IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104 (2 cases)

1. CM-9642-CII and CM-9644-CII in/and
FAO No.565 of 2021 (O&M)
DATE OF DECISION: 04th OCTOBER, 2021

United India Insurance Company Limited
…. Appellant
Versus
Gurmeet Kaur and others
…. Respondents

2. CM-9677-CII and CM-9679-CII in/and
FAO No.577 of 2021 (O&M)

United India Insurance Company Limited
…. Appellant
Versus
Harmandeep Singh and others
…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. D.P. Gupta, Advocate for the applicant/appellant.

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<u>RAJBIR SEHRAWAT, J. (Oral)</u>

<u>CM-9642-CII-2021 in FAO-565-2021 and</u>
<u>CM-9677-CII-2021 in FAO-577-2021</u>

The present application have been filed by the applicant/appellant for preponing the date of hearing in the main appeals.

For the reasons mentioned in the applications, the same are allowed. The hearing of the main appeals are preponed for today.

<u>Main Cases</u>

By this common order, both the aforementioned appeals shall stand decided; as both have arisen out of the same award.

Both the appeals have been filed by the appellant-Insurance Company challenging the award dated 16.02.2021 passed by the Motor Accident Claims Tribunal, Amritsar (for short, the Tribunal), whereby an amount of ₹20,70,00/- in FAO No.565 of 2021 and an amount of ₹12,11,000/- in FAO No.577 of 2021 along with interest, from the date of filing of the claim petitions, have been awarded as compensation to the claimants Gurmeet Kaur and her son Harmandeep Singh respectively, on account of injuries suffered by them in a motor vehicular accident, involving the offending vehicle; insured by the present appellant.

For convenience, the main facts are being taken from FAO No.565 of 2021.

The brief facts, as mentioned in the award passed by the Tribunal are; that on 08.08.2017, the claimant Gurmeet Kaur was bringing her son Harmandeep Singh (the other claimant) from tuition centre at Rajinder Nagar, Focal Point, Amritsar, to her house on Honda Activa Scooter bearing registration No.PB-02-DG-5292 (Temp.). The claimant was driving the said activa scooter while her son Harmandeep Singh was the pillion rider. At about 7.30 p.m. when they reached near the turn of Tara Wala Pull, G.T. Road, Amritsar, a loaded truck bearing registration No.PB-46-M-1042, which was being driven rashly and negligently by respondent No.1; without even using the horn, smashed against the scooter of the claimant. Due to the impact of the accident, the claimant and her son fell on the road. The claimant Gurmeet Kaur received serious injuries, which resulted in amputation of the right arm and there was serious damaged to the leg of her son Harmandeep Singh. Their Honda scooter was also badly damaged. On account of the accident, the claimant Gurmeet Kaur became unconscious, whereas, the driver of the offending truck kept the same standing there for some time and then fled away from the spot along with his truck. Subsequently, the claimant was informed about the registration number of the vehicle in question by the persons who had been there on the scene of accident. On account of this accident, an FIR No.78 dated 09.08.2017 was also registered under Sections 279, 427, 337 and 338 IPC at Police Station Maqboolpura, Amritsar, on the statement of injured Gurmeet Kaur. The claimant was taken to the hospital where, besides amputation of the right arm of the claimant, she was given treatment and was also advised future treatment. Ultimately, the permanent disability of the claimant was assessed to the extent of 80%. In view of these facts, the claim petition was filed with the averments that with the amputation of the right arm, her earning capacity had been diminished to the extent of 100% and huge expenses have been incurred on the surgeries, medical equipment and medical procedure etc. The claimant had to hire an assistant as well, and she was paying ₹7,000/- per month to the said assistant. Earlier, the claimant was earning ₹15,000/- per month from tailoring etc. However, as of now she has been rendered totally helpless and she cannot do any work. Accordingly, an amount of ₹2.00 Crores, along with interest, was claimed in the claim petition.

In the second case, FAO No.577 of 2021; the claim petition was filed with assertions that injured Harmandeep Singh was admitted to Amandeep Hospital, Amritsar and lot of medical expenses were incurred on his treatment; as well. His right foot had to be amputated. Several surgeries were conducted on him. The claimant was studying in 5th standard in Ryan Public School and he has been a brilliant student. With his right foot amputated, he has been rendered 50% disabled, however, the earning capacity of the claimant Harmandeep Singh has been diminished to the extent of 100% for all times to come. It was further asserted that the claimant was contributing towards the family for a value equivalent to ₹5,000/- per month. Accordingly, the compensation of ₹2.00 Crores, along with interest, was claimed.

