IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2683 of 2001 (O&M)
Date of Decision: May 11, 2017

National Insurance Co. Ltd.

..Appellant(s)

Versus

Amrinder Singh and others

..Respondent(s)

with

FAO No. 4028 of 2001 (O&M)

Amrinder Singh

..Appellant(s)

Versus

Ashwani Kumar and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sagar Aggarwal, Advocate for
for the appellant in FAO-4028-2001 and
for respondent no.1 in FAO-2683-2001.

Ms. Sheena Khanna, Advocate
for respondent no.1 in FAO-4028-2001) and
for respondent no.2 in FAO-2683-2001.

Mr. Ravinder Arora, Advocate
for the appellant in FAO-2683-2001 and
for respondent no.3 in FAO-4028-2001.

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ANITA CHAUDHRY, J.

These are two appeals one by the insurance company and the other by the claimant against the award dated 05.05.2001. The insurance company is seeking recovery rights whereas the claimant is seeking enhancement in the award.

Claimant - Amrinder Singh was injured in an accident which occurred on 22.03.1999. He suffered injury on the right shoulder and knee. He was unmarried at that time and owned agricultural land and his income was stated to be Rs.8,000/- per month. It was claimed that he had become permanently disabled and there was loss of marriage prospects. He was admitted in the hospital for 10 days. The disability was assessed at 30% of the right leg. The total disability was assessed at 9%. The Tribunal had awarded the following compensation:-

Compensation for pain and suffering	:	Rs.2,000/-
Compensation for expenses on medicine and treatment	:	Rs.21,000/-
Compensation for adverse effect on future prospects and earning capacity of the petitioner due to 9% permanent disability qua whole body	:	Rs.10,000/-
Compensation for expenses on conveyance, special diet and attendant	:	Rs.5,000/-
Compensation for loss of income considering the petitioner to be an agriculturist and adverse effect on matrimonial prospectus	:	Rs.7,000/-
Compensation for to meet unforeseen expenses in the hospital	:	Rs.2,000/-
Total	**:**	**Rs.50,000/-**

The submission on behalf of the insurance company is that they were entitled to recovery rights as it was a Matador which was driven and the driver had a licence to drive only a light motor vehicle and it did not have any endorsement for driving transport vehicle and endorsement was required and though the Tribunal had noted this fact but chose to ignore it and had wrongly placed the liability upon them.

The submission on behalf of the claimant is that the amount allowed to him is on the lower side. It was urged that the injured was an agriculturist and he was unable to look-after his fields as the injury was on the leg and adequate amount be allowed. It was urged that in ***Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Co. 2014(1) RCR (Civil) 765*** there was a fracture of the right hand and the doctors had given the disability at 13% but the Apex Court assessed the disability to the extent of 85% and in this case since he used to engage in manual labour and was unable to cultivate the land, therefore, the loss wold be over 80% and the multiplier method should have been applied to calculate the loss.

The counsel representing the owner - driver referred to the law laid down in ***National Insurance Company Vs. Swaran Singh 2004(3) SCC 297*** and referred to para nos. 47 and 89 of the judgment and it was urged that if a driver has a licence of a particular type of vehicle then he can drive another type of vehicle which is of the same category and no separate endorsement was required.

Dealing with the last submission first, admittedly the driving licence which was available on record is only for LMV. The insurance policy shows that the vehicle is a public carrier and is registered as a

Matador, which is a transport vehicle. A special endorsement was required which was not the case here and therefore, the insurance company was entitled to recovery rights.

The judgment referred to by the claimant with respect to the disability percentage is not applicable as the head note does not indicate the correct position. A perusal of para no.21 of the judgment shows that there the injured had disability of 22% of the upper limb and 29% of the lower limb. The High Court calculated the functional disability at a lower percentage. It was noted that he was not able to stretch or rotate his right hand or lift heavy material and his main hand was affected, therefore, his functional disability was taken as 85%. The facts of the present case are entirely different. The judgment cited by the claimant is not applicable.

Coming to the quantum, the disability certificate shows that the disability was 9% as there was shortening by one inch, therefore, it is first to be seen as to what was the income and the multiplier method has to be applied. The claimant though had pleaded that he was an agriculturist and owned land but no Jamabandi was placed on record to show that he owned land or had taken any land on lease. There is no evidence to show that he was earning any amount at that young age but for the purposes of calculation some amount has to be taken. The minimum wages in that year stood at Rs.1,900/- per month, therefore, the calculation can be made by taking the income to be Rs.1,900/- and taking the functional disability at 9%, the loss would be Rs.171 x 12 x 18 = Rs.36,936/-.

The Tribunal had awarded the actual expenses made on the treatment and had also allowed adequate amount for loss of income. The amount would be as under:-

Compensation on account of disability	:	Rs.36,936/-
Compensation for actual expenses made for purchase of medicines	:	Rs.21,000/-
Compensation for special diet	:	Rs.5,000/-
Compensation on account of loss of marriage prospects	:	Rs.15,000/-
Compensation for attendant charges	:	Rs.6,000/-
Compensation for loss of income (1900 x 3)	:	Rs.5,700/-
Compensation for pain and suffering	:	Rs.10,000/-
Compensation for transportation	:	Rs.7,500/-
Total	**:**	**Rs.1,07,136/-**

The Tribunal had awarded Rs.50,000/-, which would be deducted and the remaining amount would be payable firstly by the insurance company and thereafter, they can recover the entire amount from the owner-driver.

The appeal filed by the insurance company is allowed. The appeal filed by the claimant is partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 11, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No