

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision-31.07.2018

1. FAO No.1748 of 2001(O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Ravinder Kumar ... Respondent

2. FAO No.3548 of 2001

Ravinder Kumar ... Appellant

Versus

Jangsher Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vinod Chaudhri, Advocate
for the appellant in FAO No.1748 of 2001 and
for respondent No.5 in FAO No.3548 of 2001.

Mr. Malkeet Singh, Advocate
for the appellant in FAO No.3548 of 2001 and
for respondent No.1.

Mr. Vinod Chaudhri, Advocate
for respondents No.3 to 5 in FAO No.1748 of 2001
and for respondent No.5 in FAO No.3548 of 2001.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.1748 of 2001 titled Oriental Insurance Co. Ltd. Vs. Ravinder Kumar and FAO No.3548 of 2001 titled Ravinder Kumar Vs. Jangsher Singh and others are being disposed of. Common facts are being noticed.

[2]. Ravinder Kumar filed claim petition under Section 166 of the Motor Vehicles Act for grant of compensation on account of injuries received by him in a vehicular accident on 03.12.1996.

The accident took place when the claimant was going to Dosarka in jeep bearing registration No.HR-0A-8412. He was driving the jeep at a moderate speed and on the left side of the road. One Dharam Pal was sitting on front seat by the side of the driver. At about 6 PM, when they reached near the Sugar Cane Centre, Mullana, a tractor bearing registration No.HR-02B-9047 came from opposite side in a rash and negligent manner. The tractor was being driven by Jangsher Singh. In the meantime, a cow suddenly came on the road and in order to save the cow, Jangsher Singh turned the tractor towards the side of the jeep and he lost the control over the tractor and dashed into the jeep. As a result of which, Ravinder Kumar received multiple injuries and the jeep was also badly damaged. Claimants suffered multiple fractures i.e. fracture of right hip, thigh, knee and fracture on his legs. The thumb of his left hand was amputated. The injured was taken to Kohli Hospital, Jagadhari. Keeping in view his seriousness, he was referred to PGI, where he remained admitted for long time. Claimant pleaded that he had spent about Rs.40,000/- on his medical treatment till the date of filing of the claim petition. The claimant was running a shop at Dosarka and was earning Rs.8000/- per month. Due to his injuries and confinement to bed, he was incapacitated of doing his work. The claimant staked his claim for Rs.12 lacs for the injuries suffered by him.

[3]. The Insurance Company did not take any specific stand. On the one hand, the accident was denied and at the same time, it was pleaded that the accident was caused due to rash and negligent driving of the driver of the jeep. The collusion was pleaded between the driver and owner of the tractor. The other grounds were also taken that even if the accident is proved, the Insurance Company is not liable to pay any compensation as the tractor was being driven by a person who was not holding any valid and effective driving licence and the same was being driven in violation of terms and conditions of the Insurance Policy. The driver and owner of the tractor were proceeded against *ex parte* vide order dated 02.02.1998. They did not prefer to file even written statement.

[4]. Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') held that the accident in question took place due to rash and negligent driving of driver of the tractor/offending vehicle. The claimant appeared as PW 1 and proved the factum of receiving injuries by him in the said accident. The Tribunal on assessment of material on record found that injured had spent an amount of Rs.63,000/- towards transportation and the claimant was entitled to a sum of Rs.4,22,300/- as compensation for the injuries suffered by him under different heads. The Tribunal has found that the injured remained hospitalized for 99 days. He was discharged from the hospital, but he was not properly cured. He was again admitted in PGI and remained admitted for 55 days for

the second time. He was operated five times and thumb of his left hand was amputated. After discharge from the hospital, the injured attending PGI for follow up treatment and visited the hospital for 40 times by incurring taxi fare on each occasion. The Tribunal has assessed an amount of Rs.40,000/- towards transportation keeping in view the distance between the place of his residence and PGI. The claimant was permanently disabled to the tune of 65% on account of injuries suffered by him. Prior to the accident, he was running a shop and was earning Rs.8000/- per month. Due to permanent disability, he became totally incapacitated for running shop. An amount of Rs.94,000/- was spent on the repair of the jeep. As per testimony of Dr. P.K. Nigam (PW 4), the medical board found the claimant to be an old case mal united supra condylar fracture right femur with stiffness right knee with old case of fracture right acetabulum with partial stiffness right hip with amputation left thumb at metacarpophalangeal joint. Permanent disability was assessed to the tune of 65% as per disability certificate Ex.P1. The medical expenses to the tune of Rs.59,304.35 were found as per evidence.

[5]. The Tribunal on the basis of aforesaid facts assessed the total compensation to the tune of Rs.4,22,300/-. The Tribunal on the basis of evidence on record found that the driving licence of the driver of the tractor was valid from 31.01.1988 to 30.03.1993 and the same was renewed on 04.12.1996. At the time of accident i.e. on 03.12.1996, the driver was not having any

valid driving licence. However, the Tribunal on the basis of the then interpretation arising out of case titled **Ramesh Chand @ Ramesh Kumar Vs. United India Insurance Company, 1997-3 PLR 426** held that if the driver at the time of accident had a valid driving licence or had held one earlier, then the Insurance Company was liable *ipso facto*. The Tribunal while awarding the compensation held that the liability to pay compensation was joint and several. The claimant was held entitled to compensation to the tune of Rs.4,22,300/- along with interest @ 9% per annum from the date of filing of the claim petition till final realization of the amount.

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[6]. This appeal has been preferred by the Insurance Company against the award dated 31.03.2001 passed by Motor Accident Claims Tribunal, Ambala.

[7]. Learned counsel for the appellant/Insurance Company stated that at the time of issuance of notice of motion on 01.06.2001, recovery of 60% of the awarded amount has been stayed. Learned counsel relied upon **Ishwar Chandra and others Vs. The Oriental Insurance Co. Ltd. and others, 2007(2) RCR (Civil) 370, National Insurance Co. Ltd. Vs. Vidhadhar Mahariwala and others, 2008 ACJ 2860 (Supreme Court)** and **New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal, 2009(3) RCR (Civil) 500 (Supreme Court)** and

contended that in case, validity of the driving licence of the driver of the offending vehicle had expired prior to the date of accident, Insurance Company is not liable. If the driving licence of the driver of the offending vehicle had expired prior to the date of accident and the same was got renewed after the accident, the gap in renewal of driving licence cannot be a ground for exoneration of driver of the offending vehicle and in such situation, Insurance Company is not liable. The driver of the offending vehicle did not apply for renewal of the licence within 30 days from the date of its expiry of validity, therefore, the ground on which the Insurance Company has been held liable cannot be sustained as the licence of the driver of the offending vehicle expired on 30.03.1993. It was only renewed on 04.12.1996. The accident which took place on 03.12.1996 was not covering any period of validity of driving licence. At the most, driver could have sought benefit of 30 days from the date of expiry of validity of driving licence. The huge delay cannot be credited to the driver of the offending vehicle. The liability of the Insurance Company viz-a-viz the owner would depend upon several factors. The owner would be liable for payment of compensation in case, where the driver was not having a valid driving licence. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle at the relevant time.

[8]. In **National Insurance Co. Ltd. Vs. Swaran Singh and others, 2004, Accidents Claims Journal 1**, it was held that the Insurance Company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) of the Act are satisfied, but is further required to establish that there has been a breach on the part of the insured. In view of **National Insurance Co. Ltd. Vs. Swaran Singh and others case (supra)**, mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time were not the defences available to the insurer against either of the insured or the third party, but for its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. The testimony of owner of the vehicle became relevant in the context of certification that he had employed the driver after seeing driving licence and taking driving test of the driver. In the absence of any such evidence of the owner, the condition of policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time became irrelevant and the Insurance Company cannot be deprived of its legal right.

[9]. In the instant case, driver and owner of the offending vehicle were proceeded against *ex parte*. They did not project

even a defence in the written statement, therefore, it has to be held that the offending vehicle was being driven by a person who was not holding any driving licence. In the instant case, the award to the tune of 60% has already been stayed. No evidence has come forward to show any overt-act on the part of the driver of the jeep in the accident in question, therefore, the plea of the appellant for considering the case to be of contributory negligence cannot be appreciated for want of evidence.

[10]. In view of aforesaid material on record, the appeal filed by the Insurance Company is accepted. Since disbursement of the compensation upto 60% of the awarded amount has been stayed, therefore, it would be in all fitness of things that the Insurance Company may be asked to make good the entire payment with a right to recover the same from owner and driver of the offending vehicle in accordance with law.

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[11]. The present appeal has been preferred by the injured claimant for enhancement of compensation.

[12]. In view of law laid down in **Govind Yadav vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817; K. Suresh vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312; S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696; G. Ravindranath @ R. Chowdary vs. E. Srinivas and**

another, 2013(3) RCR (Civil) 934; Rekha Jain vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996; Neerupam Mohan Mathur vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422 and Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155, a distinction has to be drawn between the damages and the compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner as if, injury is not taken place. The Court should be liberal in deciding quantum of compensation to be paid to the victim towards future loss of income.

[13]. In view of **Raj Kumar vs. Ajay Kumar and another, 2011 ACJ 1,** it can be noticed that all injuries do not result in loss of earning capacity, however it depends upon case to case. The percentage of permanent disability with reference to whole body of a person, cannot be assumed to be the percentage of loss of earning capacity i.e. the percentage of loss of earning capacity is not the same as percentage of permanent disability (except in few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

[14]. The Tribunal has found that the injured incurred an amount of Rs.63,000/- towards transportation and Rs.59,304.35

towards medical expenses. The injured suffered permanent disability to the tune of 65% in the accident in relation to a particular limb. If the permanent disability in relation to whole body is taken, it will reduce to 50% i.e. 32.5% rounded to 33%. An amount of Rs.66,000/- (Rs.2000/- per percentage of permanent disability) can be computed on account of permanent disability to the tune of 33%. The injured was 36 years of age at the time of accident. The income of the injured at the relevant time can be taken to be Rs.3000/- per month as per daily wage prevailing in the year 1996. After assessing permanent disability in relation to whole body to the tune of 33%, loss of income due to permanent disability would come out to be Rs.990/- per month ($3000 \times 33/100 = 990$) i.e. Rs.11,880/- per year ($990 \times 12 = 11,880$). Keeping in view the age of the injured and in view of ratio laid down in **Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77,** multiplier of 15 has to be applied. In this way, an amount of Rs.1,78,200/- ($11,880 \times 15 = 1,78,200$) would come out for future loss of income on account of permanent disability of the injured. Therefore, an amount of Rs.2,44,200/- ($66,000 + 1,78,200 = 2,44,200$) can be computed under both the heads of permanent disability and loss of future income on account of permanent disability. The Tribunal has awarded an amount of Rs.2,00,000/- towards future prospects, therefore this amount has to be deducted. In this way, enhanced amount of

compensation would come out to be Rs.44,200/-
(2,44,200-2,00,000=44,200).

[15]. The enhanced amount of compensation i.e. Rs.44,200/- shall carry interest @ 7.5% from the date of filing of the claim petition till final realization of the amount. Since recovery rights have already been given in favour of the Insurance Company, therefore, Insurance Company shall pay the entire enhanced amount of compensation in the executing Court and thereafter, shall proceed to recover the same from owner and driver of the offending vehicle in accordance with law.

[16]. With the aforesaid modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

31.07.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No