

**409 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1)

FAO No. 2268 of 2000 (O&M)

Decided on: 13.5.2015.

National Insurance Company Limited

... Appellant

Versus

Jatinder Singh and others

... Respondents

(2)

FAO No. 1144 of 2001 (O&M)

Jatinder Singh

... Appellant

Versus

Arvinder Pal Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Neeraj Khanna, Advocate
for the insurance company.

Mr. Ranjit Saini, Advocate,
for the claimants.

K.C.PURI.J.

Vide this judgment I intend to dispose of afore-mentioned two appeals bearing FAO No.2268 of 2000 titled as National Insurance Company Limited vs. Jatinder Singh and others and FAO No.1144 of 2001 titled as Jatinder Singh vs. Arvinder Pal Singh and others. As both these appeals have arisen out of the same Award, for convenience, facts are being taken from FAO No.2268 of 2000.

Briefly stated, Jatinder Pal Singh filed claim petition

claiming compensation of Rs.20 lacs on account of the injuries sustained by him in a motor vehicular accident on 14.11.1997.

It was pleaded that the claimant was employed with M/s Vicky Travellers owned by Arvinder Pal Singh respondent No.1 as conductor. In the course of employment, he had gone to Katra with a group of students in a bus bearing No. DL-IP-0914. Amarjit Singh respondent No.3 was the driver of the said bus. On 14.11.1997 claimant was returning to Ambala in the above said bus. Amarjit Singh was driving the said bus in a rash and negligent manner and at a very high speed. The claimant advised him not to drive the bus rashly and negligently but in vein and the said bus fell in a khud in the area of village Milawan, District Kangra. The accident has taken place due to rash and negligent driving of offending bus driven by Amarjit Singh. The claimant was extricated from the remains of the bus by Sh. P.S. Kahlon, Advocate, who happened to pass that area at the relevant time. The claimant was taken to some hospital of Pathankot from where he was brought to Ambala where he was admitted in the hospital of Dr. R.K. Mehndiratta. However, as the condition of the claimant was serious, Dr. Mehndiratta advised to shift the claimant to some other hospital. So, the claimant was shifted to hospital of Dr. N.P. Singh where he remained admitted upon 19.11.1997. Thereafter, the claimant was referred to PGI and ultimately the claimant remained admitted in PGI till 3.1.1998. The right arm of the claimant was amputated from the shoulder joint. There were fractures of both the legs and his

backbone was also injured. The claimants suffered 100% permanent disability and he is unable to do any work without the assistance of some attendant. The claimant is unable to walk without the help of crutches and the attendant. The whole life of the claimant has been shattered and ruined. The claimant has two children to look after in addition to his wife and old parents. The claimant has become crippled person and has spent Rs.2 lacs on his treatment. The claimant will not be in a position to work throughout his life. So, the amount of future income has also been claimed.

The respondents No.1 & 2 admitted the factum of accident but have pleaded that the accident has not taken place due to rash and negligent driving of bus by Amarjit Singh. They have pleaded that brakes of the said bus had gone out of order and due to steep turn, the bus fell into the ditches. It is submitted that it is an act of the God for which they are not liable. The claimant was employed as cleaner on payment of Rs.40/- per day. The claim is highly exaggerated.

The respondent No.4 insurance company denied the factum of accident. However, it was pleaded that in case, the accident is proved, in that case respondent No.4 is not liable to pay any compensation as the bus was being driven in violation of the terms and conditions of insurance policy and the driver of the bus was not having a valid and effective driving licence at the time of accident.

From the pleadings of the parties, following issues

were framed:-

1. Whether the accident in question had taken place on account of rash and negligent driving of bus No. DL-IP-0914 by its driver respondent No.3 ?OPP
2. To what amount of compensation the claimant is entitled to and from whom ?OPP
3. Whether the respondent No.4 is not liable to pay any compensation in view of the preliminary objections raised by it in its written statement ?OPR
4. Relief.

The claimant in order to prove his case examined PW-1 Onkar Singh and himself stepped into the witness box as PW-2 and also examined PW-3 Amarjit Singh, PW-4 Dr. R.C. Jindal, PW-5 Dr. R.K. Mehndiratta and closed the evidence.

In rebuttal, the respondent Arvinder Pal Singh himself stepped into the witness box as RW-1 and has placed on record the copy of insurance policy as Ex.R-1 and copy of the report regarding genuineness of the driving licence as Ex. R-2 and closed the evidence.

Learned Tribunal after appraisal of the evidence returned finding on issue No.1 in favour of the claimant. Issue No.2 was partly accepted in favour of the claimant and the claimant was held entitled to claim Rs.4,42,905/-. Issue No.3 regarding driving licence was decided against the insurance company. Consequently, vide Award dated 7.6.2000 passed by Motor Accident Claims Tribunal, Ambala

(for short “the Tribunal”), the claim petition was accepted and the

claimant was held entitled to claim Rs.4,42,905/- along with interest @ 12% per annum from the date of filing petition till realization.

