# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**F.A.O.No.4043 of 2015 (O&M)**
**Date of Decision: 08th July, 2015**

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Kamal Singh & Ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI**

Present: Mr.Sanjeev Goyal, Advocate, for the appellant.

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

**Naresh Kumar Sanghi, J.** (Oral)

**CM-12892-CII-2015**

Prayer in this application is for condonation of delay of 47 days in filing the appeal.

After hearing learned counsel for the applicant and going through the contents of the application which is duly supported by an affidavit, the same is allowed and the delay of 47 days in filing the appeal is hereby condoned.

**FAO-4043-2015**

The present appeal has been filed by Shri Ram General Insurance Company Limited challenging the Award dated 16.01.2015 passed by learned Motor Accidents Claims Tribunal, Rewari (for brevity "learned Tribunal") whereby an

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amount of ₹ 7,32,481/- (Rupees seven lacs thirty two thousand four hundred and eighty one only) along with interest at the rate of 6% per annum from the date of filing of the petition till its realization was awarded as compensation in favour of Kamal Singh-injured in a motor vehicular accident.

Learned counsel for the appellant has raised the following contentions:-

(i) the injured/claimant was not an employee with the registered owner of the vehicle bearing registration No.HR-47-A-5189 and as such, he was a borrower of the vehicle and can be termed as owner of the vehicle in terms of **Ningamma & Anr.** vs. **United India Insurance Co. Ltd.** **2009(3) RCR(Civil) 435 (S.C.);**

(ii) since the claim petition was filed under Section 163-A of the Motor Vehicles Act, therefore, the appellant /insurance company cannot be held liable beyond ₹ 15,000/-(Rupees fifteen thousand only) for medical expenses; and

(iii) the factum of accident was reported to the police after eight days and as such, the presumption of sustaining injury by Kamal Singh in a motor vehicular accident should not have been drawn by learned Tribunal.

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I have heard learned counsel for the appellant and with his able assistance gone through the material available on record.

On 17.10.2012 Kamal Singh (respondent/claimant) had started from Narnaul while driving vehicle bearing No.HR-47A-5189 and at about 8:30 p.m he reached near village Budoli then suddenly a cow emerged in front of his vehicle. In process of saving the said cow, Kamal Singh lost control over the vehicle and it struck against a *kikar* tree. The brother of the respondent i.e the registered owner of the vehicle was telephonically informed by a passerby and after his arrival at the spot, the respondent was carried to a private hospital where he was provided first aid and thereafter, shifted to Medanta Hospital, Gurgaon. The respondent/claimant remained admitted at the said hospital from 18.10.2012 to 25.10.2012. He was operated upon for serious injury on his hand and plastic surgery was also done. He was also treated for post traumatic right forearm and facial injury.

The matter was reported to the police vide DDR No.13 dated 25.10.2012.

In the claim petition filed by the claimant/respondent it was averred that at the time of accident he was 40 years old and was employed as driver at the salary of ₹ 3,000/- (Rupees

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three thousand only) per month by his own brother who was the registered owner of the vehicle bearing registration No.HR-47A-5189. It was further averred that an amount of ₹ 7,00,000/- (Rupees seven lacs only) was spent on his treatment including transportation, attendant and special diet etc. It was further averred that due to the injuries received, he had become handicap to the extent of 44%. He claimed ₹ 20,00,000/- (Rupees twenty lacs only) as compensation from the appellant and the registered owner of the vehicle.

On notice issued by learned Tribunal, the registered owner of the vehicle appeared and filed his written statement. The factum of accident was admitted by him. However, it was averred that the vehicle was insured with respondent No.2 i.e the appellant in the present appeal and as such, the liability, if any, was to be discharged by the appellant/ insurance company. He prayed for dismissal of the claim petition qua him.

The appellant/insurance company filed a separate reply and took the various preliminary objections. Factum of accident was denied by the appellant.

Taking into consideration the pleadings of the parties the following issues were framed:-

1. Whether the accident in question had taken place out of use of the offending vehicle i.e TATA 909

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bearing registration No.HR-47A-5189 resulting into injuries to claimant Kamal Singh? OPP.

2. If issue no.1 is proved whether the petitioner is entitled to any compensation if so to what amount and from whom? OPP.

