

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

Date of Decision: 18.11.2019

(1)

FAO No.2373 of 2006 (O&M)

New India Assurance Co. Ltd.

.....Appellant

Versus

Ben Parsad @ Ved Parkash and others

.....Respondents

(2)

FAO No.2682 of 2006

Ben Parshad @ Ved Parkash

.....Appellant/Claimant

Versus

Vijay Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. Paul S. Saini, Advocate
for the appellant in FAO No.2373 of 2006 and
for respondent No.3 in FAO No.2682 of 2006.

Mr. S.K. Jain, Advocate
for respondent No.1 in FAO No.2373 of 2006 and
for the appellant in FAO No.2682 of 2006.

Mr. Parminder Singh, Advocate
for respondents No.2 and 3 in FAO No.2373 of 2006.

Mr. Maninder Sidhu, Advocate
for respondents No.1 and 2 in FAO No.2682 of 2006.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO No.2373 of 2006** titled New India Assurance Company Limited Vs. Ben Parsad @ Ved Parkash and others filed by Insurance Company for setting aside the award dated 06.03.2006 passed by the Motor Accidents Claims Tribunal, Sirsa (for short, 'the Tribunal') and **FAO No.2682 of 2006** titled Ben

Parshad @ Ved Parkash Vs. Vijay Kumar and others filed by the injured/claimant-Ben Parshad @ Ved Parkash for enhancement of the compensation awarded vide above said award.

2. For the sake of convenience, the parties are referred to by their description in the claim petition.

3. Injured/claimant-Ben Parshad @ Ved Parkash filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') pleading that on 25.03.2004 at about 6:00 p.m., after harvesting the Sarson (Mustard) crop in the fields of respondent No.2-Richhpal Singh, he along with other labourers was going in the trolley attached to the tractor bearing registration No.PB-51-5437, owned by respondent No.2, insured with respondent No.3, to the Kotha of respondent No.2-Richhpal Singh where the labourers used to stay in the night. The tractor-trolley were being driven at high speed by respondent No.1 who did not slow down the tractor on the turn due to which hook of the trolley was broken and the trolley overturned. The claimant and other labourers suffered serious and grievous injuries. Respondent No.2-Richhpal Singh reached on the spot and shifted the injured including the claimant to Dr. Y.K. Chaudhary Hospital, Sirsa where he was medico-legally examined and treated. FIR No.44 dated 26.03.2004 was registered under Sections 279, 337 and 338 of the Indian Penal Code, 1860 at Police Station Baragudha, District Sirsa regarding the accident.

4. The claimant further averred in the claim petition that the claimant was aged about 52 years at the time of accident and was earning Rs.2,500/- per month by working as labourer. The claimant became permanently disabled due to multiple and grievous injuries,

including crush fractures of his right leg resulting in its amputation, suffered in the accident and he is unable to stand or walk. The claimant spent amount of Rs.40,000/- on his medical treatment and required an amount of Rs.1,00,000/- for future treatment. The claimant accordingly prayed for award of compensation of Rs.10,00,000/- with costs and interest at the rate of 18% per annum from the date of accident till realisation of the amount from respondents No.1 to 3.

5. The petition was contested by the respondents in terms of their respective written statements. In their joint written statement respondents No.1 and 2 pleaded that the accident did not take place due to fault and negligence on the part of respondent No.1 and occurred due to mechanical defect i.e. breaking of the hook of trolley attached with the tractor when the tractor was taking turn and was due to an Act of God beyond the control of respondent No.1. Respondent No.1 and 2 accordingly denied their liability and prayed for dismissal of the petition with costs.

6. In its written statement respondent No.3 took objections as to maintainability, respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of the insurance policy by respondent No.2 as the tractor-trolley were meant for carrying the agricultural crops or goods relating to the agriculture and not for carrying labour and the risk to labour was not covered by payment of extra premium. Respondent No.3 accordingly denied its liability and also prayed for dismissal of the claimant with costs.

