In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:9.11.2017

FAO-1179 of 2016(O&M)

United India Insurance Company Limited

---Appellant

vs.

Gurditta and others

---Respondents

FAO-3571 of 2016(O&M)

Gurditta

---Appellant

vs.

Ashwani and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. D.P.Gupta, Advocate
for the insurance company in both the appeals

Mr. Chander Kant Rana, Advocate
for the appellant in FAO No. 3571 of 2016
for respondent No. 1 in FAO-1179 of 2016.

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1179 and 3571 of 2016 as these have emerged out of common award dated 13.11.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") whereby compensation has been awarded in regard to injuries sustained by Gurditta in a motor vehicular accident that took place on 17.10.2012.

FAO No. 1179 of 2016

The sole submission made by counsel for the appellant (insurance company) is that as the driver was possessing licence of light motor vehicle-non-transport, he was not competent to drive the vehicle in question i.e. HR-61 9728. It is argued that the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative may be given right of recovery against the insured as he committed breach of terms and conditions of contract of insurance constituting a valid defence under Section 149(2) of the Motor Vehicles Act, 1988 (in short "the Act").

Counsel representing respondent No. 1 (claimant) while refuting contention of counsel for the insurance company and supporting findings of the Tribunal on Issue No. 3 has submitted that controversy raised in the present appeal is no longer *res integra* and stands settled by the latest judgment of Hon'ble the Supreme Court of India **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731.**

I have heard counsel for the parties and find that appeal filed by the insurance company is devoid of merit and liable to be rejected.

Indisputably, the gross weight of the vehicle in question is less than 7500 kgs and the same falls within the definition of light motor vehicle as defined in Section 2(21) of the Act. Light Motor Vehicle would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Hon'ble the Supreme Court has held that such transport vehicles are not excluded from the definition of the 'light motor vehicle' by virtue of Amendment Act No. 54/1994. A relevant extract from the judgment relied upon by counsel for respondent No. 1 is quoted hereunder for ready reference:-

> "A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or raod-roller, thus "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form."

In view of the above, I find myself unable to accept contention of the insurance company that driver of the offending vehicle was not possessing a licence authorising him to drive the vehicle in question or the insured in guilty of committing breach of terms and conditions of the contract of insurance.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

FAO No. 3571 of 2016(O&M)

C.M.No. 12599-CII of 2016

Prayer in this application is for condoning delay of 54 days in filing the appeal.

In view of averments made in the application supported by affidavit of Gurditta, applicant and arguments advanced by counsel for the applicant, application is allowed and delay of 54 days in filing the appeal is condoned.

Application stands disposed of accordingly.

FAO No. 3571 of 2016

The Tribunal has awarded compensation to the tune of Rs.18,30,044/-, detailed in tabulated form in para 24 of the award, reproduced hereunder:-

1.	Loss of income during treatment	-
2.	Medical expenses	
(i)	Medicines	Rs. 59,344/-
(ii)	Hospital charges	Rs. 2,03,000/-
(iii)	Attendant charges	Rs. 1,00,000/-
(iv)	Special diet	Rs. 20,000/-
3.	Transportation charges	Rs. 44,900/-
4.	Pain and suffering	Rs. 50,000/-
5.	Loss of earning capacity/future earnings on account of permanent disability	Rs. 12,52,800/-
6.	Reduction in life expectancy/loss of amenities and loss of prospects of marriage	Rs. 1,00,000/-
	Total	**Rs. 18,30,044/-**

Counsel for the appellant has submitted that the injured was 18 years old young unmarried boy whose future has been ruined on account of injuries sustained in the occurrence rendering him paraplegic and bed ridden. It is further submitted that doctor Vinod Kumar, Senior Medical Officer, Kalpana Chawla Government Medical College and Hospital, Karnal PW4 appeared in the witness box and deposed that on 25.2.2015, he alongwith other members of the Board examined Gurditta son of Harbhajan

Singh and found that it was an operated case of spine with paraplegia with bladder involvement with bed sores at places and disability was assessed at 100%. It is argued with vehemence that keeping in view nature and extent of disability suffered by the victim, compensation awarded by the Tribunal under various pecuniary and non-pecuniary heads is liable to be enhanced. According to counsel, loss of future income is liable to be assessed by determining income of the victim at Rs. 25,000/- per month and extending benefit of increase in income for future prospects. He has not been awarded proper compensation for loss of amenities (and/or loss of prospects of marriage) and loss of expectations of life. As the victim has been rendered bed ridden with disability to move resulting in bed sores etc., he requires services of an attendant throughout his life, therefore, attendant charges to the tune of Rs. 1,00,000/- allowed by the Tribunal are grossly inadequate.

Counsel for the insurance company, on the other hand, has urged that adequate compensation has been awarded by the Tribunal under various heads making total compensation close to Rs. 20,00,000/-. The claimant failed to establish his income, therefore, benefit of future prospects to the extent of 40% in the light of latest judgment of Hon'ble the Supreme Court of India **Special Leave Petition (Civil) No. 25590 of 2014 (National Insurance Company Limited vs. Pranay Sethi and others)** decided on 31.10.2017 cannot be extended. In addition, it is argued that in case claimant is allowed additional compensation qua services of an attendant in future, he is not entitled to get interest on expenses to be incurred in future.

