

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

**FAO No.1726 of 2011 (O&M)
Date of Decision: 27.05.2016.**

The Oriental Insurance Company LimitedAppellant.

VERSUS

Krishan Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Ajay Pal Singh, Advocate for respondent No.1.

Respondents No.2 and 3 exparte vide order dated 07.05.2012.

SNEH PRASHAR, J.

CM-5181-CII-2011

Learned counsel for the appellant contends that he had filed an application under Order 41 Rule 27 of the Code of Civil Procedure seeking permission to adduce additional evidence with regard to the fact that claimant-Krishan Singh (respondent No.1 herein) had received Rs.30,932/- and Rs.1,93,846/- on 26.03.2009 and 31.03.2009 respectively as reimbursement of the medical expenses incurred by him on his treatment of the injuries suffered during the accident. The said fact was put to the claimant on 13.08.2010 by the appellant when he appeared in the witness box during trial of the claim petition, but he denied that he had received reimbursement of medical expenses from his department. After the evidence

of the appellant was closed by order of the Tribunal, the appellant received the required information sought under the Right to Information Act, 2005 from the employer of the claimant vide letter dated 15.10.2010 stating about reimbursement of the medical bills to the claimant. With the said facts in backdrop, he filed the instant application for adducing additional evidence alongwith his appeal. However, in his reply filed in the form of affidavit by the claimant, he has admitted receipt of payment of Rs.30,932/- and Rs.1,93,846/- on 26.03.2009 and 31.03.2009 from his employer. When the factum he wanted to prove by way of additional evidence has already been admitted by the claimant, there remains no necessity to lead additional evidence in respect of the same.

The reply in the shape of affidavit filed by the claimant is taken on record and in accordance with the submissions made by learned counsel for the appellant with regard to his application for additional evidence, the application is disposed of.

FAO No.1726 of 2011

Claimant-Krishan Singh had suffered injuries in a motor vehicular accident that took place on 12.08.2008 in the area of Bariwala, Tehsil and District Sri Muktsar Sahib on account of rash and negligent driving of Bolero vehicle bearing No.PB-15A-0056 (hereinafter referred to as “the offending vehicle”) by its driver Dilbag Singh-respondent No.2. The claim petition filed by the claimant under Section 166 of the Motor Vehicles Act, 1988 claiming compensation from the driver, insurer and owner (impleaded in that sequence as respondents) of the offending vehicle was allowed by learned Tribunal and an amount of Rs.3,50,000/- alongwith

actual payment, was awarded as compensation to him. The driver, insurer and owner (respondents No.1 to 3 in the claim petition) were held jointly and severally liable for payment of the compensation amount.

Feeling aggrieved by the award, the insurer of the offending vehicle (appellant-insurance company) filed the instant appeal.

The submissions made by Mr. D.P. Gupta, learned counsel for the appellant and Mr. Ajay Pal Singh, learned counsel for respondent No.1 have been heard and record perused.

The only argument submitted by learned counsel for the appellant is that considering the medical bills tendered in evidence and the ocular testimony of the claimant and the witnesses examined by him, learned Tribunal allowed Rs.2,90,000/- to the claimant as expenditure on his treatment. Out of the said amount, as admitted by the claimant, he has already been reimbursed Rs.2,24,778/- by his department. The medical expenses which he had received from his department on reimbursement of the bills is to be deducted from the amount allowed to him on that count.

On the other hand, learned counsel for the claimant argued that the amount received by the claimant from his employer has no relevancy with the compensation amount awarded by learned Tribunal. It has been held in **Vimal Kanwar and Others vs. Kishore Dan and others, 2013(3) Recent Apex Judgments (R.A.J.) 446** that the amount of provident fund and insurance receivable by the claimant does not come within the periphery of the Motor Vehicles Act to be termed as pecuniary advantage liable for deduction.

Admittedly, the claimant is a class-IV Punjab Government

employee and was posted in Civil Hospital, Sri Muktsar Sahib when the

accident took place. Analyzing the ocular and documentary evidence led by the claimant to prove expenditure on treatment, the findings of learned Tribunal are as under:-

“From appraisal of above referred evidence on the record, this tribunal finds that claimant could not prove any permanent disability in him on the record. There is no disability certificate issued by any board of doctors with regard to any permanent disability in the claimant on the record. However, it is a proved fact on the record before this tribunal that the claimant sustained injuries and was hospitalized at Muktsar, DMC Ludhiana and in the hospital of Dr. Hardas Singh at Amritsar. The claimant received grievous injuries in this case and he spent the money for his treatment. The rough calculation of the bills as proved on the record by the claimant in the statements of CW1 Ramesh Chopra, CW2 Rakesh Sharma, CW3 Rupinderjit Singh, CW4 Dr. Parvinder Singh Sandhu, CW5 Gurjant Singh, CW6 P.K. Sharma, and CW7 Asees Kumar comes to Rs.2,90,000/- and as such the claimant is, thus, found entitled to the above referred actual amount incurred by him on his treatment which comes to Rs.2,90,000/-.”

It is not the case of the claimant that the medical bills submitted by him for reimbursement to his department were different from the medical bills proved by him in evidence before learned Tribunal during trial of his claim petition. He has simply stated that the said amount has no relevancy

of appellant-insurance company is that the amount of Rs.30,932/- and Rs.1,93,846/- received by him from the department on 26.03.2009 and 31.03.2009 respectively relates to the same medical bills on the basis of which learned Tribunal had awarded the amount of Rs.2,90,000/- as expenditure on treatment. It was mentioned in the information (Annexure-A/1) received by the appellant-insurance company under the Right to Information Act, 2005 from the department of the claimant that the claimant who remained on medical leave for the period 12.08.2008 to 05.02.2009 i.e. when he was under treatment for the injuries suffered by him during the accident in question against the medical bills claimed by him, he had been allowed the sum of Rs.2,24,778/- by the department. As such, there remains no doubt that the medical bills reimbursed to the claimant were the same bills which he proved during trial of his claim petition to show expenses incurred on his treatment.

As the amount received by the claimant was not on account of provident fund or insurance money, rather it was the amount relating to reimbursement of medical bills which he had also claimed in the instant claim petition, the amount once paid to the claimant has to be deducted from the amount allowed by learned Tribunal as expenditure on treatment.

From the above, it follows that the claimant shall now be entitled to Rs.65,222/- (Rs.2,90,000 – Rs.2,24,778/-) only as expenditure on treatment in addition to the amount of compensation awarded under other heads and accordingly the award passed by learned Tribunal is modified and the appeal is allowed.

(SNEH PRASHAR)
JUDGE