Upon notice, respondent Nos.1 and 2 in the claim petition, i.e. the driver and the owner of the alleged offending truck filed their joint written statement. Beside taking preliminary objections, it was asserted in the written statement filed by the driver and the owner of the alleged offending truck that no such accident had taken place with their vehicle mentioned above. The claim petition had been filed by the claimant just to grab the money. Hence, the dismissal of the claim petition was prayed for. Respondent No.3 in the claim petition, i.e. the insurance company, who is the present appellant, filed separate written statement raising preliminary objections that the driver of the offending truck was not holding a valid and effective driving licence at the time of the accident. Further, it was asserted that neither respondent No.1 in the claim petition was driving the said vehicle nor respondent No.2 was the owner of the vehicle. The claim of compensation had been abnormally exaggerated. The offending vehicle was not having any registration certificate, route permit and the certificate of fitness etc.

To substantiate the claim, the claimant herself appeared as a witness. Beside this, the record of the hospital, at which she was treated, was proved by examining the clerk of the said hospital. The discharge summary and the medical bills were placed on record. She also examined PW-2, i.e. the official of the licensing authority, who proved that the claimant was having a valid driving licence on the date of accident. The treating doctor was also examined by the claimant. To prove her vocation of tailoring, the claimant examined another witness, namely, Harmeet Kaur as PW-5; besides deposing to this effect in her own statement.

On the other hand, the respondents tendered in evidence the copy of insurance policy and closed the evidence. No evidence was led by the insurance company; in any manner; whatsoever.

After considering the evidence led by the respective parties, the Tribunal assessed the notional income of the claimant Gurmeet Kaur to be ₹9,200/- per month. Multiplier of 15 was applied. Still further, the functional disability of the claimant was taken to be 100%. Accordingly, a total compensation of ₹20,70,000/- was awarded by the Tribunal.

In the second case, FAO No.577 of 2021, the Tribunal held that as per the testimony of PW-3 Dr. Gurjinder Singh, claimant Harmandeep Singh suffered 50% of permanent disability on account of amputation of right lower limb. The Tribunal accepted the medical bills for a total amount of ₹5,33,985/- which was spent on the treatment of the claimant Harmandeep Singh. While assessing the notional income of the claimant Harmandeep Singh, the contribution of the claimant in terms of money was assessed to be ₹4,200/- per month. Hence, the income was assessed to be ₹50,400/- per annum. The functional disability of the claimant was taken to be 80%. Taking the loss to be 80% of the annual income and by applying the multiplier of 15, an amount of ₹6,04,800/- was calculated by the Tribunal. Beside this, some amounts were also awarded on account of pain and suffering, conveyance and special diet, attendant charges etc. Accordingly, an amount of ₹12,11,000/- was awarded to the claimant.

Questioning the award passed by the Tribunal, the counsel for the appellant has raised, primarily, three arguments. Firstly, it is argued by the counsel for the appellant that the vehicle in question was not involved in the accident; at all. The involvement of the alleged offending vehicle in the accident is result of collusion between the claimant and the owner and the driver of the said vehicle. Referring to the contents of the FIR, it is submitted by the counsel for the appellant that on the one hand the claimant Gurmeet Kaur had asserted that she had become unconscious after the accident and on the other hand she has mentioned the registration number of the offending vehicle in the FIR herself. This exposes the false implication of the vehicle by the claimant. Secondly, it is submitted by the counsel for the appellant that even as per the medical opinion, the disability of the claimant is only 80%, whereas, the Tribunal has awarded compensation taking the same to be 100%. Hence, the award has been wrongly passed by the Tribunal. The third argument raised by the counsel for the appellant is that the Tribunal was not authorized to award the penal rate of interest. The Tribunal has awarded 7% interest per annum, however, it has further observed that if the amount is not paid within two months, then the rate of interest would be @ 8% per annum. Relying upon the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Co. Ltd. Versus Keshav Bahadur and others, 2004 (2) RCR (Civil) 99,*** the counsel has submitted that although the Tribunal has the authority to grant interest at the rate deemed appropriate by it, however, it has no authority to grant penal interest at an enhanced rate. The counsel for the appellant has also submitted that the medical bills have not been duly proved by the claimant.

