IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6747 of 2016 (O&M)
Date of Decision: 23.12.2016

New India Assurance Company Ltd.,
......Appellant

Vs

Ishabbir Singh and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for the caveator/respondent No.1.

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RAJ MOHAN SINGH, J.

CM No.23479 -CII of 2016

For the reasons mentioned in the application, delay of 7 days in filing the appeal is condoned.

Application stands disposed of.

FAO No.6747 of 2016 (O&M)

[1]. Appellant-Insurance Company has assailed the award dated 08.07.2016 passed by Motor Accident Claims Tribunal, Panchkula (hereinafter to be referred as 'the Tribunal').

[2]. Brief facts are that the claimant/respondent No.1 filed claim petition under Section 166 of the Motor Vehicles Act, 1988

(for short 'the Act') on the ground that in the intervening night of 27/28.10.2013 he was going to Zirakpur from old Panchkula in a car on the correct left hand side of the road. Sahil Budhran @ Sahil and Navrattan Singh Sodhi, were the co-occupants of the car. After covering some distance from old Panchkula, when they reached on the flyover, offending vehicle i.e. Canter came at a very fast speed in a rash and negligent manner and struck against their car from the backside. All the occupants received serious injuries. Co-occupants Sahil Budhran @ Sahil and Navrattan Singh Sodhi died due to the injuries. Claimant also suffered head injury and other multiple injuries on his person. Claimant spent about Rs.35 lacs on his treatment and special diet etc. and claimed adequate compensation from the respondents.

[3]. Respondent Nos.1 and 2 denied the accident and claimed that false FIR was registered against respondent No.1. Similarly respondent No.3 also contested the claim petition on various grounds.

[4]. After completion of pleadings, both the parties went to the trial on the following issues:-

> *"1. Whether claimant received injuries due to accident caused by truck bearing No.UP-15-AT-0803 being driven by respondent No.1*

rashly and negligently? OPP

2. *Whether claimant is entitled to compensation, if so to what amount and from whom? OPR*

3. *Whether respondent No.1 was not having valid & effective driving licence? OPR-3.*

4. *Relief."*

[5]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. After appreciation of evidence, Tribunal found that the accident in question took place due to rash and negligent driving of the offending vehicle. Issue No.2 was accordingly decided in favour of the claimant, thereby assessing total compensation of Rs.60,78,600/- in favour of the claimant/ respondent No.1. Under issue No.3, it was found that there was nothing on record to prove that respondent No.1 was driving the offending vehicle in violation of the insurance policy. The driving licence Ex.RA was issued on 12.03.2013 and the same was valid upto 11.03.2016. Respondent No.1 was authorised to drive the vehicle in question. The accident in question took place during the validity period of the insurance policy. Accordingly, the Tribunal assessed the amount as calculated under issue No.2 along with interest @ 7.5% per annum from the date of filing of the claim petition, till realization of the amount as well as cost of the proceedings. All the respondents were held jointly and

severally liable to pay the compensation. That is how the present appeal came to be filed before this Court.

[7]. Appellant-Insurance Company has challenged the award on the ground of negligence, quantum and addition of future prospects.

[8]. I have heard learned counsel for the parties.

[9]. Learned counsel for the appellant has argued that in view of Ex.PW-4 and PW-4/7 the claimant along with his friends were returning from birthday party and they had taken drinks and, therefore, the accident in question was due to the result of sole negligence of the injured claimant. As per statement of RW-1 Inderjeet Singh, Ahlmad of the criminal Court, the photographs and mechanical report of the damaged car were sufficient to to conclude a case of contributory negligence of the drivers of the vehicles. The Tribunal while assessing the future loss of income due to 80% permanent disability has wrongly assessed 100% permanent disability without there being any evidence on record. The claimant was rightly considered to be labourer and his income was assessed to Rs.6000/- but an addition of 50% towards future prospects was totally unwarranted.

[10]. Learned counsel while relying upon number of

precedents viz. ***National Insurance Company Limited vs. Pushpa and others (SC)*** and ***National Insurance Company Limited vs. Malti and others (SC)*** contended that the matter has since been referred to the Larger Bench, therefore, the amount towards future prospects be stayed.

[11]. Learned counsel further contended that the payment of medical bills to the tune of Rs.28,34,600/- should have been appreciated in the light of Max Bupa Health Insurance, who paid the amount of Rs.19,10,255/- under the Mediclaim policy. The said amount has to be deducted from the amount towards the expenditure incurred by the claimants. Injured cannot claim medical expenses under the Mediclaim policy as well in the claim petition under the Motor Vehicle Act. The medical expenses are classified as pecuniary losses which has to be assessed on actual amount spent by the injured claimants for treatment. Learned counsel emphasized that only the difference of the bills were required to be paid to the injured claimant.

