IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3 of 1999

Date of Decision: November 17, 2017

United India Insurance Co. Ltd.

......Appellant

versus

Hardev Singh and others

.....Respondents

FAO No. 4 of 1999

United India Insurance Co. Ltd.

......Appellant

versus

Gurcharan Singh and others

.....Respondents

FAO No. 746 of 1999

Coop. Bank Damdama

......Appellant

versus

Hardev Singh and others

.....Respondents

FAO No. 949 of 1999

Coop. Bank Damdama

......Appellant

versus

Gurcharan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present:- Mr. Neeraj Khanna, Advocate
for the appellant (in FAO Nos. 3 and 4 of 1999)

Mr. Navin Mahajan, Advocate
for the appellant (in FAO Nos. 746 and 949 of 1999)
for respondent No. 6 (in FAO Nos. 3 and 4 of 1999)

Ms. Sandeep Punchhi, Advocate
for respondent No. 2 (in FAO No 3 of 1999) and
for respondent No. 3 (in FAO No. 4 of 1999)

Mr. J.S. Thind, Advocate
for respondent No. 3 and LRs of respondent No. 4 (in FAO No. 3 of 1999)
for respondent No. 2 and LRs of respondent No. 4 (in FAO No. 4 of 1999)

Mr. Gurminder Singh, Advocate
for respondents No. 2, 6 and 7 (in FAO Nos. 3 of 1999, 746 of 1999, 949 of 1999)
for respondents No. 3, 5 and 7 (in FAO No. 4 of 1999)

Mr. Rajesh Sethi, Advocate
for the respondent (in FAO Nos. 746 and 949 of 1999)

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Sudhir Mittal, J.

This common judgment shall dispose of FAO Nos. 3, 4, 746 and 949 of 1999, as all of them arise out of the same accident and the same award of the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as "the Tribunal").

2. The bare facts of this case are that on 15.02.1993 Scooter bearing Registration No. HR-20/1513 was being driven by claimant–Gurcharan Singh and claimant–Hardev Singh was riding pillion. They were proceeding from Nagrana to Kariwala. A jeep bearing Registration No. RJ-13-C/0016 came from opposite side and was being driven in a rash and negligent manner. It struck against the scooter and as a result of this accident both Gurcharan Signh and Hardev Singh received injuries. Hardev Singh became unconscious and he was taken to the hospital by Gurcharan Singh. The parties shall be referred to in accordance with the Memo of Parties filed in FAO No. 3 of 1999.

3. Two claim petitions were filed one each by Gurcharan Singh and Hardev Singh claiming compensation for injuries sustained on account of the accident. Both these petitions have been decided together by the impugned award. Gurcharan Singh has been granted compensation of ₹ 20,000/- whereas Hardev Singh has been granted compensation of ₹ 1,50,138.95. The claimants have also been held entitled to interest @ 6% per annum from the date of filing of claim petition till the date of realization. "Owner", driver and the Insurance Company have been held liable to pay the amount of compensation jointly and severally.

4. Since two separate claim petitions had been preferred, the Insurance Company has filed two separate appeals challenging its liability to pay the compensation. Two other appeals have been filed by the Cooperative Bank Damdama, Tehsil Rania, District Sirsa, "owner" of the vehicle, also challenging the liability foisted upon it.

5. It is not in dispute that Atma Ram–respondent No. 3 was the registered owner of the offending vehicle. He sold it to Ram Partap–respondent No. 4 who further sold it to Shamsher Singh–respondent No. 5. In the month of November 1992, said Shamsher Singh hired it out to Cooperative Bank, Sirsa, who took the vehicle for recovery purposes of Cooperative Bank, Damdama–respondent No. 6. Cooperative Bank, Sirsa is not party in these proceedings.

6. It was pleaded before the Tribunal that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. On the basis of the evidence on record, the Tribunal has returned a finding of fact that the driver of the offending vehicle caused the accident on account of his rash and negligent driving. The said finding is not under challenge in these appeals and is thus affirmed.

7. The dispute for decision is as to who is liable to pay the compensation in the prevailing fact situation. It is not in dispute that the Insurance Company has

already paid the amount of compensation determined by the Tribunal and if at all it succeeds it would get the right to recover the amount of compensation paid from the "owner".