Feeling dis-satisfied with the said Award dated 7.6.2000, the insurance company has directed FAO No.2268 of 2000 titled as National Insurance Company Limited vs. Jatinder Singh and others whereas claimant has filed FAO No.1144 of 2001 titled as Jatinder Singh vs. Arvinder Pal Singh for enhancement of compensation. Since both these appeals have arisen of the same Award and as such the same are being disposed of vide common judgment. The appeals are taken up one by one. Firstly the appeal filed by the insurance company is being taken up.

FAO No.2268 of 2000 filed by insurance company

Learned counsel for the insurance company has challenged the Award of the Tribunal on two grounds. Firstly, challenge is made to the finding on issue No.3 that Amarjit Singh driver of offending vehicle was not holding a valid driving licence and it is submitted that Ex. R-2 photocopy of the report regarding genuineness of licence of Amarjit Singh was called for and Ex. P-2 is the letter written to Divisional Manager by Gurmit Singh. So, it is submitted that since the driving licence was fake one and as such, the Tribunal should have allowed recovery rights in favour of the appellant insurance company.

The argument advanced by learned counsel for the appellant looks attractive but is without any legal force. Mere

production of photocopy of the report is not sufficient to prove that driving licence of Amarjit Singh was a forged and fabricated document. The original of letter Ex. P-2 written to Divisional Manager by Gurmit Singh has also not been produced. The insurance company has not summoned the record before the Tribunal to convince the Tribunal that licence was fake one. So, in the absence of any cogent evidence, the finding on issue No.3 does not call for any interference and as such the same stands affirmed.

The other point raised by learned counsel for the appellant is that no interest in respect of future income can be allowed. He has submitted that a sum of Rs.2,04,000/- has been allowed by the Tribunal in respect of loss of future income. The future income would accrue in the coming years and the Tribunal has committed a grave error in allowing interest on that amount. To fortify his argument, learned counsel for the appellant insurance company has relied upon authorities **(i) R.D. Hattangadi vs. M/s Pest Control (India) Pvt. Limited and others AIR 1995 SC 755 and (ii) Palvinder Singh vs. Harsh Kumar Trihan and others 1996 ACJ 596 P&H.**

Learned counsel for the claimant has submitted that interest has rightly been allowed in respect of future income also.

I have considered the said submission and have gone through the record of the case.

From the perusal of the Award, it is revealed that amount of Rs.2,04,000/- has been allowed in respect of future loss of

income. The adequacy of the said amount shall be considered in the appeal preferred by the claimant. However, I am of the considered view that interest on the future income cannot be allowed. The Hon'ble Apex Court in **R.D. Hattangadi's case (supra)** in paragraph No.18 observed as under:-

“18. So far the direction of the High Court regarding payment of interest at the rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditure under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount.”

This Court again in authority **Palvinder Singh's case (supra)** in concluding paragraph No.14 held as under:-

“xxxx So far as his future prospects are concerned he is entitled to get a compensation of Rs.2,00,000/-. Accordingly, the appeal is allowed and compensation is enhanced to Rs.4,00,000/-. The appellant is entitled

to recover interest on the amount of Rs.2,00,000/- at the rate of 12 per cent per annum awarded under different heads from the date of filing of claim petition. Insofar as the award of Rs.2,00,000/- for future prospects is concerned, he will not be entitled to charge any interest on it. The appellant shall also be entitled to receive costs.”

So, interest on future prospects has not been allowed by this Court and by the Hon'ble Apex Court. Otherwise also, the amount of Rs.2,04,000/- has been paid in respect of the income in the coming years. So, the appeal preferred by the insurance company stands partly accepted and it is held that the claimant is not entitled to interest on the amount of Rs.2,04,000/- allowed in respect of future income. So, the appeal stands allowed to that extent. However, it is hasten to add that the claimant shall be entitled to interest in respect of future income in case the amount is enhanced. The reasoning for grant of interest on that enhanced amount is that in case the Tribunal had awarded the said amount, in that case the claimant could have utilized the said amount. The claimant has been deprived of the said amount which is calculated in respect of future income in the corresponding paragraph.

So, the appeal of insurance company stands disposed of accordingly. However, the finding of the Tribunal that insurance company is jointly and severally liable to pay the amount awarded

stands upheld.

