

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No. 1665 of 2014
Date of decision: 22.09.2017

The Oriental Insurance Co. Ltd.

...Appellant

Versus

Jai Bhagwan and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate
for Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Parveen Bhardwaj, Advocate for respondent No. 1.

Mr. Sidharth Sanwaria, DAG, Haryana, assisted by
Mr. Jasvir Singh, in person for respondent No. 3.

Mr. B.S. Tanque, Advocate for respondent No. 5.

AVNEESH JHINGAN, J. (ORAL)

The present appeal has been filed against award dated 05.12.2013 passed by the Motor Accident Claims Tribunal, Kaithal(for short, 'The Tribunal').

On 11.01.2008 Jai Bhagwan suffered injury, as a result of accident. He was travelling in his Qualish vehicle bearing registration No. CH-03V-2452 which was hit by Bolero bearing registration No. HR24H-9891 (for short 'The Offending Vehicle'). As a result of the accident Jai Bhagwan suffered hip bone fracture and other injuries. He was shifted to CHC Bhuna, on the same day, he was referred to General Hospital, Fatehabad but he was taken to Malerkotla.

FIR No. 13, dated 11.01.2008 was registered under Sections 279, 337, 427 and 304-A of the Indian Penal Code at Police Station Bhuna.

A claim petition under Section 166 of the Motor Vehicles Act, 1988(for short, 'The Act') claiming a compensation of ₹ 20,00,000/- was filed. The Tribunal after considering the evidence and witnesses awarded a sum of ₹ 2,78,000/- along with interest at the rate of 7.5 % per annum.

The present appeal has been filed by the Oriental Insurance Company(for short, 'The appellant') being aggrieved of the amount awarded by the Tribunal.

I have heard learned counsel for the parties and perused the paper-book and record.

Learned counsel for the appellant contended that the Tribunal has considered the medical expenses even up to the year 2010. The accident occurred in the year 2008, therefore, the medical expenses incurred for two yeas should not have been awarded.

Learned counsel for the respondent argues that it was established before the Tribunal that due to the accident Jai Bhagwan suffered fracture of the 'hip bone'. The medical record was produced and doctor was examined. It has come on record that the injury was such which needed long treatment and had to be operated upon. The amount of ₹ 2,78,000/- awarded by the Tribunal includes ₹ 2,43,000/- for medical expenses and bills. Before the Tribunal, the contentions and the evidence raised by the claimants are being reproduced from the award itself :-

17. “ As per the contentions raised by the learned counsel for the petitioner, the accident was taken place on 11.01.2008 in the area of village Khasa Pathana situated within the territorial jurisdiction of Police Station Bhuna while the petitioner and other relatives were travelling in vehicle bearing registration No. CH03V-2452. The

respondent No. 1, who was driving the offending vehicle bearing registration No. HR24-H-9891 which is Mahindra Bollero and had struck against the vehicle which was boarded by the petitioner along with other occupants. Due to heavy impact, he sustained the injuries and immediately he was taken to CHC Bhuna where he was medico legally examined vide MLR Ex.PW4/B which has been proved by Dr. Devi Dass, who has been examined as PW4. The X-ray was also advised and X-ray report Ex.PW2/A was prepared by Dr. Priyanka Chhabra (PW2). However he could not be properly cured and then regularly continued to visit Malerkotla for getting his treatment at Nizam Hospital w.e.f. 31.1.2008 to 27.2.2009. He has also visit Chawla Nursing Home at Hisar where he was given the medical treatment by Dr.Parveen Chawla (PW4) and he had charged the sufficient amount and also proved the bill Ex.PW5/B as being operation charges amounting to Rs. 20,150/-. The petitioner has also incurred the medical expenses which are the subject matter of the bills Ex.PW5/J to Ex.PW5/AB for purchasing the medicines which were prescribed by Dr. Parveen Chawla. As per statement of Dr. Parveen Chawla, the petitioner was diagnosed a case of fracture dislocation right hip with posterior wall fracture a neglected case and was already a case of three months old. He was operated upon and a bone block operation was done. His head of the femur was depressed and dented with destroyed socket indicating that the hip joint was almost destroyed and will need some surgery later. The prognosis for recovery was poor and result guarded and was explained to the patient. He was admitted on 12.05.2008 and discharged on 26.05.2008.

18. It has further been argued by the learned counsel for the petitioner that since after operation conducted in Chawla Hospital Hisar, the petitioner could not be cured and he was admitted in PGIMER Chandigarh on 08.06.2009 and remained as indoor patient w.e.f. 12.8.2009 as per medical summary Ex.P1. Ex.P2 is the prescription given by the medical officer and thereafter also, he was again admitted in PGIMER Chandigarh w.e.f. 31.5.2010 to 30.6.2010 as per medical record and order produced by the learned counsel for the petitioner while addressing the arguments passed by the Joint Secretary Government of Haryana Department of Agriculture dated 6.12.2010. As per this order, the petitioner as being the Government employee has sought the medical reimbursement amounting to Rs. 1,44,145/- for a specific period w.e.f. 31.5.2010 to 30.6.2010. However there were two bills Ex.P4 and Ex.P5 which could not be submitted as the petitioner was seriously ill and whatever the bills were available were submitted in his Department

for reimbursement as the petitioner was working in the office of Soil Testing Officer Department of Agriculture. Though the learned counsel for the respondents may take a specific plea that the bills Ex.P4 and Ex.P5 issued for a sum of Rs. 67,000/- as well as Rs. 1,35,000/- which are original are the major bills and they could not be sought, but these bills due to deteriorated condition of the petitioner could not be submitted and as such, the petitioner is entitled to get the compensation of bills which he has incurred along with the other expenses including the disability which the petitioner has suffered”.

A perusal of the entire evidence and the record produced before the Tribunal establishes that there was a grievous injury suffered by Jai Bhagwan who was aged 60 years at the time of the accident. He was diagnosed with fracture dis-location right hip with posterior wall fracture. Head of the femur was depressed and dented with destroyed socket. The nature of the injuries are such that they cannot heal with the passage of the time and has to be operated upon. Admittedly Jai Bhagwan was operated upon in Chawla Nursing Home, Hissar. A perusal of the medical record produced establishes the continuity of the treatment from the date of accident till 2010. In such circumstances, the Tribunal has rightly taken into consideration the medical record produced till the year 2010.

Hon'ble the Apex Court in case of **G. Ravindranath @ R. Chowdary Versus E. Srinivas and another**, 2013 (12)SCC 455, held as under:-

“It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains), which the injured would have made had he not been injured,

comprising:

- (a) Loss of earning during the period of treatment;
- (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

A perusal of the above decision shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated. It is held that even future medical expenses and treatment should be taken care of. In such circumstances the appeal filed by the Insurance Company is dismissed. No interference is called for, as no illegality or factual error has been established in the award passed by the

Tribunal.

Hence the appeal is dismissed accordingly.

September 22, 2017
Poonam (II)

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned: *Yes*

Whether reportable: *Yes*