IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8446 of 2014 (O&M)
Date of decision: 31.10.2019

United India Insurance Co. Ltd. ... Appellant

Versus

Bimlesh Kumar @ Vimlesh Kumar and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajesh K. Sharma, Advocate for the insurance company.

Mr. Vipul Sharma, Advocate for the claimant.

Mr. Anil K. Spehia, Advocate for
Mr. Nitin Mittal, Advocate for the driver and owner.

****

<u>REKHA MITTAL, J. (Oral)</u>

The present appeal directs challenge against award dated 03.07.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of injuries sustained by Bimlesh Kumar @ Vimlesh Kumar in a motor vehicular accident that took place on 05.03.2011.

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and liability of the insurance company on the question of driving licence.

With regard to driving licence possessed by Dinesh Kumar, driver of JCB machine No.CH-03-X-8571, it is argued that licence possessed by him was found to be fake in view of testimony of D.R. Patva

RW examined by the insurance company reference whereof has been made in para 17 of the award. It is further argued that testimony of Yuvraj Bhalla RW1, owner of the offending vehicle that he had seen the driving licence of Dinesh Kumar and tested his driving skills is beyond pleadings, therefore, cannot be taken into consideration. It is argued that the insured is not entitle to seek aid of ratio of the judgment of Hon'ble the Supreme Court **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273**, in view of aforesaid.

Counsel would argue that injured suffered disability to the extent of 20% but the Tribunal has assessed loss of future income by considering disability to the extent of 25%. Compensation allowed under other heads is also higher and merits reduction.

Counsel representing respondent No.1/claimant (appointed as amicus curiae) would argue that the Tribunal has assessed just and reasonable compensation and there is no justification for reduction in compensation. However, it is argued that multiplier applied by the Tribunal is incorrect and needs rectification.

Counsel representing respondents No.2 and 3 (driver and owner) would argue that a specific plea was raised by driver that he was holding a valid licence. The statement of Yuvraj Bhalla that he had seen the licence and tested driving skills of the driver is more than sufficient to counter plea of the insurance company that the insured is guilty of breaching the terms and conditions of insurance policy.

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

The insurance company raised a plea in para 3 of the preliminary objections that driver of JCB bearing No.CH-03-X-8571 was not holding valid and effective driving licence at the time of alleged accident and as such, the answering respondent is not liable to pay any compensation. However, no such plea has been raised by the insurance company that the insured is guilty of intentionally violating the terms and conditions of insurance policy constituting a defence in favour of the insurer. Yuvraj Bhalla, owner of the offending vehicle appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.RW1/A. He has deposed that Dinesh Kumar was working with his firm for the last four years as an operator of JCB machine. At the time of employing him, he had checked driving skills and driver showed driving licence marked as Ex.RW1/1. The driver had also shown him licence which was renewed. He gave him the job after being satisfied with his driving skills and driving licence.

Counsel for the insurance company has failed to point out any materials elicited in cross examination of Yuvraj Bhalla, on the basis whereof his testimony is rendered unworthy of credence and reliance. Keeping in view the above, when the case is examined in the light of judgment of Hon'ble the Supreme Court **Pepsu Road Transport Corporation's case (supra)**, there is no reason to interfere in findings of the Tribunal rejecting plea of the insurance company to have right of recovery against the insured on the question of driving licence.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal awarded Rs.10,37,820/-, detailed hereunder:-

Loss of income	Rs.1,20,000/-
Medical expenses	Rs.1,12,820/-
Loss of future income	Rs.6,75,000/-
Pain, sufferings and agony	Rs.50,000/-
Special diet	Rs.25,000/-
For conveyance/transportation	Rs.15,000/-
Attendant	Rs.40,000/-