3. Whether the claim petition is liable to be dismissed on the pleas taken by respondent No.2 in its written statement?OPR-2

4. Relief.

On the basis of the testimony of ASI Anil Kumar (PW1) who proved Daily Diary Report Ex.PW1/A regarding the factum of accident in which the respondent/claimant had suffered multiple injuries; testimony of Kamal Singh-claimant/ respondent (PW4); Dr.Vimalendu Brajesh (PW5) from Medanta Hospital, Gurgaon, to the effect that the claimant was admitted in the hospital on 17.10.2012 with the history of fracture right humerus and degloving injury on right forearm sustained in the road side accident and was operated upon and plastic surgery was done by him with the assistance of Dr.Rakesh Khazanchi, decided issue No.1 in favour of the respondent/claimant holding that he had sustained injuries in a motor vehicular accident. While deciding issue Nos.2 and 3 in favour of the claimant, learned Tribunal relied upon the deposition of Ramesh

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Kumar (PW6) dealing clerk, Medanta Hospital, Gurgaon, who proved treatment bill Ex.P4 amounting to ₹ 4,75,095/- (Rupees four lacs seventy five thousand and ninety five only) and in addition thereto, he also proved the medicine bills Ex.P5 to P19 amounting to ₹ 14,786/- (Rupees fourteen thousand seven hundred and eighty six); Mahender Singh (PW3) the registered owner of the vehicle deposed that the respondent/claimant was employed by him as a driver at a monthly salary of ₹ 3,000/- (Rupees three thousand only) and the deposition of the respondent/ claimant Kamal Singh to hold that at the time of accident the respondent/claimant was 40 years old and earning ₹ 3,000/- ( Rupees three thousand only) per month who was serving as a driver on vehicle bearing registration No.HR-47A-5189. Due to permanent disability of 44% occurred on account of the injuries sustained in the accident, the claimant was entitled to ₹ 2,37,600/- (Rupees two lacs thirty seven thousand and six hundred only) for the loss of income due to permanent disability. It was further held that the claimant was entitled to ₹ 5,000/- (Rupees five thousand only) on account of pain and sufferings. Learned Tribunal further held that the respondent/ claimant had spent ₹ 4,89,881/- (Rupees four lacs eighty nine thousand eight hundred and eighty one only) on his treatment, therefore, the respondent/claimant was entitled to

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₹7,32,481/- (Rupees Seven lacs thirty two thousand four hundred and eighty one only). While awarding the medical expenses and directing the appellant/insurance company to make the payment beyond ₹ 15,000/- (Rupees fifteen thousand only), learned Tribunal placed reliance on **Oriental Insurance Company Ltd.** vs. **Kulwinder Kaur & Anr., 2014 ACJ 1625** wherein it was held by this Court that Second Schedule of the Motor Vehicles Act, 1988 contains a number of fallacies and the said Schedule has to be followed in broad principles and as such, the compensation could not be kept confined within the limit prescribed by the Second Schedule. It is apposite to mention that Hon'ble the Supreme Court in the matter of **Puttamma and others** vs. **K.L.Narayana Reddy and another, 2014(1) RCR(Civil) 443**, discussed the viability of Second Schedule of the Motor Vehicles Act, 1988 and held the said Schedule had become redundant due to cost of living. The directions were issued to Central Govt. to immediately make amendment in the Second Schedule and till then the enhanced rates prescribed by Hon'ble the Supreme Court were to be followed. So far as the argument of learned counsel for the appellant that the respondent/claimant after borrowing the vehicle in question from his brother was driving the same and as such, as per **Ningamma & Anr** case (supra) the

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respondent/claimant can be presumed to be the owner of the vehicle at the time of accident, cannot be accepted. It has been well proved on record not only by the respondent/claimant but also by the registered owner of the vehicle which met with an accident that the respondent/claimant was employed with him at the monthly salary of ₹ 3,000/- (Rupees three thousand only) as driver. In view of the deposition of the claimant/respondent and that of the registered owner of the vehicle that the respondent/ claimant was employed as a driver, the principle laid down by Hon'ble the Supreme Court in the matter of **Ningamma & Anr.** case (supra) would not be applicable and hence, there is no substance in the argument raised by learned counsel for the appellant in this regard.

Further submission of the learned counsel that the matter was reported to the police after eight days of the accident in question and hence no credence should be attached to the deposition of the respondent/claimant and the other material produced on record be discarded, has no legs to stand. It has not been denied that the respondent/claimant had sustained the injuries in a motor vehicular accident. The priority of the attendant/relatives of the injured was to provide him the treatment and not that the matter be reported to the police. Immediately after the occurrence the brother of the

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claimant/ respondent was telephonically informed and thereafter the injured was shifted to local hospital and then to Medanta Hospital, Gurgaon. Learned counsel for the claimant could not pointed out as to how the delay in reporting the matter to the police has caused prejudice to the appellant-Insurance company. In view of the material available on record and the issue-wise findings recorded by learned Tribunal, the arguments raised by learned counsel for the appellant cannot be accepted and as such, the present appeal sans merit and is hereby dismissed.

Learned counsel for the appellant points out that the statutory amount of ₹ 25,000/- (Rupees twenty five thousand only) deposited with the office of this Court be remitted to the learned Tribunal for disbursement to the claimant.

Ordered accordingly.

**July 08, 2015** **(Naresh Kumar Sanghi)**
seema **Judge**

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