

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 4349 of 2013 (O&M)

Date of decision : 09.12.2015

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Oriental Insurance Company Limited

.....Appellant

Versus

Vishal Sharma and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Aditya Kochar, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent no.1.

Ms. Richa Mittal, Advocate for
Mr. Manish Bansal, Advocate for respondent no.2.

Mr. Navdeep Singh Dhillon, Advocate for
Mr. Vikram Singh, Advocate for respondent no.3.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

**C.M No.495-CII of 2013 in
XOBJC No.2-CII of 2014 in
FAO No. 4349 of 2013 (O&M)**

This appeal has been filed by the Oriental Insurance Co. Ltd.-
insurer of the offending vehicle bearing registration No. CH-03V-8632
against the award dated 5.7.2013 passed by the Motor Accidents
Claims Tribunal, Chandigarh (hereinafter referred to as `the Tribunal')

on account of injuries suffered by Vishal Sharma in the vehicular accident on January 17, 2009. In this case the Tribunal awarded Rs.5,66,364/- under the following heads:-

Rs.4,79,800/-	for future loss of earning
Rs. 47,049/-	awarded on account of taking the leave
Rs.9515	for medical expenses
Rs 15000/-	for pain and sufferings
Rs.5000	for transportation charges
Rs.5000/-	for special diet
Rs.5000/-	for attendant charges

Brief facts of the case are that on 17.1.2009, Vishal Sharma was coming from his house Harmilap Nagar, Phase-II, Baltana to attend his duty in the company situated in Industrial Area, Phase-I, Chandigarh on his motorcycle No. CH-03-L-9129. He was on the correct side of the road and was driving the motorcycle in normal speed and when he reached near village Raipur Kalan, U.T Chandigarh an Indica Car bearing No. CH-03-V-8632 driven by respondent no.1 came at a very high rash speed and in a negligent manner and hit against his motorcycle, as a result of which, he along with motorcycle fell down on the road and received multiple injuries on various parts of his body. He was taken to Govt. Medical College and Hospital, Sector 32, Chandigarh and remained admitted there till 19.1.2009. Due to the injuries suffered by him, he remained out of job for about four months and suffered a loss of about Rs.60,000/- towards salary. The matter was reported to the police and DDR No.17, dated 17.1.2009 was recorded and in the said DDR it was mentioned that the mater has been patched up. At that time, the owner of offending vehicle gave assurance that he would bear all the

expenses of the treatment. A complaint was thereafter made to the SHO, Police Station, Manimajra as well as to the Senior Superintendent of Police, U.T., Chandigarh.

On account of the injuries suffered in the accident, the claimant filed a claim petition under Section 166 of the Motor Vehicles Act.

Upon notice of the claim petition, Sonu-driver of the offending vehicle and Kuldeep Bhatt-owner of the offending vehicle appeared and filed joint written statement, wherein it was alleged that though the accident took place, but it was due to rash and negligent driving of the claimant himself. In the written statement filed by Insurance Company, it was alleged that no intimation was given to them regarding the said accident. The driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident. The owner has committed breach of terms and conditions of the insurance policy and hence the insurance company is not liable to compensate.

Following issues were framed on 14.6.2011:-

(1) Whether claimant sustained injuries in an accident which took place on 17.1.2009 in the area of Chandigarh, due to rash and negligent driving of Car No. CH03-V-8632 by its driver respondent no.1? OPP

(2) Whether the claimant is entitled to any compensation, if so how much and from whom?

OPP

(3)Relief.

The claimant examined Anil Kumar, Manager, Groz Beckret Asia Pvt. Ltd. As PW-1, Dr. Rohit Jindal, Assistant Professor, Orthopaedics, GMCH, Sector-32, Chandigarh as PW-2 and himself appeared in the witness box as PW-3. On the other hand respondents no.1 & 2 (in the claim petition) failed to lead their evidence despite availing sufficient opportunities. Thus their evidence was closed by order. The Insurance Company tendered in evidence the Insurance policy Ex. RX and closed its evidence. The driver of the offending vehicle and the owner did not appear and contest the suit of the claimant. The accident was not in dispute and as per the contents of the DDR Ex. P-6, the car in question struck against the motorcycle as a result of which the accident took place. Moreover as per the claimant the driver and owner of the offending vehicle did not compensate the claimant as per the DDR and hence the application Ex. P-8 was made before SHO for taking action against them. The trial Court returned a finding on issue no.1 in favour of the claimant that the accident had taken place due to rash and negligent driving of respondent no.1. Compensation was assessed taking into account that he was 28 years of age at the time of accident and was working as operator at Needle production Machine in the Company at a monthly salary of Rs.16,000/- per month. The statement of Anil Kumar, Manager, Groz Beckret Asia

Pvt. Ltd who appeared as PW-1 had proved after getting the summoned record that the claimant was working as technician in category-II in their company since 7.11.2002 and Ex. P-1 is his salary record for the month of December 2008 and January 2009 to May 2009. He also proved on record the leave certificate and leave register and stated that the claimant remained on leave without pay from 1.2.2009 to 2.5.2009. As per the statement of PW-2, Dr. Rohit Jindal, Assistant Professor, Orthopaedics, GMCH, Sector 32, Chandigarh, as per summoned record, the claimant was admitted in Govt. Medical College and Hospital, Sector 32, Chandigarh on 17.1.2009 and was discharged on 19.1.2009. He sustained fracture D-12 vertebra and fracture lateral end of clavicle right side. He proved on record the disability certificate Ex. P-4 and also discharge and follow up card Ex. P-5 issued to the claimant and stated that he was suffered 15% disability qua the whole body.