Dr. Sandeep Kumar, Junior Resident, Department of Orthopedics, PGI, Chandigarh was examined to prove nature of injuries sustained, period of hospitalisation and treatment given to the injured. He has deposed that Bimlesh Kumar @ Vimlesh Kumar was admitted on 05.03.2011 with history of road side accident. On examination, he was diagnosed with fracture of both bones leg and lunate dislocation. For fractures of femur, proxima femur nail and for both bones leg interlocking nail and for lunate dislocation, k-wire fixation was done on 22.03.2011. The patient was discharged on 02.04.2011 in satisfactory condition. He was advised medication and physiotherapy. On 04.04.2011 for lunate dislocation, below elbow cast was given. On 30.04.2011, lunate k-wire was removed because of pintract infection and below elbow cast continued. In follow up on 29.05.2011, cast was removed and wrist brace was given and active physiotherapy started. For fracture both bone legs delayed union, active physiotherapy was advised. During the period of treatment and after about three months, the patient might had walked with the help of a support and might not had been in position to do heavy work. The patient may require another operation for removal of implant.

The Tribunal has allowed loss of income for eight months during the period of treatment and recovery. The injured tendered into evidence his affidavit Ex.PW1/A, relevant extract from para 6, in the context of loss of income, reads thus:-

> That the deponent was 29 years of age at the time of accident. He was dealing in furnishing oil which is used for constructing roads/furniture. He was earning a sum of Rs.25,000/- per month and was an income tax payee. Due to this accident the earning capacity of the deponent has been badly affected as the deponent has lost his clients and his working capacity has also been reduced as he has received serious injuries on his left arm and right leg due to which he cannot lift weight and is dependent on others for his livelihood.

The Tribunal has assessed loss of monthly income at Rs.15,000/-. As per income tax return for the assessment year 2009-10, annual income of the victim is Rs.1,81,330/-. The return filed by him subsequent to the accident (assessment year 2010-11) reflects his income to the tune of Rs.2,14,660/. In the given circumstances, return filed before the accident would be taken as base for computing loss of income.

The Tribunal has assessed income @ Rs.15,000/- per month by taking into consideration annual income of Rs.1,81,330/-, reflected in the return for assessment year 2009-10 and the same is affirmed. Dr. Sandeep

Kumar, Junior Resident, Department of Orthopedics, PGI, Chandigrh PW3 was examined to prove nature of injuries and period of treatment. Taking into consideration the period of treatment as an indoor patient and follow up on 29.05.2011 and 07.07.2011, claimant shall be entitle to loss of income during the period of treatment and recovery for a period of six months. The same is calculated at Rs.90,000/- (15,000 x 6).

Dr. Rajiv Dosajh, one of the members of medical board that assessed disability and issued disability certificate Ex.P55, has deposed to the following effect:-

> He was a case of neglected dislocation of the wrist with shoulder osteosclerosis with 10 degee range of movement at wrist. He was operated case of fracture shaft femur with nail in situ and operated case of fracture shaft tibia with nail in situ. There was limb length shortening of one inch. Permanent partial disability of 20% was given.

No opinion has been expressed as to how this disability can be computed for the purpose of functional disability. The Tribunal has not expressed any opinion with regard to functional disability but assessed loss of earning capacity @ 25% without assigning any valid reason. The injured had stated that he was dealing in furnishing oil used for constructing roads/furniture. He has not made it clear as to the modus of doing business of sale of furnishing oil. If the victim was operating from a fixed place for supplying of furnishing oil, loss of earning capacity would be taken at 10% and functional disability is assessed accordingly. The victim was less than 30 years of age at the time of occurrence and a multiplier of 17 is admissible. Accordingly, loss of future income is assessed at Rs.3,06,000/- (15,000 x 12 x 17 x 10%).

The Tribunal has reimbursed medical expenses to the tune of Rs.1,12,820/- and the same is affirmed. Taking into consideration the nature of injuries coupled with period of treatment, there is no justifiable reason to interfere in assessment of compensation for pain and sufferings, special diet, transportation and attendant charges. In view of the above, total compensation is Rs.6,38,820/- and compensation assessed by the Tribunal is reduced to the extent of Rs.3,99,000/- (10,37,820 – 6,38,820). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

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

(REKHA MITTAL)
JUDGE

31.10.2019
ashok

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No