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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11.11.2014

+ MAC.APP. 702/2012

FUTURE GENERALI INDIA INSURANCE CO.LTD..... Appellant
Through Ms. Suman Bagga, Mr. Pankaj Gupta
and Mr. Saral Chaturvedi, Advocates

versus

KUNJI LAL & ORS Respondents
Through Mr. S.N. Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present appeal is filed by the appellant insurance company to impugn the Award dated 7.5.2012. The brief facts are that respondent No.1 was on 7.12.2011 going towards Shahbad Dairy in a Gramin Seva. The Gramin Seva turned upside down due to which the respondent No.1 sustained injuries. Based on the evidence on record, the tribunal granted a total compensation of Rs.20,84,934/- to respondent No.1.

2. Learned counsel appearing for the appellant submits that there is violation of the insurance policy. The driver and the owner are being prosecuted for driving a vehicle and causing an accident for which they were not authorised to ply. It is submitted that the appellants were given no opportunity to lead evidence and to prove their contentions. Reliance is placed on the order of the tribunal dated 07.05.2012 which notes that the pleadings are

complete and framed issues. Having framed the issues, it also notes that vide separate judgment, the petition is disposed of accordingly. The Award is also dated 07.05.2012.

3. It is obvious from the Award and the order dated 07.05.2012 framing issues that the tribunal has given no opportunity to the parties to lead evidence. The issue is as to whether the tribunal can pass an Award without giving an opportunity to the parties to lead evidence.

4. The Division Bench of Punjab and Haryana High Court in ***Barkat Singh and Ors v. Hans Raj Pandit, Driver and Ors.1985 ACJ 318***, held as follows:

“6. The provisions of the Act relating to the Constitution, powers to be exercised and the procedure to be followed by the Claims Tribunal leave no matter of doubt that the Claims Tribunal is a Judicial Authority clothed by the Act, with inherent judicial power of the State to determine disputes between parties on merits fairly and objectively. The Claims Tribunal possesses the powers to summon and examine witnesses, to cross examine them and to order discovery, admission or denial of documents. It decides the claim for compensation and renders a binding decision. An appeal is provided against its decisions. It is quasi-judicial Tribunal possessing the trappings of the Court. It is, however, not enjoined by law to observe all the rules of procedure contained in the Code of Civil Procedure and the Evidence Act which are binding on the Civil Courts. The Claims Tribunal has been constituted for specific purpose, i.e., to adjudicate upon claims for compensation in relation to accidents causing death or bodily injuries arising out of accidents by the use of motor vehicles. It has no jurisdiction to entertain or decide any other claim, dispute, suit or cause. The functions and duties of the Claims Tribunal are very much like those of a body discharging judicial functions though it is not a “Court”.

5. The Division Bench of Kerala High Court, in the case of ***Saramma Scaria v. Mathai, 2003 ACJ 213*** passed a general direction for future guideline

and compliance, relevant portion of which reads as follows:

“11. In the wake of the above circumstances we are inclined to set aside the order of the Tribunal and remit the matter back to the Tribunal for de novo consideration. However, we are inclined to give certain directions to the Claims Tribunals for future guidance and compliance.

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4. Tribunal even in the absence of any evidence adduced by the claimants could decide the issues on the basis of the FIR, scene mahazar, wound certificate and other materials applying the principle of *res ipsa loquitur*. This principle as such may not dispense with the need to prove a fact alleged by a person but the Tribunal after considering the police report, objection filed by the opposite party if any, can reach a conclusion though no oral and documentary evidence was adduced by the claimant. Of course in appropriate cases Tribunal could insist the appearance of injured person so as to get itself satisfied of the claim. Culpability could be presumed if Tribunal satisfied on the basis of the available materials that the claim is genuine and award adequate compensation.

6. Hence the Kerala High Court has held that even in the absence of any evidence adduced by the claimants, the tribunal can dispose the claim petition based on the FIR, scene mahazar, wound certificate and other materials. The Court also noted that it should not dispense with the need to prove a fact alleged by a person. Hence, in appropriate cases where there is enough documents on record or where the respondents have admitted large part of the contentions of the claimants and have admitted most of the aspects of the case, it may be possible for a tribunal to give no opportunities to the parties to lead evidence and to dispose of the claim petition. However, the tribunal would

have to spell out the reasons as to why the parties need not lead evidence.

7. In the facts and circumstances of the present case, the appellants have taken the plea which is noted by the tribunal that there is violation of the policies of insurance as the owner and driver were not authorised to ply the offending vehicle. The tribunal has heavily relied upon the act of the police I.O. who has filed permit verification report and has found the permit to be ok. On the basis of this report, the tribunal has found fault with the act of the appellant and held that without verification of particulars of the offending vehicles the appellant insurance company has taken vague pleas which are mechanical pleas and burdened the appellant insurance company with cost of Rs.1,000/- and made an observation that the Managing Director of the company and the officers of the insurance company are not exempted from criminal liability in respect of the mechanical defences taken.

8. The tribunal has also assessed the functional disability of the claimant at 90% noting that he was working as mansion. The tribunal also notes that it has seen the physical condition of the injured, who cannot walk without a walker and is unable to stand. It is also noted that the claimant has been given a temporary disability certificate by the Safdarjung Hospital and his treatment is continuing.

9. For the purpose of assessing the functional disability, reference may be had to the judgment of Supreme Court in the case of ***Raj Kumar v. Ajay Mumar & Anr. MANU/SC/1018/2010:IV (2010) ACC 815 (SC)***. Para 10 and 13 of the judgment reads as follows:

“10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on

in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately

under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

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13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

10. In the facts and circumstances of this case, evidence was necessary to assess the functional disability of the appellant. The Tribunal has assessed the functional disability on visual appearance. There is even no permanent disability certificate on record. That apart, in the facts and circumstances of

this case, the appellant insurance company was certainly entitled to an opportunity to lead evidence to prove the case. In my view, the nature of the case and the nature of plea of the appellant did not warrant tribunal passing an Award without granting an opportunity to the parties to lead evidence.

11. Accordingly, I set aside the Award dated 07.05.2012 and remand the matter back to the tribunal for fresh consideration after giving an opportunity to the parties to record evidence. The tribunal shall dispose of the claim petition uninfluenced by observations made in this order or in the Award dated 07.05.2012. It may be noted that respondents No.1 to 3 were duly served by this Court. The present order has been passed in the presence of parties who have chosen to appear. Fresh service need not be effected on those who have chosen not to appear. The matter may be listed before the tribunal on 11.12.2014 for directions.

12. As the accident is of 07.12.2012 and the matter has been remanded back, the Tribunal is requested to complete the recording of evidence and pass the necessary award within six months from the first date of hearing before the Tribunal.

13. As per order dated 10.07.2012 of this Court, the appellant was directed to deposit the entire award amount up to date interest with UCO Bank, Delhi High Court. 50% of the award amount was released in favour of the claimants.

14. This order was subsequently modified on 19.05.2014 whereby Rs.5 lacs were directed to be released in favour of the claimant/respondent No.1.

15. The amount now lying deposited with UCO Bank shall remain with the UCO Bank, Delhi High Court, subject to further orders of the Tribunal. The award amount received by the claimant shall also be subject to any final orders

that the Tribunal may pass.

16. Renotify on 11.12.2014 before the Tribunal.

JAYANT NATH, J

NOVEMBER 11, 2014
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