Having considered the arguments of the counsel for the appellant and having perused the case files, this Court does not find any substance in the arguments raised by the counsel for the appellant. So far as the involvement of the offending vehicle in the accident is concerned, undisputedly; the FIR has been got registered by none other than the injured herself, the same has been registered on the very next day. The registration number of the vehicle involved in the accident has duly been mentioned in the FIR. It is also not disputed that the driver of the offending vehicle is still facing the trial in the FIR involving the accident in question. Although, the counsel for the appellant has submitted that the claimant has stated before the Tribunal that she had become unconscious and the driver of the offending vehicle had fled away from the scene after the accident, and therefore, she could not have herself known the registration number of the vehicle; and no other person who might have told her the number of the vehicle has been examined by the claimant, however, this Court does not find any inconsistency in the testimony even in that regard. It is obvious that after the accident the claimant had become unconscious. However, there were other persons, who had gathered at that place; at the time of accident and who had taken the claimant to the hospital. Undisputedly, as per the statement made before the Tribunal, the offending vehicle kept standing there for some time. Therefore, there is nothing inconsistent in the statement made by the claimant that she was told the registration number of the offending truck; by the persons who were present at the scene of occurrence at the time of accident. Needless to say that the FIR had been got registered on the very next day after the claimant had gained consciousness. This promptitude rules out any significant attempt at manipulation just to wrongly involve the vehicle insured by the appellant/insurance company in the accident. Mere fact that the person who might have informed the injured about the registration number of vehicle was not examined as a witness would not have any significance in that situation. Otherwise also, if the vehicle insured by the insurance company was not involved in the accident, then the least which was expected from the insurance company was to prove the fact on record by producing, at least, the owner of the vehicle involved in the accident. However, neither the driver nor the owner of the offending vehicle has been produced by the insurance company as witness before the Tribunal; so as to face the cross examination by the claimant. In fact, the appellant/insurance company has not led any evidence; whatsoever; before the Tribunal. Hence, this Court does not find any illegality in the finding recorded by the Tribunal that it was the accident caused by the offending vehicle, which is insured by the present appellant-insurance company.

The argument of the counsel for the appellant qua the quantum is that the disability of the claimant has been certified only to be 80%. Hence, the Tribunal has gone wrong in law in taking the disability to be 100% and granting the compensation accordingly. Another aspect argued by the counsel for the appellant on this point is that the claimant has not led any documentary evidence to show that she was earning an amount of ₹9,200/- per month at the time of the accident. Hence, the income of the injured/claimant has not been rightly assessed by the Tribunal. However, this Court does not find any substance in this argument as well. Undisputedly, the right arm of the claimant stands amputated due to the accident in question. Although, the permanent disability of the claimant has been assessed to be 80%, however, it is obvious that functional disability, for the purpose of earning, has gone upto 100%. In view of the assertion made by the claimant that she was doing the job of tailoring to survive, it is clear that she cannot do tailoring work any more on account of loss of right hand. Otherwise also, a person without right hand would find it almost impossible to do any occupational work. Therefore, the functional disability has rightly been taken by the Tribunal at 100%. On the point of notional income of the claimant, the Tribunal has taken the notional income of the claimant only ₹9,200/- per month despite the fact that the claimant has led evidence by examining another witness to show that the claimant was doing tailoring work and she was earning ₹15,000/- per month from that work. Even if the income of ₹15,000/- is not proved by any documentary evidence, the witness did prove that the claimant was doing tailoring work. Even as per the common knowledge, the income of a person who was doing tailoring work, of any magnitude, would not be less than ₹10,000/- per month in the year 2017, keeping in view the prevalent stitching and tailoring charges. Hence, the Tribunal has not committed any illegality or irregularity in assuming the notional income of the claimant to be ₹9,200/- per month. The compensation on account of treatment taken by the claimant has been awarded only as per the bills produced and treatment proved by the claimant before the Tribunal. Accordingly, this Court does not find anything wrong qua the award of compensation by the Tribunal on account of treatment taken by the claimant.

Learned counsel for the appellant has vehemently argued that the Tribunal has no jurisdiction or authority to grant penal interest. Once, the Tribunal has awarded the interest at the rate of 7% per annum, then it could not have awarded enhanced rate of interest at the rate of 8% per annum after a period of two months, in case of default in payment. However, this Court does not find any substance in this argument at all. Every order imposing a higher liability in case a lower liability is not discharged as per the terms imposing such lower liability; is not necessarily penal and in nature. In case the authority, imposing higher liability in default of discharge of lower liability as per the terms, otherwise; has the power to impose more than one level of such liabilities, then imposing higher liability in case of default of lower liability, would not be penal in nature, rather, it would be only a contingent alternate liability; contingent upon happening of the event of non-discharge of lesser liability. A penal provision and a penal order has to have particular trappings. A penal provision has to have pre-defined ingredients which would invite penal order. It has to have certainty in its operation and consequences. Still further the consequences of penal conduct has to coercive in nature duly supported by sanction of law. Unless these aspects are present; the provision would not be penal and the order of the Court/Tribunal could not be termed as penal in nature. Anything optional for the party before the Court can never be termed as penal by virtue of very definition of the term 'penal'. The Motor Vehicles Act does not contain any penal provision for default enhanced penal rate of interest. Therefore, it is not appropriate to call such enhanced rate of interest as penal; and to equate such higher rate of interest with default punishments as are specifically provided under the provisions of Indian Penal Code. But then the question is, does the Motor Vehicles Act empowers the Tribunal to award more than one rate of interest, one in alternate to the other not materializing ? Section 171 of the Motor Vehicles Act, 1988 gives power to the Tribunal to award interest in case of claim cases. The Section reads as under:-

> *"171.* ***Award of interest where any claim is allowed.****—Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal*

may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf".