7. The Tribunal framed issues and recorded evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that the claimant suffered injuries due to accident caused by rash and negligent driving of tractor by respondent No.1 who was having valid and effective driving licence and respondents No.1 to 3 were jointly and severally liable for payment of compensation to the claimant. The Tribunal awarded amount of Rs.17,500/- towards medicines, Rs.21,050/- towards medical treatment, Rs.75,000/- on account of disability, Rs.15,000/- towards attendant, transportation and pain and suffering etc. totalling Rs.1,28,550/- and directed respondents No.1 to 3 to pay the same jointly and severally with costs and interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

8. Feeling aggrieved, respondent No.3-Insurance Company filed **FAO No.2373 of 2006** for setting aside the award dated 06.03.2006 against it and the injured-claimant filed **FAO No.2682 of 2006** for enhancement of the compensation amount.

9. I have heard arguments addressed by the learned Counsel for the claimant, learned Counsel for respondents No.1 and 2-driver and owner and learned Counsel for respondent No.3-Insurance Company.

10. Learned Counsel for the injured-claimant has argued that the claimant suffered multiple and greivous injuries due to accident caused by rash and negligent driving of tractor-trolley in question by respondent No.1. The claimant has become permanently disabled and is unable to do any labour work. The Tribunal has gravely erred

in law by granting a sum of Rs.75,000/- on account of 65% permanent disability without calculating the compensation for loss of future earnings by applying multiplier method as per ratio of the judgment of Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another : 2011 (2) RCR (Civil) 101**. The Tribunal has also erred in not awarding any compensation for loss of income during treatment. In view of the nature of injury and amputation of the right leg of the claimant, compensation awarded by the Tribunal cannot be said to be just and adequate. The Tribunal has erred in law by awarding meagre lump sum amount of Rs.15,000/- towards general damages including pain and sufferings, transportation, special diet and attendant. The Tribunal has also awarded lesser rate of interest. Learned Counsel for the claimant has accordingly prayed that the award may be modified and the compensation awarded may be enhanced.

11. On the other hand, learned Counsel for respondents No.1 and 2, driver and owner and learned Counsel for respondent No.3-Insurance Company have argued that the claimant has failed to prove that he suffered injuries due to accident caused by rash and negligent driving of tractor-trolley by respondent No.1 and the claimant is not entitled to payment of any compensation. Learned Counsel for respondents No.1 and 2 and learned Counsel for respondent No.3 have argued in the alternative that the Tribunal has awarded just and adequate compensation and enhancement thereof is not warranted.

12. In the present case to prove his claim, the claimant appeared in the witness-box as PW-1 and testified that on

25.03.2004 he and other labourers were returning in the trolley attached to the tractor driven by respondent No.1 to the place of their stay. When the tractor-trolley reached near Gurudwara of village Khatranwan, respondent No.1, who was driving the tractor at very high speed, did not slow down the same on turn due to which the hook of trolley was broken and the trolley overturned resulting in injuries to him and other labourers. The veracity of testimony of PW-1 Ben Parsad @ Ved Parkash could not be shattered during his cross-examination. The testimony is supported by copy of FIR lodged immediately after the accident without any undue and unreasonable delay. On investigation, the police found the accident to have occurred due to rash and negligent driving of the tractor-trolley by respondent No.1 and filed report under Section 173(2) of the Cr.P.C. against respondent No.1 regarding alleged commission of offences punishable under Sections 279, 337 and 338 of the IPC. Respondent No.1 did not make any complaint to the concerned SHO or Superintendent of Police, Sirsa regarding his false implication and did not enter into witness-box to rebut the testimony of PW-1 Ben Parsad @ Ved Parkash. Respondent No.3 also did not produce any evidence to rebut the testimony of PW-1 Ben Parsad @ Ved Parkash or to prove any collusion between the claimant and respondents No.1 and 2. In view of these facts and circumstances, oral and documentary evidence produced by the claimant having gone virtually un rebutted and unchallenged was rightly relied and acted upon by the Tribunal to record the findings that the claimant suffered injuries due to accident caused by rash and negligent driving of tractor-trolley bearing registration No.PB-51-5437 by

respondent No.1 and there is no ground to warrant interference with the same.