8. Learned counsel for the Insurance Company has argued that as per the finding of the Tribunal, the vehicle was under control of Cooperative Bank– respondent No. 6 on the date of the accident. It is an admitted fact that Shamsher Singh had hired out the vehicle to the said respondent. In view of these admitted facts the arguments raised are that -

> (i) The Insurance Company can not be held liable because contract of Insurance is a contract of indemnity and there is no privity of contract between the insurance company and respondent No. 6, hence, there is no question of any liability.
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> (ii) Since the offending vehicle was registered and insured as a private vehicle, it could not have been hired out by the owner; there was thus a breach of the terms of the certificate of insurance and on this account also the Insurance Company is absolved of its liability.

9. On the other hand it has been submitted that "owner" refers to a person who is in possession of the vehicle on the date of the accident; further, statutorily, a certificate of insurance is transferred to the purchaser of a vehicle of a motor vehicle and as a result thereof there exists a privity of contract between the Insurance Company and the person to whom the vehicle has been sold. Reliance has been placed upon Division Bench judgment of this Court in ***United India Insurance Co. Ltd. vs. Sharanjit Kaur and others, 2005(1) PLR 34*** and a judgment of the Hon'ble Supreme Court in ***HDFC Bank Ltd. vs. Kumari Reshma and others, 2015(1) RCR(Civil) 1.***

10. Section 2(30) of the Motor Vehicles Act. 1988 (hereinafter referred to as the Act) and Section 157 thereof are being reproduced below:-

*"**2(30).** "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."*

157. Transfer of certificate of insurance. *– (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfer to another person the ownership of the another vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.*

[Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

11. In this case also the offending vehicle has been sold a number of times.

12. Applying the ratio of the above judgment, and in view of the provisions of Section 157 of the Act, there is a deemed transfer of the certificate of insurance in favour of Shamsher Singh - respondent No. 5 on the date of the accident. Shamsher Singh was, however, not "owner" as he had further hired out the vehicle to the Cooperative Bank–respondent No. 6 and the said respondent was in possession of the vehicle on the date of the accident. Thus, the "owner" was respondent No. 6 and the liability to pay compensation is the "owner" and driver of the vehicle being the tortfeasors. This principle has been incorporated in Section 158 of the Act. Respondent No. 6 would be entitled to recover this amount from respondent No. 5 in terms of agreement dated 12.11.1992.

13. The Insurance Company would be absolved of its liability as it did not have any privity of contract with the Cooperative Bank–respondent No. 6 and also because the offending vehicle was being used in breach of the terms of the certificate of insurance. A perusal of the award shows that breach of the terms of the certificate of insurance was specifically pleaded before the Tribunal and no evidence to the contrary has been produced either by Shamsher Singh–respondent No. 5 or the Cooperative Bank–respondent No. 6.

14. Mr. Rajesh Sethi, Advocate appearing for both the claimants further submits that although no appeal or cross objections have been filed by either of the claimants, the Appellate Court has power to enhance the amount of compensation granted to the claimants on the principle that a Tribunal or a Court is duty bound under the provisions of the Act to grant "just" compensation. In this regard reference has been made ***Nagappa vs. Gurdayal Singh and others, 2003(1) RCR(Civil) 258, Sanobanu Nazirbhai Mirza and others vs. Ahmedabad Municipal Transport Service, 2013(4) RCR(Civil) 732*** and ***Ibrahim vs. Raju, 2011(4) RCR(Civil) 863.***

15. A perusal of these judgments shows that reliance has been placed upon Section 158(4)&(6), Section 166 and Section 168 of the Act, to hold that the Tribunal/Court is duty bound to award just compensation irrespective of the pleadings regarding quantum of compensation. There is no restriction on the Tribunal to grant compensation more than that claimed. Infact, compensation, under usual heads even if not claimed, can be granted. There can be no quarrel with this proposition of law but the said judgment can not come to the rescue of the claimants in this case because no appeal has been preferred by them at all against the impugned award. In all the cases, upon which reliance has been placed the appellants before the Hon'ble Supreme Court were the claimants themselves.

