

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.231 of 2008

Date of decision : 22.03.2017

United India Insurance Company Ltd.

.....Appellant

Versus

Ved Parkash and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ravinder Arora, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-Insurance Company against the award dated 06.10.2007, passed by learned Motor Accidents Claims Tribunal, Hisar (hereinafter called the “Tribunal”) in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short – the “Act”) vide which respondent No.1-claimant Ved Parkash has been awarded compensation to the tune of ₹4,57,560/- on account of the injuries suffered by him in the motor vehicular accident which took place on 21.05.2004.

2. The present appeal has been preferred by United India Insurance Company Ltd. to assail the quantum of compensation determined by the learned Tribunal.

3. I have heard learned counsel for the appellant and have gone

through the record of the case carefully.

4. Learned counsel for the appellant contended that the present claim petition was filed under Section 163-A of the Act. The learned Tribunal was not competent to award the medical expenses beyond ₹15,000/-, whereas the learned Tribunal has wrongly awarded a sum of ₹1,30,000/- towards the medical expenses. Thus, he contended that the amount of compensation determined by the learned Tribunal is against the structured formula prescribed in the Second Schedule of the Act.

5. I have duly considered the aforesaid contentions.

6. Respondent No.1-claimant Ved Prkash while stepping into the witness box deposed that he had spent ₹3,00,000/- on his treatment, medicines, operation fee, hospital charges, attendant charges and transportation etc. and more money is required for further treatment. From the statement of PW1 Dr. Parveen Chawla it comes out that claimant Ved Parkash was having fracture right radius and compound fracture both bone of right leg. He underwent surgery. Fracture both bone leg was treated by an external fixator. He again had to be admitted in City Hospital, Hisar on 02.03.2005. As per the statement of PW2 Dr. Rajiv Aggarwal, he was operated upon on 03.03.2005 for nailing of right tibia with bone grafting and was discharged on 07.03.2005. He was again admitted in that hospital on 02.05.2005 and then on 16.05.2005. Ultimately, his right lower limb below knee had to be amputated. The claimant had also remained admitted in Arora Orthopedic Hospital, Hisar which is evident from the statement of PW3 Dr. Ashok Arora. It shows that respondent No.1-claimant Ved Parkash

had remained admitted at different times in different hospitals and received treatment from different doctors.

7. The learned Tribunal taking into consideration the entire oral as well as documentary evidence produced by the claimant particularly the bills regarding treatment and purchase of medicines awarded a sum of ₹1,30,000/- to the claimant as medical expenses keeping in view the nature of injuries suffered by him and period of hospitalization. There is no dispute with the proposition of law that in a claim petition filed under Section 163-A of the Act, the compensation is to be calculated as per the Second Schedule of the Act, but at the same time the calculation of compensation and amount worked out in the Schedule suffers from several defects. The claimant in this case has suffered 70% disability on account of amputation of leg in the middle and deformity of the right elbow due to the injuries suffered in this accident. Thus, in the instant case as respondent No.1-claimant Ved Parkash has suffered serious injuries he remained hospitalized on various intervals and underwent multiple surgeries and ultimately his right leg below knee has to be amputated. So, in view of the facts and circumstances of the case, there is justification of departure from the Second Schedule and to award actual medical expenses incurred by claimant respondent No.1 Ved Parkash.

8. In case *The Oriental Insurance Company Ltd. Vs. Smt. Kulwinder Kaur and another* FAO No.3874 of 2013 decided on **26.07.2013** in a claim petition filed under Section 163-A of the Act a sum of ₹2,29,000/- were awarded towards medical expenses. In the appeal filed by

the Insurance Company the plea was raised that under Second Schedule the medical expenses cannot be allowed exceeding ₹15,000/-. This Court laid down as under : -

*“In my opinion, the submissions cannot be accepted. It has been held by Hon`ble Supreme Court of India in a number of decisions that the second schedule contains a number of fallacies. It has to be followed in broad principles. In suitable cases where treatment is long or loss is heavy, the compensation cannot be kept confined within the limits prescribed by the second schedule. The law on the point is well settled by Hon`ble Supreme Court of India in **U.P. State Road Transport Corporation Vs. Trilok Chandra 1996 (4) SCC 362**. The decision in Trilok Chandra's case [supra] has been reiterated by Hon`ble Supreme Court in **National Insurance Company Ltd. Vs. Smt. Saroj & Ors. 2009 (3) RCR (Civil) 431.**”*

9. Similarly, in case **Reliance General Insurance Company Ltd. Vs. Girdhari Lal and another FAO No.1312 of 2014 (O&M) decided on 12.03.2014** this Court laid down as under : -

*“Today, learned counsel for respondent no.1-caveator has sought to place reliance upon **Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd. and another, 2013(4) RCR(Civil) 295** wherein Hon'ble Supreme Court has departed from the Schedule attached with Section 163A of the Motor Vehicle Act, 1988 and the decision in **Putta ma and others v. K.L.Narayana Reddy and another, 2014 (1) RCR (Civil) 443**, to contend that in both these cases, Hon'ble Supreme Court has justified the departure from the Second Schedule and has urged that the present is the case wherein the actual medical expenses have to be given which justifies the departure from the provisions of the Second Schedule. I am also in agreement with the submissions raised by learned counsel for*

respondent no.1-caveator. In the circumstances, the appeal is dismissed.”

10. Similar view was taken by this Court in case ***Parvinder Kaur Vs. Mandeep Singh and others FAO No.7530 of 2014 decided on 29.11.2016.***

11. Thus, in view of the aforesaid factual as well as the legal position, there is no ground to interfere with the award of the medical expenses by the learned Tribunal in favour of respondent No.1-claimant Ved Parkash.

12. Consequently, the present appeal is without any merit and same is hereby dismissed.

22.03.2017

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No