

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.939 of 1988 (O&M)

Date of Decision: March 01, 2017

Pritpal Mittal

..Appellant(s)

Versus

Bakhshish Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vinay Pandey, Advocate for
Mr. Abhinav Gupta, Advocate
for the appellant.

Mr. Sukhdarshan Singh, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

This is the claimant's appeal seeking enhancement in the award dated 08.09.1986, passed by the Motor Accident Claims Tribunal, Sangrur.

The claimant met with an accident on 11.01.1986. He was shifted to a hospital where first aid was given. He was again admitted and remained in the hospital till 13.02.1986. The plaintiff had claimed that he was doing agricultural work and business and his monthly income was Rs.6,000/-. It was claimed that he had spent Rs.23,500/- on his treatment. The Tribunal noted that there were fractures and there was stiffness of the right knee joint and shortening of the right lower

limb and developed a deformity and the disability was permanent. It also noted that the doctors had assessed the disability at 50%. It allowed Rs.25,000/- for the expenses made on the treatment. A sum of Rs.30,000/- was allowed on account of loss of amenities, raising the total to Rs.55,000/-. A claim of Rs.35,926/- was allowed for the damage to the car.

The counsel for the appellant had stated that they were not disputing nor claiming any enhancement for the damages to the car and attention was drawn to the statement made on 17.12.2015. In view of that statement, the service of respondents no.1 & 2 was dispensed with.

The submission on behalf of the appellant is that there was shortening of the leg and there were four fractures and the amount allowed was on the lower side. It was urged that on account of number of fractures, the claimant was immobile for a number of months and some amount should have been allowed for loss of income, pain & suffering and also for the attendant.

The submission on the other hand was that there was a statutory limit to the claims under the 1939 Act and the new Act came into force on 01.07.1989 and no amount higher than Rs.1.5 lacs would be payable by them.

The submission on behalf of the appellant was that after the repeal of the Motor Vehicle Act, 1939 all amounts taken under the old Motor Vehicle Act are only saved so long as they were not inconsistent with the new Act and the Act was amended to overcome the limit fixed under the old Act.

It is not in dispute that the liability under a policy in the old Act of 1939 limits the liability of the insurance company to Rs.1,50,000/-. On a statement made by the appellant, notice to respondents no.1 & 2 had been dispensed with and there is no request on behalf of the appellant to send any notice to respondents no.1 & 2.

The record reveals that there was no evidence that the claimant was having an income of Rs.6,000/- per month though he had stated that he was doing business and agriculture work.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

The award does not refer to any document to show the income. The disability was assessed as under:-

“There is disability of 35%. There is shortening of right lower limb by one inch. There was malunited fracture left humerus with limitation of shoulder movements. There is permanent disability of 5%. Malunited fractured, mendible with scar and facial disfigurement. Disability is 10%. Total permanent disability is of 50%.”

The Tribunal though noted the disability but chose to grant lump sum amount on various heads and did not apply the multiplier method to calculate the amount towards disability. No evidence was led with respect to the income. The accident had taken place in 1986. The minimum wages in 1986 were not more than Rs.550/- per month. Even if it is assumed that the claimant had more income, it can at most be taken at Rs.750/- per month. The Medical Officers had noted that there was a shortening of a limb and the disability was assessed at 35%. It had noted that there was restriction in the shoulder movement and added 5% permanent disability and added 10% for the malunited fracture and noted the scars and the facial disfigurement and added another 10%, raising the total to 50%. The functional disability would certainly be lower, which I take it as 35%, which comes to Rs. 262.5/- per month, rounded off to Rs.265/- per month and the annual loss would be Rs.3,180/-. The claimant was 40 years old at the time of the accident and using the multiplier of 15, the loss would come to Rs.47,700/-. A sum of Rs.25,000/- is added for pain and suffering and a sum of Rs.20,000/- is added for disfigurement of the face. Therefore, the total amount would come as under:-

Disability	-	Rs.47,700/-
Pain & Sufferings	-	Rs.25,000/-
Actual Medical Expenses	-	Rs.25,000/-
Loss of amenities	-	Rs.30,000/-
<u>Disfigurement of face</u>	-	<u>Rs.20,000/-</u>
TOTAL	=	Rs.1,47,700/-.

The Motor Vehicle Act, 1988 came into force w.e.f. 01.07.1989. The policy in this case was issued under the Motor Vehicle Act, 1939. In other words, it had to be consistent with the provisions of that Act. It is not the case of the claimant that there was any special contract between the owner of the insurance company to cover any liability outside the limit prescribed under Section 95(2) of the Motor Vehicle Act, 1939. The Proviso to Section 147(2) of the 1988 Act clearly provides that if the policy is issued with a limited liability then it would remain effective for a period of four months after the new Act comes into operation. In the present case, the accident had taken place in 1986.

A Constitution Bench of the Supreme Court had held in *New India Assurance Co. Ltd. Vs. CM. Jaya and Ors.* 2002 (I) SCALE 183 that in terms of Section 95(2) of the Motor Vehicle, 1939, the liability of the insurer was limited, but it was open to the insured to make payment of additional higher premium and get a higher risk covered in respect of third party also. But in the absence of any such additional contract or clause in the insurance policy, the liability of the insurer cannot be unlimited in respect of a third party and it was limited to the statutory liability.

Since there was no special contract and the policy could only be consistent with 1939 Act, the submission made on behalf of the appellant has to be rejected. Liability was limited to Rs.1,50,000/-, therefore, the amount could not be larger than that.

The Tribunal had allowed Rs.55,000/-. The total amount payable is Rs.1,47,700/- (rounded off to Rs.1,48,000/-). After deducting Rs.55,000/-, the amount payable would be Rs.93,000/-, which would be payable to the appellant with interest @ 6% per annum from the date of filing of appeal i.e. January, 1988.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

March 01, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No