Bare perusal of the language of this Section shows that the Tribunal has the authority to award the interest at such rate and from such date, as deemed appropriate by the Tribunal. In this regard, it is more useful to read Section 13 of the General Clauses Act, 1897 which reads as under:-

*"13. **Gender and number**. – In all (Central Acts) and Regulations, unless there is anything repugnant in the subject or context, -*

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular include the plural, and vice versa."

Hence it is clear that unless the contrary is otherwise provided specifically or the contrary clearly comes out by necessary implication, the singular of a word shall include the plural of that word as well. Therefore, the word 'date' used in Section 171 of the Motor Vehicles Act, shall include 'dates' and the word 'rate' shall include the 'rates'. There is nothing in Section 171 or any other Section of Motor Vehicles Act which limits or is suggestive of limiting power of the Tribunal to award interest except to the extent that the interest cannot be awarded with effect from a date prior to the date of filing of claim petition. Rather it empowers the Tribunal to award and specify the rate of interest and the date for that purpose, as deemed appropriate by it. Hence the Tribunal has every power to award variable rates of interest w.e.f. the variable dates, as deemed appropriate by it. Therefore, it is obvious that 'such date' and 'such rate', referred to in Section 171 shall include two different dates for the purpose of awarding two different rates of interest as well, if considered appropriate by the Tribunal. Therefore, the Tribunal has every power to award alternate contingent rates of interest to provide an option to the party liable to pay the amount of compensation. The party liable to pay the compensation does not have a legal right of not making payment of the compensation for indefinite period. The payment has to be made by it, by any means. Therefore including a stipulation in the award for encouraging early payment would not be coercive in nature. Hence, there is no question of any penal interest being awarded, as submitted by the counsel for the appellant. Instead, in such a situation, the Tribunal shall be deemed to have awarded interest at a concessional rate of 7% for a limited period of upto two months; as an incentive and as an option to the insurance company to make the payment at the earliest possible. However, the main awarded rate of interest would be deemed to be the alternate higher rate of interest only, which is not limited in its operation to any particular period. A rate of interest which is limited by a time period in its operation, can never be taken as the main rate of interest. Main rate of inertest would be only that which is not bound by any outer time limit. Hence, even if the Tribunal had awarded 7% rate of interest upto the initial period of two months and, thereafter, at a higher rate of 8% per annum after two months upon the contingency of non-payment of amount within two months, then it would not be a penal interest, by any means. Although, the counsel for the appellant has relied upon the judgment of Hon’ble Supreme Court rendered in the case of ***National Insurance Co. Ltd. (supra)***, however, that judgment is hardly of any help to the appellant. Provisions of General Clauses Act were not specifically brought to the notice of the Hon’ble Supreme Court in that case. Hence, that judgment cannot be interpreted to be a binding precedent on the aspect of powers of the Tribunal to award variable rates of interest from variable dates and on the point of award of penal interest. Otherwise also, in that case, the main thrust of the judgment is that the Tribunal could not have awarded higher rate of interest retrospectively. Although, as is discussed above, there is no retrospectively involved in case of award of higher rate of interest by the Tribunal from any date, if the limited period incentive of lower rate is not availed by the insurance company, however, in the present case, it is not even made retrospective by the Tribunal. The higher rate of 8% per annum has been awarded only for the future interest; after the period of two months. Hence, this argument raised by the counsel for the appellant is also liable to be noted only to be rejected.

In the second case, FAO No.577 of 2021, the counsel for the appellant has submitted that the disability of the claimant was to be reviewed after one year. But, the same has not been done. Hence the compensation is wrongly awarded. However, this Court does not find any substance in this argument. Needless to say that the assessment of the compensation is the guess work, of course applied as per the judicially established standard for calculation of the compensation. Such a calculation, primarily, is to be based on the factors as they existed on the date of accident, supplemented by compensation for any future possible loss. Any future treatment could be a ground for awarding an additional amount of compensation, if the injury requires future treatment, after the medical review. However, the amount of compensation, granted keeping in view the factual situation as it existed on the date of accident, supplemented by the unforeseen possibilities, cannot be reduced on the basis of any subsequent review of disability. Hence, any subsequent review would have been immaterial for the purpose of reduction of compensation. Hence, this argument raised by the counsel for the appellant is also rejected.

No other argument was raised.

Hence, finding no merits in the present appeals, the same are dismissed and the findings recorded by the Tribunal, qua the objections raised by the insurance company are upheld.

Let the statutory amount deposited by the insurance company before this Court at the time of filing of the appeals; be sent to the Tribunal concerned for onwards disbursal to the claimant.

All pending miscellaneous applications are also disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

04th OCTOBER, 2021
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Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*