FAO No. 1144 of 2001 filed by the claimant

Learned counsel for the appellant claimant has submitted that the Tribunal has assessed the income of the claimant as Rs.2000/- per month. No challenge has been made regarding that assessment. However, it is submitted that as per evidence on the file, the claimant became 100% disabled. The right arm of the claimant was amputated at the level of axilla with compound comminuted fracture. There were fractures of both bones of right leg and claimant also suffered injury to his cervical spine. The claimant remained admitted in PGI for 52 days and prior to that, he remained admitted in other hospitals. The calculation made by the Tribunal that functional disability is to the extent of 50% is wrong. The whole of the amount should have been calculated in respect of loss of income. It is further submitted that future prospects of the appellant should have also been considered. The age of the appellant was 34 years and in authority **Santosh Devi vs. National Insurance Company Limited and others** **2012(2) RAJ 505** the Hon'ble Apex Court has taken into account the income of the injured to be 30% over and above the total income. The appellant has become a crippled person and the whole of the family is to be looked after on the income of the appellant claimant.

Learned counsel for the insurance company has supported the Award of the Tribunal.

I have considered the submissions made by both the

sides and have gone through the record of the case.

In order to properly appreciate the facts of the case, the relevant evidence requires to be re-appreciated. PW-2 Jatinder Singh appeared as his own witness and has stated that he received multiple injuries in the accident and has become unconscious. He regained his consciousness at the PGI after few days. Later on, he came to know that from Pathankot, he was taken to the hospital of Dr. Mehndiratta where he remained admitted for three days. Thereafter, he was shifted to the hospital of Dr. N.P. Singh where he remained admitted upto 19.11.1997. Dr. N.P. Singh referred him to PGI where he remained admitted upto 3.1.1998 and his right arm was amputated from shoulder joint. Both bones of his legs were also fractured and there was an injury on his backbone. He suffered acute pain for a number of months and he has not been completely cured so far. He has become permanent disabled to the extent of 100% and he requires the assistance of some attendant.

PW-5 Dr. R.K. Mehndiratta has corroborated the statement of the claimant and has stated that the claimant remained admitted in the hospital from 15.11.1997 to 18.11.1997. He was brought with traumatized amputation of right arm at the level of axilla with compound comminuted fracture of both bones of right leg with cervical spine injury. The amount in respect of medical expenses has been granted which has not been challenged.

PW-4 Dr. R.C. Jindal has stated that the claimant has

become permanent disabled to the extent of 100%. He remained hospitalized for 52 days. His right arm was amputated from shoulder joint and he is not in a position to walk due to fracture of bone of his legs and injury on his spine. He cannot even bend due to the injuries on his spine. Therefore, he required the assistance of one attendant round the clock.

Learned Tribunal has allowed Rs.2 lacs in respect of 100% disability and pain and suffering. That amount cannot be said to be on lower side. However, the amount calculated in respect of future income has not been rightly calculated by the Tribunal. The Tribunal has held that although, permanent disability is 100% but the claimant can earn about half of the amount and the loss of future earning has been allowed to the extent of 50%. The Hon'ble Apex Court in **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited 2011 (4) RCR (Civil) 107** held that in case of physical disability to the extent of 41% relating to claimant who is a coolie, future income cannot be restricted to the extent of 13.5%.

In the present case, right arm of the claimant has been amputated from shoulder. So, in these circumstances, the future loss of income should have been calculated by taking the permanent disability to the extent of 100%. In respect of grant of amount regarding future prospects, the Hon'ble Apex Court in **Santosh Devi's case (supra)** in paragraph No.14 observed as under:-

“14. We find it extremely difficult to fathom any

rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a

cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it

is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

So, keeping in view the observations made by the Hon'ble Apex Court mentioned above, the claimant is also held entitled to 30% increase in the income. So, the income of the deceased after adding 30% comes to Rs.2600/- per month. The yearly income comes to Rs.31200/-. The claimant was 34 years old at the time of occurrence so, multiplier in respect of loss of future earning should be 16 as per **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(6) SCC 121.** So, by applying that multiplier, the amount

comes to Rs.4,99,200/- say Rs.5 lacs in respect of loss of future

earning. So, in this manner, a sum of Rs.2,96,000/- stands enhanced regarding future prospects in addition to the amount already awarded by the Tribunal.

As observed above, since this amount has not been paid at the relevant time i.e on the date of passing of the Award and as such the said amount of Rs.2,96,000/- shall carry interest @ 7.5% per annum from the date of passing of the Award by the Tribunal till payment. However, from the said amount, the interest on the amount of Rs.2,04,000/- from the date of application till payment paid by the insurance company shall be adjusted. The insurance company is also held liable to pay the enhanced amount jointly and severally along with owner and driver. The appeal preferred by the claimant stands accepted to that extent.

Both the appeals stand disposed of in the manner indicated above.

13.5.2015.
SN

(K.C.PURI)
JUDGE