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

227

FAO-487-1994
WITH XOBJC-80-CII-1997
Date of decision: 19.12.2023

Oriental Insurance Company Ltd

.....Appellant

Versus

Sardar Jagir Singh and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Shrenik Jain and Mr. Hari Pal, Advocates
for the appellant-Insurance Company.

Mr. Rajiv Vij, Advocate
for cross objector/respondent No.1-claimant.

Respondent No.2 proceeded against *ex parte*

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**AMAN CHAUDHARY, J.**

1. Challenge in the present appeal is to the award dated 10.12.1993 passed by the learned Motor Accidents Claims Tribunal, Jalandhar (for short 'the Tribunal'), whereby a sum of Rs.60,000/- was awarded as compensation to claimant-respondent No.1, on account of injuries received by him, in a road side accident and the appellant being the insurer of the offending vehicle was held liable to make the payment. However, the claimant-respondent No.1 has also filed cross-objection for enhancement of the compensation awarded to him.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for the last more than 29 years, the counsel for the parties have no objection, in case the same is decided on the basis of the available record.

3. Learned counsel for the appellant contends that the Tribunal had committed an error to hold the Insurance Company liable to make the payment of the compensation awarded, despite the fact that the vehicle was being driven in violation of insurance policy as the driver of the Matador was not holding a valid driving licence. He further submits that the award is already excessive, thus he prays for rejection of the cross-objection of the claimant.

4. On the other hand, the learned counsel submits that cross-objector/ respondent No.1-claimant was posted as Superintendent of Police in the ITBP and on account of the injuries suffered due to the accident, he remained hospitalised for about 10 days. His right eye got damaged due to which he had become ineligible for further promotion to the post of Commandant and D.I.G. However, the Tribunal has awarded a meager amount of Rs.60,000/- only for loss of vision and pain. Nothing has been awarded for loss of future prospects and enjoyment of amenities of life etc. Further, the Tribunal after appreciating the evidence has rightly held the driver of the Matador responsible for causing the accident.

5. Heard learned counsel on either side and file perused.

6. There is no dispute that the accident caused by the driver of the offending vehicle resulted in multiple injuries to the claimant. However, as regards the contention of there being no liability of the Insurance company on account of the fact that the driver was not holding a valid driving licence, the Tribunal recorded that “there was no evidence on the file to hold that respondent No.1 was not holding a valid driving licence at the time of accident.” Nothing has been shown that the above finding was contrary to or

on account of misreading of evidence. The onus to prove the driving licence produced in the claim proceedings to be fake, lay heavily upon the insurer, as held in **Magma HDI General Insurance Co. Ltd. vs. