IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2812 of 2018
Date of Decision.22.05.2018

SBI General Insurance Company Ltd. ...Appellant

Vs

Om Parkash and others ...Respondents

2. **FAO No.2813 of 2018**

SBI General Insurance Company Ltd. ...Appellant

Vs

Suraj Bhan and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Man Mohan, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals arising out of the same accident, preferred at the instance of the insurance company against the awards passed by the Tribunal, whereby a compensation of ₹20,91,640/- on account of injuries suffered by one Om Parkash and ₹31,82,030/- on account of injuries suffered by one Suraj Bhan has been awarded. In both the cases, the claimants suffered amputation of their limbs and suffered permanent disability i.e. 81% due to amputation of right arm below elbow in case of Om Parkash, which is subject matter of appeal in FAO No.2812 of 2018 and 80% in case of Suraj Bhan due to amputation of right leg above knee, which is subject matter of appeal in FAO No.2813 of 2018.

In both the cases, the Tribunal assessed the compensation in the following manner:-

"Om Parkash

Sr. No.	Category	Amount
1	Hospitalization	₹3000/-
2	Pain and suffering	₹25,000/-
3	Medical bills/receipts	₹65,280/-
4	Cost of artificial limb	₹3,22,000/-
5	High Protein diet	₹20,000/-
6	Transportation charges	₹10,000/-
7	Physiotherapy charges	₹5000/-
8	Loss of future earnings due to permanent disability	₹14,91,360/-
9	Loss of amenities and loss of expectancy	₹1,50,000/-
	Total	Rs.20,91,640/-

Suran Bhan

Sr. No.	Category	Amount
1	Hospitalization	₹11,000-
2	Pain and suffering	₹25,000/-
3	Medical bills/receipts	₹51,950/-
4	Cost of artificial limb	₹5,10,000/-
5	High Protein diet	₹20,000/-
6	Transportation charges	₹10,000/-
7	Physiotherapy charges	₹5000/-
8	Loss of future earnings due to permanent disability	₹22,99,080 /-
9	Loss of amenities and loss of expectancy	₹2,50,000/-
	Total	₹31,82,030/-

Mr. Man Mohan, learned counsel appearing on behalf of the appellant-insurance company submitted that the Tribunal grossly erred in assessing the functional disability of both the injured to the extent of 100%, much less, the increase in the income towards future prospects has erroneously been granted in injury case. The amount provided towards cost of artificial limb, loss of amenities and loss of expectancy is also excessive. He further contended that tractor trolley falls under the category of transport vehicle and therefore, an endorsement to that effect is mandatory. The driver did not have endorsement of transport vehicle on his licence, therefore, insurance company is entitled for recovery rights.

I have heard learned counsel for the appellant and appraised the paper book. The distinction between physical disability and functional disability while assessing the loss of earning capacity has been pondered upon by Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another (2011) 1 SCC 343*** wherein while citing illustration in para 13 & 14 of the same, it has been held as under:-

> *"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was*

earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier *holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."*

A perusal of the aforementioned would reveal that the loss of future earning capacity depends upon the nature of injury and the impact of the same on the avocation of the claimant. The claimant Om Parkash was working as scrap dealer whereas Suraj Bhan was working as Driver. Om Parkash suffered amputation of right arm below elbow and Suraj Bhan suffered amputation of right leg above knee, resulting into 100% loss of earning capacity.

As regards the argument qua future prospects, the Hon'ble Supreme Court in ***Syed Sadiz Vs. United India Insurance Co. Ltd. (2014) 2 SCC 735*** and ***Sanjay Verma Vs. Haryana Roadways (2014) 3 SCC 210*** has awarded future prospects of increase of income. All other heads claims have also been correctly appreciated.

The issue of requirement of endorsement of transport vehicle who falls in the category of light motor vehicles has been dealt with by Hon'ble Supreme Court in ***Mukund Dewangan VS. Oriential Insurance Company Limited 2017(4) RCR (Civil) 111*** wherein it has been held that for driving vehicles having unladen weight of less than 7500 kg which includes tractor as well, a driver having licence to drive a light motor vehicle is authorized to drive said vehicles without any further endorsement of transport vehicle.

In view of the aforementioned, the awards passed by the Tribunal are perfectly legal and justified and do not call for interference. The same are upheld and both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No