dismissed. The impugned award is maintained and affirmed. All pending applications also stand disposed of. Records be sent back forthwith.

(Sureshwar Thakur)
Judge.

21st June, 2017.
(jai)