[12]. Learned counsel also highlighted that the Tribunal has assessed excessive compensation for future medical attendant i.e. future physiotherapy, pain and suffering, and loss of marital prospects. Learned counsel also contended that on future loss of income, no interest should have been paid.

[13]. Learned counsel relied upon ***Sarla Verma vs. Delhi Transportation Corporation, 2009 ACJ 1298 (SC);*** ***Reshma vs. Madan Mohan, 2013 ACJ 1253 (SC);*** ***Shashikala vs. Ganga Lakshamma, 2015 ACJ 1239 (SC)*** and ***Savita vs. Satpal, 2015(4) PLR 854 (P&H)*** to contend that additional future prospects in case of self-employed person was not permissible.

[14]. Learned counsel also relied upon judgment of the Hon'ble Apex Court in ***Reliance General Insurance Co. Ltd., vs. Shashi Sharma & Ors. in Civil Appeal No.9654 of 2016 (arising out of SLP (Civil) No.14312/2013)*** to contend that the claimant cannot set up claim for compensation under Mediclaim policy as well as under Motor Vehicles Act.

[15]. I have considered the submission made by learned counsel for the appellant on this aspect.

[16]. Having considered the issue with reference to different precedents, the Court finds that in ***Rajesh and others vs. Rajbir, 2013 ACJ 1403 (SC)***, the Hon'ble Apex Court has awarded future prospects after taking into consideration number of precedents. Thereafter the matter was again considered in ***Munna Lal Jain vs. Vipul Kumar, 2015 ACJ 1985 (SC)***. Even though the matter has been referred to the Larger Bench, but

the dictum laid down in ***Rajesh and others' case*** and ***Munna Lal Jain's case*** (supra) have not been stayed in any manner. In view of this, this Court does not find any plausible explanation to interfere with the grant of future prospects in favour of the claimant.

[17]. In view of evidence discussed by the Tribunal, the case was not found to be a case of contributory negligence by any stretch of imagination. The driver of the offending vehicle was criminally prosecuted. Proceedings in terms of Section 166 of the Motor Vehicles Act are summary in nature. Being a welfare legislation, no intricacy of the Evidence Act are to be applied in case of award of compensation. The requirement in deciding the claims is based on preponderance of evidence and some guess work is also required to be done, while assessing just and proper compensation.

[18]. Examination of PW-3, PW-4 and PW-6 virtually discharged the onus on behalf of claimant. The Investigating Officer while appearing as PW-4 testified that respondent No.1 was driving the offending vehicle in a rash and negligent manner. The cross-examination of the Investigating Officer provided evidence to prove by preponderance of probability that accident took place due to rash and negligent driving of respondent No.1. Since the claimant discharged the initial onus

by cross-examining the witnesses i.e PW-3 and PW-4, onus heavily shifted upon the respondents to disprove the same. The driver of the offending vehicle i.e. respondent No.1 did not step into witness box and adverse inference was rightly taken against him. In the said occurrence, two co-occupants died, whereas claimant sustained serious injuries on his person. No evidence was found by the Tribunal to hold that the accident was the result of contributory negligence.

[19]. The claimant was 23 years of age at the time of accident and was owner of 25 acres of land. As per the claim set up by the claimant, his monthly income was stated to be Rs.20,000/- per month. Doctor found 80% permanent disability in favour of the claimant. In view of ***Raj Kumar vs. Ajay Kumar, 2011, ACJ, Page I***, the permanent disability with reference to the parts of body has to be considered as 100% as the claimant became totally incapacitated due to permanent disability in terms of daily routine of work. The claimant could not walk and talk as his left side was totally paralysed. He was operated upon eight times and there was likelihood of such operations in future also.

[20]. In case of injury, the heads under which compensation is to be awarded are:-

(1) Expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenses.

(2) Loss of earning and other gain which the injured would have got had he not been injured. This head includes:-loss of earnings during period of treatment and loss of future earnings on account of permanent disability.

(3) Future medical expenses.

(4) Non-pecuniary damages /general damages are also required to be assessed towards pain, suffering and trauma as consequent of the injuries.

(5) Loss of amenities in life including loss of marriage prospects.

(6) Loss of expectation of life i.e. shortening of longevity of life.

[21]. In ***Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817,*** the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[22]. In ***K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability

as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[23]. In ***S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696***, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[24]. In ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934***, the Hon'ble Apex in

case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[25]. In case of ***Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996***, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[26]. In case of ***Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422***, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the

claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[27]. In case of ***Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[28]. The Tribunal has rightly considered the amount under head of loss of future prospects due to permanent disability after considering the monthly income of the injured by adopting multiplier method. The Tribunal found that during the course of

treatment, a bill of Rs.24,68,147/- was raised by the Alchemist Hospital. An amount of Rs.19,10,255/- was paid by the Insurance Company and the remaining amount was disallowed on the ground that the sum insured stood exhausted. Undisputedly, an amount of Rs.19,10,255/- was paid by the Insurance Company with whom the medical policy was availed by the claimant.