13. It is now well settled that in personal injury cases compensation can be awarded under the following heads:-

(1) **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; and
 - (b) Loss of future earnings on account of permanent disability; and
- (iii) Future medical expenses

(2) **Non-pecuniary damages (General damages)**

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

(See Raj Kumar Versus Ajay Kumar and another (2011) 1 Supreme Court Cases 343 and R. D. Hattangadi Versus Pest Control (India) Limited and others 1995 ACJ (SC) 366).

14. So far as the claim for expenses relating to treatment, hospitalization and medicines is concerned, the claimant examined Dr. Y.K. Chodhary as PW-2 who proved having medically treated the claimant and charged an amount of Rs.21,050/- and also deposed that the claimant must have spent amount of Rs.15,000/- to Rs.20,000/- on purchase of medicines during the period of his treatment. Even though the claimant did not produce any bills to show the amount spent on purchase of medicines but in the facts

and circumstances of the case, the Tribunal must be held to have rightly awarded the amount of Rs.21,050/- towards hospital charges and Rs.17,500/- towards purchase of medicines which cannot be said to be unjust and inadequate. However, in the absence of bills or testimony of concerned Doctor/Chemists to prove incurring of expenses beyond the above-said amounts, the claimant is not entitled to payment of any further amount under these heads.

15. It is also pertinent to observe here that the claimant did not produce any medical evidence to prove requirement of his medical treatment in future. Therefore, the claimant is not entitled to award of any compensation towards future medical treatment.

16. It may be observed here that the Tribunal awarded lump sum amount of Rs.15,000/- towards general damages including pain and suffering and the Tribunal did not award specific amounts under various heads. No doubt, the claimant did not produce any bills to show amount spent on transportation, attendant and special diet but it is common knowledge that in such cases expenses are incurred on transportation, attendant and special diet. The claimant remained hospitalized for a period of about 1½ months. His right leg was amputated. In the facts and circumstance of the case, it will be just and reasonable to award amount of Rs.2,500/- towards transportation, amount of Rs.7,500/- towards attendant and amount of Rs.7,500/- towards special diet.

17. In the present case, the Tribunal did not award any compensation for loss of income during treatment. In view of testimony of the claimant as PW-1 as to earning of Rs.2,500/- per month and the minimum wages of Rs.2269.45ps. notified by State of

Haryana to be payable to an unskilled labourer during the relevant period, it will be just and reasonable to hold that the claimant was having income of Rs.2,300/- per month at the time of the accident. In view of the period of hospitalization of the claimant and the period of recovery of about three months, it will be just and appropriate to award amount of Rs.7,000/- to the claimant towards loss of income during the period of his treatment.

18. To prove his permanent disability and consequent loss of future earnings, the claimant produced Disability Certificate Ex.P5 issued by Civil Surgeon, Civil Hospital Hospital, Sirsa according to which permanent disability for amputation of right lower limb below knee was found to be 65%. In the facts and circumstances of the case and on overall assessment of the material on record including the Disability Certificate, it will be appropriate to assess permanent disability of body and consequent loss of earning capacity of the claimant as **65%**. The claimant was aged about 52 years and was having income of Rs.2,300/- per month at the time of the accident to which addition of 10% ($2300 \times 10/100 =$) Rs.2,530/- has to be made towards future prospects as per observations made by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009**. In view of age of the appellant at the time of accident being 52 years, multiplier of 11 was applicable as per observations made by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77**. On application of the multiplier method as per the observations made by the Hon'ble Supreme Court in **Raj Kumar's Case (Supra)** proportionate

compensation payable to the claimant for loss of future earnings due to functional permanent disability and consequent loss of earning capacity to the extent of 65% comes to (Rs.2,530/- X 12 X 11 = Rs.3,33,960 X 65/100=) Rs.2,17,074/-.

19. In view of the nature of injuries suffered, the claimant will be entitled to amount of Rs.15,000/- towards pain and suffering and Rs.15,000/- towards loss of amenities. However, the injuries are not proved to have shortened the longevity of life and resulted in loss of expectation of life and the claimant is not entitled to any compensation for the same.