16. The matter, however, does not end here. Section 169 of the Act vests power of Civil Court in the Tribunal and declares such Tribunal to be a Civil Court for the purposes of Section 195 of the Act and Chapter XXVI of the Cr.P.C. 1973. Thus, the provisions of Order 41 Rule 33 CPC are applicable to proceedings under the Act. Reference in this regard can be made to a Single Bench judgment of the Delhi High Court ***National Insurance Co. Ltd. vs. Komal and others, 2013(8) RCR(Civil) 375*** as well as the judgment of Madras High Court in ***Royal Sundaram Alliance Insurance Company Limited vs. T. Selvarani, 2017 ACJ 396.*** The said judgments, on examination of case law on the subject, hold that Order 41 Rule 33 CPC can be invoked to enhance compensation even where no appeal or cross objections have been filed by the claimants.

17. Having perused the said judgments, I am respectfully in agreement with them and I choose to follow the same. So far as the claimant Hardev Singh is concerned, it is not in dispute that he was an agriculturist and earning about ₹ 5000/- per month. PW-3 Dr. Ashok Kumar Bishnoi, Orthopaedic Surgeon at Civil Hospital, Sirsa has deposed that Hardev Signh had a compound fracture of right leg bone which was fixed with external fixtor on 16.02.1993, another operation in the

form of skin grafting was done on 05.03.1993 and third operation was performed on 18.05.1993, since there was discharge of puss from his wounds, on the third occasion, bone grafting had to be done. He further stated that permanent disability of 25% has been suffered by Hardev Singh and he has been rendered incapacitated to pursue agriculture. The disability certificate has been produced on record as Ex. P8. Medical bills Ex. P-1 to Ex. P-6 and Ex. P-13 to Ex. P-44 have also been produced on record which add upto ₹ 25,138.95.

18. Learned counsel has relied upon Supreme Court judgment in ***G. Dhanasekar vs. M.D. Metropolitan Transport Corporation Ltd., 2014(1) RCR(Civil) 993*** to contend that in the case of disability, compensation has to be granted by determining the functional disability incurred and not solely on the basis of percentage of disability determined by a Medical Board. It is his contention that according to the evidence on record Hardev Singh has been rendered unfit to perform the functions of an agriculturist and is entitled to be compensated accordingly. He has further contended that fixed amount granted by the learned Tribunal on account of permanent disability and loss of earning capacity are insufficient and invalid.

19 I am inclined to agree with the learned counsel. The evidence on record indicate that Hardev Singh has become unfit for agriculture, thus, his functional disability is 100% although permanent disability of right leg is only 25%. The compensation granted by the Tribunal is enhanced by following the judgment of the Hon'ble Supreme Court of India in ***Yadav Kumar vs. The Divisional Manager NIA Company Ltd., 2010(4) RCR(Civil) 155***. Taking ₹ 5000/- to be the monthly income of Hardev Singh and deducting 1/3rd for personal expenses the annual dependency works out to ₹ 39,996/-. Since the age of the claimant is not evident from the record, I choose to apply multiplier of 13 and the dependency, thus, works

out to ₹ 5,19,948/-. Apart from that the claimant Hardev Singh is also entitled to a sum of ₹ 25,138.95 on account of medical expenses. He is further entitled to a sum of ₹ 5000/- on account of pain and suffering (in accordance with Schedule II of the Act). Accordingly, the total compensation is assessed as ₹ 5,50,086/-.

20. The appeals filed by the Insurance Company are, thus, partially allowed and those filed by the Cooperative Bank, Damdama are dismissed. The Insurance Company is directed to pay the enhanced amount of compensation alongwith interest @ 7.5% per annum within a period of three months from the date of receipt of a certified copy of this judgment. It would, however, be entitled to recover the amount paid by it from the Cooperative Bank, Damdama, Tehsil Rania, District Sirsa, who in turn would be entitled to make recovery from Shamsher Singh–respondent No. 5 and Tarsem Singh–respondent No. 7 (driver of the offending vehicle) in accordance with law.

November 17, 2017 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No