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

Before adverting to the submissions made by counsel for the parties, it is appropriate to recapitulate the guidelines laid down by Hon'ble the Apex Court in **Raj Kumar vs. Ajay Kumar and others 2011(2)RCR (Civil)101.** The relevant paragraphs are extracted hereinbelow:-

> "6. The heads under which compensation is awarded in personal injury cases are the following:
>
> 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).
>
> In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence 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.
>
> 7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses

Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non pecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings onaccount of permanent disability Item (ii)(a)."

Hon'ble the Supreme Court in **R.D.Hattangadi vs. M/s Pest Control (India) Private Limited AIR 1995 (SC) 755** has laid down in para 9 reproduced hereinbelow for ready reference:-

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Reverting to the case at hand, there is no dispute that the injured victim suffered spinal injury that made him paraplegic/bed ridden with involvement of bladder and disability to the extent of 100% as assessed by the Medical Board of which Dr. Vinod Kumar was one of the member. That being so, loss of future earnings on account of permanent disability would be assessed by treating it to be a case of total loss.

As per plea of the claimant, he was agriculturist and earning Rs. 25,000/- per month. The claimant produced on record copy of jamadandi Ex. P.45 that shows that agriculture land stood in the name of his father Harbhajan Singh. The learned Tribunal has assessed income of the injured at Rs. 5800/- per month by treating him an unskilled labourer but income has been assessed on the basis of rates fixed by the Deputy Commissioner for the period from 1.3.2012 to 28.2.2013. The victim was middle pass and born on 8.4.1994 as per date of birth recorded in middle examination certificate. Even if the injured victim was rendering services to look after the land owned by his father Harbhajan Singh coupled with that father of the victim is also alive, I do not find any reason to interfere in assessment of income made by the Tribunal. The victim was 18 years old at the time of occurrence. There is nothing on record to suggest that he was suffering from any disability to impair his capacity to work and earn. In agriculturist families, land is looked after with joint efforts of the family. It is difficult to expect from them to produce any documentary evidence with regard to income of an individual member of the family. Hence, I find it difficult to accept contention of the insurance company that in absence of documentary proof regarding income, claimant is not entitled to benefit of increase in income for future prospects to the extent of 40% in the light of latest judgment of Hon'ble the Apex Court **National Insurance Company Limited vs. Pranay Sethi and others' case(supra).** After extending benefit of increase in income for future prospects to the extent of 40%, compensation for loss of future income comes to Rs. 5800 x12 x 18= 12,52,800 + 5,01,120(40%)=**Rs.17,53,920/-**.

The Tribunal has awarded an amount of Rs. 1,00,000/- for loss of amenities of life. Taking into consideration nature and extent of disability to the victim, he is awarded an amount of **Rs. 3,00,000/-** under this head. The claimant shall be entitled to an amount of **Rs.1,00,000/-** for pain and sufferings.

The Tribunal has awarded an amount of Rs. 1,00,000/- for attendant charges. As has been noticed hereinbefore, the victim has been rendered 100% disable with incapacity to walk. At the time of his examination by the board of doctors, he had bed sores, may be, he has got sensational loss and finds difficult to change his posture. There is bladder involvement due to spinal injury. The victim needs services of an attendant round the clock. The occurrence in question took place on 17.10.2012. The application for compensation was filed in July 2013. The injured remained hospitalized on three different occasions i.e. 17.10.2012 to 18.10.2012, 21.10.2012 to 6.11.2012 and 17.7.2013 to 29.8.2013. Keeping in view his condition, he required services of an attendant throughout at the time of hospitalization and thereafter. Compensation awarded by the Tribunal towards attendant charges would be appropriated towards the period from the date of occurrence till the date of award, therefore, the claimant shall be entitled to interest on attendant charges (Rs. 1,00,000/-) allowed by the Tribunal in terms of the award. The claimant shall be entitled to additional amount of **Rs. 3,00,000/-** towards attendant charges but the same shall not carry interest. Compensation awarded by the Tribunal for medicines, hospital charges, special diet and transportation charges **(Rs.3,27,244/-)**is affirmed.

In view of the above, total compensation comes to. **Rs.28,81,164** /- and the additional amount is **Rs. 10,51,120/-**(28,81,164 – 18,30,044). The additional amount of Rs. 10,51,120/- (except Rs. 3,00,000/-) shall carry interest at the rate of 7.5% per annum from the date of petition till realization. The entire compensation assessed by the Tribunal with interest was directed to be deposited in the account of the victim. It is not clear if any amount was released in favour of the victim in order to meet expenses on his upkeep and maintenance. The additional amount shall also be deposited in the account of the claimant. The interest accruing on the amount awarded by the Tribunal as well as the additional amount shall be payable to mother of the victim for meeting expenses on his care, upkeep and maintenance. Either of the parents of the victim would be entitled to file an application for release of a part of compensation, if required for taking care of needs of the victim.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

10.11.2017
paramjit Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No