IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.333 of 2000 (O&M)
Date of Decision:31.10.2017

Roop Chand ... Appellant

Versus

Satpal Singh and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashok Jindal, Advocate for the appellant

Mr.Arun Sharma, Advocate
for respondent no.3-Insurance Company

RAJIV NARAIN RAINA, J. (Oral)

1. This is a claimant's appeal for enhancement of compensation in a case of injury suffered in a terrible accident leading to 100% disability of the appellant. The injured, Roop Chand earned a livelihood for his family consisting of one minor son, three minor daughters, wife and parents by selling *Kiryana* goods from village to village on a bicycle. The accident occurred when he was struck by a jeep bearing Registration No.DL-4-CC-9164 in 1995. He claimed that he used to earn ₹ 8000/- per month, but there was no documentary proof of income produced. The income of the injured has been assessed by the Tribunal between ₹ 1500/- and ₹ 2000/- per month. The income of the injured in this case may be relevant but not conclusive factor or major criterion for awarding compensation in a case of permanent injuries sustained in the accident which has resultantly left the appellant in a disabled state. The injured remained under treatment in Hospital from 27th December, 1995 to 16th February, 1996. He was brought from accident site in a very serious condition and remained unconscious throughout the treatment. The doctors have assessed his disability as 100%

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in relation to the whole body which is a mighty blow not only to the appellant but for his whole family taking care of him throughout and would do so till the end of his life. The appellant claimed ₹ 10.00 lakhs as compensation against which, the Motor Accident Claims Tribunal, Bathinda vide its award dated 14th December, 1999 had awarded a meagre sum of Rs.3.00 lakhs taking it to be sufficient lump sum payment. The cost of treatment has been assessed at Rs.19,216.70 paise against receipts Ex.A6 to A87. Had such serious injury been caused today having regard to the length of admission as indoor patient in hospital and the nature of injury leaving him completely disabled, the expenses incurred on treatment would have been phenomenal. The Tribunal has noticed the ruling in <u>United India Insurance Company Ltd. vs. Brijesh Kumar Jain and others,</u> 1996 (1) Accidents Judicial Reporter 164 where the injured was about 42 years of age and the accident resulted in paralysis of the lower half of the body. In that case, the income of the injured was assessed at ₹ 4000/- per month and the Tribunal awarded ₹ 8.00 lakhs as compensation which was reduced by this Court to ₹ 6.00 lakhs. The age of the injured in the present case at the time of accident was 40 years and this is sufficient indication that even where the accident occurred prior to 1996, ₹ 6.00 lakhs was awarded by this Court. In the ultimate analysis, income may not have such a vast impact on the quantum of compensation in a case where the injured is left completely disabled to be taken care of by the family and by attendants for the rest of his life.

2. The offending vehicle was insured with the respondent-Insurance Company. Though the jeep was insured, but the driver did not hold a valid and effective driving licence, and therefore, one of the essential ingredients of burdening the Insurance Company with the compensation

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awarded or any amount enhanced by this court may have to be shifted on the owner on the principle of "pay and recover".

3. Learned counsel for the appellant has brought to the notice of this Court the decision in FAO No.309 of 2000 (The New India Assurance Company Ltd. vs. Roop Chand and others decided by learned single judge on 25th August, 2010 which was an appeal by the present respondent company against the appellant in the present case. It will be appropriate to reproduce the order passed in the aforesaid appeal:-

> "1. The Insurance Company is in appeal challenging the liability on the ground that in spite of the fact that the driving licence produced by the driver was proved to be fake by examining the clerk of the Licence Issuing Authority, the insurance company has not even been provided with a right of recovery against the insured. It has came on record through evidence of Devinder Kumar RW-2 that the particular Licence No. contained in licence produced by the driver namely 2018/DTO/BTI/90 had been issued in the name of Gurmail Singh and not in the name of Satpal Singh the driver of the vehicle. The Tribunal reasoned that this will not help the Insurance Company to deny liability to the insurer. While the point of law taken by the Tribunal is correct, in so far as satisfying the liability of the claimant, the Tribunal ought to have seen that there is no duty to indemnify the insured, if he had committed the breach of terms of the policy. The driver had appeared and produced the copy with respect to which the evidence was given. The owner himself had not been examined to speak about his own belief that the driving licence was true. In the cross examination, it had been confronted to RW-2 whether he would be in a position to deny the licence of the driver to be fake and he has said that it shall not be possible for him. The statement seen in isolation may suggest that the Insurance Company had not proved

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that the licence was fake but reading the evidence on the whole, when the register had been produced and entry in the register against particular licence number of the driver, had been issued to some other person, the burden of proof must be held to be duly discharged.

2. The Insurer's liability shall be only to satisfy the claim of the claimant but it shall have a right of recovery against the insured. The award of the Tribunal is modified and the appeal is allowed to the above extent."

4. Mr.Jindal, learned counsel for the appellant submits that this is a fit case for enhancement of compensation to the amount claimed in the claim petition.

5. Having considered the arguments of the appellant and the counter-arguments of the counsel for the Insurance Company which apparently is not liable to indemnfy the insured or shoulder the burden of compensation but yet is bound by the principle of pay first and recover later (as ruled in the insurance appeal against the same award by this Court) I find that the respondent company has not made any dent in the arguments of Mr.Jindal for enhancement of the meagre amount even at the time when the award was passed in relation to 100% disability suffered in a motor accident and taking a holistic approach in view of the peculiar facts and circumstances of the present case and the principles in award of compensation, I hold that the amount of compensation should be enhanced from ₹ 3.00 lakhs to ₹ 6.00 lakhs and in addition a sum of ₹ 1.00 lakh for the family who has been rendering help and assistance to the injured appellant all these years day in and day out. It is a case of loss of total earning capacity. It is a case of total deprivation and enjoyment of active life and as a matter of fact, no amount of monetary compensation is enough

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to compensate the appellant. However, the Court is bound to quantify on known principles compensation, attempting to balance out an amount in a just manner which represents something between under-compensation and over-compensation to do long deserved justice to the appellant.

6. Accordingly, this appeal is partly allowed and the award of the Tribunal dated 14th December, 1999 is modified. The amount of compensation is enhanced from ₹ 3.00 lakhs to ₹ 7.00 lakhs. The Insurance Company would deposit the amount before the Tribunal/Executing Court within two months from the date of receipt of a certified copy of this order and the Tribunal/Executing Court will disburse the amount to the appellant as per procedure. The Insurance Company will have a right to recover the amount from the owner of the offending vehicle who is ex parte. The enhanced amount i.e. ₹ 4.00 lakhs will carry interest at the rate of 7.5% per annum from the date of the award but not from the date of the accident till realization, in view of the substantial increase in the amount by this Court. No repeat interest will run on ₹ 3.00 lakhs awarded by the Tribunal from the date of claim application, in case paid.

(RAJIV NARAIN RAINA)
31.10.2017 **JUDGE**
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*

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