20. It follows from the above discussion that the claimant is entitled to payment of compensation as calculated under the following heads:-

Sr. No.	Head	Compensation
1.	Expenses relating to medical treatment, hospitalization and medicines	Rs.38,550/-
2.	Future medical treatment	-nil-
3.	Expenses relating to Transportation, Special Diet and Attendant	Rs.17,500/-
4.	Loss of earnings during the period of treatment	Rs.7,000/-
5.	Loss of future earnings due to loss of earning capacity/functional permanent disability	Rs.2,17,074/-
6.	Pain and suffering	Rs.15,000/-
7.	Loss of amenities	Rs.15,000/-
8.	Shortening of longevity of life	-nil-
9.	Total Compensation	Rs.3,10,124/-

21. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the whole

amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

22. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest from the date of making the claim at such rate as may be specified by it.

23. In **Puttamma and others Vs. K.L. Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443**, Hon'ble Supreme Court observed in para 60 as under:-

“This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

24. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

25. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

26. In view of these judicial precedents, mercantile rate of interest prevalent, rates of interest allowed on FDRs and charged on personal loans by Nationalized Banks and other relevant factors, it will be appropriate to modify the rate of interest of 7.5% per annum awarded by the Tribunal to 9% per annum.

27. Learned Counsel for respondent No.3-Insurance Company has argued that only the tractor was insured with respondent No.3-Insurance Company and trolley was not insured. The accident took place due to the trolley having overturned on breakage of hook attached to the tractor. Tractor was insured for agricultural purposes and tractor-trolley were not meant for carrying of the passengers/labourers. Respondent No.2 committed breach of the terms and conditions of the insurance policy by carrying labourers in the trolley and respondent No.3 is not liable to indemnify the insured respondent No.2-registered owner for payment of compensation to the claimant. In support of his arguments learned Counsel for respondent No.3 has placed reliance on the observations in judgments of Hon'ble Supreme Court in ***Oriental Insurance Company Limited Vs. Brij Mohan and others : 2007(3) RCR (Civil) 271; United Indian Insurance Company Limited Vs. Serjerao and others : 2008(1) RCR (Civil) 73*** and ***The New Indian Insurance Company Vs. Darshana Devi and others : 2008(2) RCR (Civil) 86***.

28. On the other hand learned Counsel for respondents No.1 and 2 have argued that trolley has to be considered as part of the tractor. The tractor-trolley were being used for carrying labourers to the Kotha of the registered owner situated in his fields used for their

stay after harvesting of Sarso crop by them. There was no breach of terms and conditions of the insurance policy on the part of respondent No.2 and respondent No.3 is liable to indemnify respondent No.2. In support of their arguments, learned Counsel for respondents No.1 and 2 have placed reliance on the judgment of this Court in ***M/s The United India Insurance Company Limited, Chandigarh Vs. Shri Pritpal Singh IPS and others : 1996(2) SLJ 1496.***

29. Learned Counsel for the claimant has argued that in the eventuality of the exoneration of respondent No.3-Insurance Company from its liability to indemnify respondent No.2, respondent No.3 may be directed to pay the compensation to the claimant and thereafter to recover the same from respondents No.1 and 2, driver and owner, in accordance with law.

30. Admittedly, in the present case, the tractor bearing registration No.PB-51-5437 was insured with respondent No.3. The question which first arises is whether the trolley can be considered to be part of the tractor and to be covered by the insurance policy of the tractor.

31. Section 2(44) of the M.V. Act defines tractor as under:-

“2(44) ‘Tractor’ means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion)”

32. ***In United India Insurance Company Ltd. Vs. Surinder and others : 2004(4) RCR (Civil) 2011*** it was held by a Division Bench of this Court that tractor itself is not able to carry any load without the equipment and therefore, any equipment attached with

the tractor will be part of the tractor and covered under the Insurance Policy.

33. It may be observed here that in the present case, there is no claim that at the time of accident, the tractor-trolley was being used for non-agricultural/commercial purposes. Question which arises is as to whether respondent No.3-Insurance Company is liable to indemnify respondent No.2-registered owner for payment of compensation to the claimant or due to the claimant being a gratuitous passenger in the tractor-trolley respondent No.3 is entitled to exoneration from liability to indemnify respondent No.2 for payment of compensation to the claimant.