Taking into account 15% physical permanent disability and per month salary at Rs.15683/-, the loss of earning capacity per month came to Rs. 2352/- and yearly loss came to Rs. $2352 \times 12 = \text{Rs.} 28,224/-$. Taking into account that at the time of accident, the claimant was of 28 years, the multiplier of 17 was applied. Hence, the claimant was awarded **Rs.4,79,800/-** for future loss of earnings. In view of the judgment passed in the case of **Randhir Vs. Raja and others FAO No. 5033 of 2009 (O&M) decided on 8.2.2012**, he was also held entitled to the salary for the period he remained on leave on account of the accident i.e w.e.f

1.2.2009 to 2.5.2009 which came to 3 months. The salary for this period was calculated as Rs. 15683X3=Rs.47,049/-. The claimant was also awarded the amount to the tune of Rs.9515/- on medical bills Ex. P-16 to Ex.P-33 which he had proved on file. An amount of Rs.15000 on account of pain and sufferings, Rs.5000 on account of transportation charges, Rs.5000/- for special diet and Rs.5000 for attendant charges was also awarded. So, the total compensation came to **Rs.5,66,364/-**. The liability to pay the above mentioned amount was held joint and several of the respondents no. 1, 3 and 4 and it was further ordered that the same shall be paid along with interest @ 7 ½ % per annum from the date of filing of the petition till the date of its realization.

Aggrieved with the impugned award, Insurance Company has filed the present appeal.

The respondent no.1 has filed his cross-objections under Order 41 Rule 22 of CPC read with Section 151 of CPC for enhancement of compensation awarded by the Tribunal stating that the injured had received serious injuries in the accident and compensation awarded under various heads i.e pain and suffering, special diet, and hiring an attendant are on the lower side.

The findings returned by the Tribunal on issue no.1 that the accident took place on account of rash and negligent driving of Indica Car bearing No. CH-03-V-8632 by its driver is based on correct appreciation of facts. The Supreme Court of India in the case of **National Insurance Co. Ltd., Chandigarh vs. Nicolledda**

Rohtagi and others, 2002 (4) RCR (Civil) 464 has held that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of the offending vehicle. In this case Hon'ble the Supreme Court made reference to the earlier decisions in various judgments in paragraphs 19, 20 and 21, which are reproduced as under:

“19. In [Shankarayya and Anr. v. United India Insurance Co. Ltd. and Anr.](#) [1998] 3 SCC 140, it was held that an insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in [Section 170](#) are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in [Section 170](#), the insurance company was not entitled to file an appeal on merits questioning the

quantum of compensation.

20. In Narender Kumar and Anr. v. Yarenissa and Ors. [1998] 9 SCC 202, question arose whether there can be a joint appeal by an insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the insurer and the owner of an offending vehicle, if an award has been made against the tortfeasors as well as the insurer, even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause title is suitably amended by deleting the name of the insurer. In the said case, it also held thus:

"The ground on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or more of those grounds is/are available, the Insurance Company is not and cannot be treated as a party to the proceedings. That is the reason why the courts have consistently taken the view that the Insurance Company has no right to prefer an appeal under [Section 110-D](#) of the Act unless it has been impleaded and

allowed to defend on one or more of the grounds set out in sub-section (2) of [Section 96](#) or in the situation envisaged by sub-section 2(A) of Section 110-C of the Act, "

21. In [Chinnama George and Ors. v. N.K. Raju and Anr.](#), [2000] 4 SCC 130, it was held that if none of the conditions as contained in sub-section (2) of [Section 149](#) exists for the insurer to avoid the liability, the insurer is legally bound to satisfy the award and the insurer cannot be a person aggrieved by the award. In such a case, the insurer will be barred from filing an appeal against the award of the Tribunal. It was also held that the insurer cannot maintain a joint appeal along with the owner or driver if defence of any ground under [Section 149\(2\)](#) is not available to it.

22. In [Rita Devi \(Smt\) and Ors. v. New India Assurance Co. Ltd and Anr.](#) [2000] 5 SCC 113, it was held that the insurer having not obtained permission under [Section 170](#) of 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.

In view of the facts and circumstances of the case and in view of the judgment in **National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464,** appeal filed by the Insurance Company on the question of quantum of compensation is dismissed.

As regards the cross-objections filed by the respondent no.1 under Order 41 Rule 22 of CPC read with Section 151 of CPC for enhancement of compensation awarded by the Tribunal, which is reproduced in a tabular form as under:

HEAD	COMPENSATION AMOUNT
Future loss of earnings	Rs.4,79,800/-
Amount awarded on account of taking leave	Rs.47,049/-
Medical expenses	Rs.9515/-
Pain and suffering	Rs.15,000/-
Special diet	Rs.5,000/-
Attendant charges	Rs.5,000/-
Transportation	Rs.5,000/-
Total compensation awarded by the Tribunal	Rs.5,66,364/-

The compensation is hereby reassessed as under:

HEAD	COMPENSATION AMOUNT
Future loss of earnings	Rs.4,79,800/-
Amount awarded on account of taking leave	Rs.47,049/-
Medical expenses	Rs.9515/-
Pain and suffering	Rs.30,000/-
Special diet	Rs.15,000/-
Attendant charges	Rs.15,000/-
Transportation	Rs.15,000/-
Total compensation awarded	Rs.6,11,364/-
Enhanced amount of compensation	(Rs.6,11,364/-)-(Rs.5,66,364/-) =Rs.45,000/-

The enhanced amount of compensation of Rs.45,000/- shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. Remaining conditions of disbursal of amount shall remain unaltered.

In view of the above, cross objection filed by the claimant-respondent no.1 is hereby partly allowed.

(RITU BAHRI)
JUDGE

09.12.2015

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