[29]. The question for consideration is whether the amount paid under Mediclaim policy was required to be deducted from the compensation or not?

Tribunal proceeded to record that the deduction of medical expenses paid under Mediclaim policy was not permissible in view of ***Manoj Kumar Yadav vs. Azad and others, 2015(3) PLR 211 (P&H)***. Even if the amount was directly paid to the Hospital under Mediclaim policy which was obtained by father of the claimant by way of payment of separate premium and the said amount cannot be deducted from the claim awarded under Motor Vehicles Act.

[30]. In ***Reliance General Insurance Co. Ltd.'s*** case (supra) the Hon'ble Apex Court was dealing with a Scheme of Rules of 2006 framed by Haryana Government for grant of compassionate assistance by way of ex-gratia financial

assistance to the dependants of the deceased government employee, who dies in harness. In the aforementioned Rules, on the death of any Government employee, the family of employee would continue to receive a sum equal to the pay and other allowances that was last drawn by the deceased employee as a financial assistance without raising a specific claim for a period of fifteen years from the date of death of the employee in case the employee had not attained the age of 35 years for a period of 12 years was fixed in case of employee above the said age.

[31]. The features of the Policy were on beneficial note to facilitate the family of the deceased for having regular income as, if the deceased employee was in existence for the purposes of finances. The principles involved on the basis of said Policy decision were somewhat different. Here in the case, separate premium was paid by the claimant or his father while availing Mediclaim Policy. Such pecuniary advantage would have no co-relation with the cases of natural death, suicide on account of serious illness and accidental death which are to be discussed for the purposes of covering the same under Mediclaim Policy or Insurance Policies. The application of general principle of loss and gain for the computation of compensation must co-relate to the type of injury or death i.e. accidental.

[32]. If the pecuniary advantage is to be interpreted to mean from the death under the Motor Vehicles Act, it will dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. In other words, if the pecuniary advantage resulting from death means pecuniary coming under all the forms of death, then it will include all the assets of the amount receivable under the contract. So the Policy of the Mediclaim policy not only meant for accidental death, but it covers other mode of deaths for which requisite premium was paid by the party. Therefore, such pecuniary advantage would have no co-relation with the accidental death for which compensation is computed in terms of loss. The amount of compensation receivable only on account of accidental death, but the claimant would have received, even otherwise and in that eventuality, it cannot be construed to be the pecuniary advantage liable for any deduction. However, where the employer insures his employee, as against injury or death arising out of accident, the amount received on the happening of such event, may be liable for deduction, but in the cases of Mediclaim Policy and Life Insurance covers for which claimant used to pay from his personal pocket cannot be made applicable for adjustment.

[33]. The principles laid down by the Hon'ble Apex Court in

Helen C. Rebello and thers vs. Maharashtra State Road Transport Corpn. and another, 1998 AIR (SC) 3191 were to the effect that the deduction of Life Insurance money cannot be deducted while calculating compensation to be payable to the claimant under the Motor Vehicles Act.

[34]. In ***New India Assurance Co. Ltd., vs. Shashikantbhai Harsukhlal Koticha and ors., (First Appeal No.2263 of 2014 with Civil Application No.7056 of 2014 in First Appeal No.2263 of 2014)***, the Division Bench of Gujarat High Court held that Mediclaim Policies are not to be adjusted while computing award under accident claim. No amount should be set off by the Tribunal by assessing the amount of compensation. The decision rendered by the Division Bench was upheld by the Hon'ble Apex Court in SLP No.661 of 2015, when the same was dismissed on 19.01.2015.

[35]. In ***Manoj Kumar Yadav's*** case (supra); ***National Insurance Co. Ltd., vs. Aman Kapur and others, 2014 ACJ 1342*** and ***National Insurance Co. Ltd., vs. Bijomon, 2011(10) ACJ 546 (Kerala)***, it was held that Mediclaim Policies are not to be adjusted while assessing amount of compensation under Motor Accident Claims Tribunal.

[36]. Apparently the ratio laid down in ***Reliance General***

<u>Insurance Co. Ltd. (supra)</u> case was related to the ex-gratia financial assistance on compassionate grounds provided to the family of deceased employee and the concept was different altogether and has no nexus with the object of availing Mediclaim policy by the claimant.

[37]. In view of aforesaid discussion, I see no reasons to differ with the conclusion drawn by the Tribunal. This appeal is accordingly dismissed.

December 23, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No