34. Tractor-trolley, which were insured for agricultural purposes, were meant for agricultural operations and for carrying agricultural goods by the registered owner and were not meant and could not, therefore, be used for carrying passengers/labourers in the trolley.

35. In ***United Indian Insurance Company Limited Vs. Serjerao and others : 2008(1) RCR (Civil) 73***, Hon'ble Supreme Court noticed that the question of liability of Insurance Company regarding labourers travelling in trollies is not res-integra and observed as under:-

“8 So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in **Oriental Insurance Company Ltd. v. Brij Mohan and Ors., 2007(3) RCR(Civil) 271 : 2007(3) R.A.J. 286 : (2007(7) SCALE 753** and it was held that the Insurance Company has no liability.....”

36. The observations in above referred judgments are fully applicable to the facts of the present case and in view of the same the claimant being gratuitous passenger travelling in the trolley attached to the tractor is not entitled to claim compensation from respondent No.3-Insurance Company which is exonerated from its liability to indemnify respondent No.2 on account of breach of terms and conditions of the insurance policy by him.

37. In view of the observations made by Hon'ble Supreme Court in **Oriental Insurance Company Ltd. v. Brij Mohan and Ors., 2007(3) RCR(Civil) 271 : 2007(3) R.A.J. 286 : (2007(7) SCALE 753** and **United Indian Insurance Company Limited Vs. Serjerao and others : 2008(1) RCR (Civil) 73**, the observations in **M/s The United India Insurance Company Limited, Chandigarh Vs. Shri Pritpal Singh IPS and others : 1996(2) SLJ 1496** relied upon by learned Counsel for respondents No.1 and 2 driver and owner and the observations in **Bhimavva and others Vs. Shanker and others : 2005 ACJ 301 (Karnataka High Court)**; **National Insurance Company Limited Vs. Styra Parkash and others : 2005 ACJ 1752 (Allahabad High Court)** and **United India Insurance Company Limited Vs. Surinder and others : 2004 (4) RCR (Civil) 211 (Punjab and Haryana High Court)** referred to by the Tribunal in the impugned award are not applicable and are not of any help to respondents No.1 and 2 driver and owner.

38. In **National Insurance Company Limited Vs. Swaran Singh and others : 2004 ACJ 1 (Supreme Court)** Hon'ble Supreme Court held that in case of breach of the terms and conditions of the insurance policy the owner of the vehicle is liable to

the third party but the insurer has to satisfy the award and then recover the same from the owner of the vehicle.

39. The Supreme Court considered the decision of **Swaran Singh's Case (Supra)** in subsequent decision in **National Insurance Company Limited Vs. Laxmi Narain Dhut, 2007(2) R.C.R. (Civil) 345**, wherein it was held that the decision in Swaran Singh case has no application to cases other than third party risks and in case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured. The same principle was reiterated in **Prem Kumari Vs. Prahlad Dev and others : 2008 (1) R.C.R.(Civil) 835**.

40. In **Shamanna Vs. Divisional Manager the Oriental Insurance Co. Ltd. (SC) : 2018 (4) RCR (Civil) 26** Hon'ble Supreme Court observed that presently the decision in **Swaran Singh's Case (Supra)** followed in **Laxmi Narain Dhut's Case (Supra)** and other cases hold the field and upheld the award passed by the Tribunal directing the Insurance Company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question.

41. It follows from the above discussion that the claimant is entitled to payment of amount of Rs.3,10,124/- from the respondents No.1 and 2 jointly and severally with costs and interest at the rate of 9% per annum from the date of institution of the petition till realization. Amount of Rs.1,28,550/- already awarded to the claimant shall be liable to be deducted from the above-said amount. However, respondent No.3-Insurance Company shall first pay the amount of

compensation to the claimant and then recover the same from respondents No.1 and 2 driver and owner.

42. In view of the above discussion, both the appeals are allowed leaving the parties to bear their own costs and award dated 06.03.2006 is modified as discussed above.

18.11.2019

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**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No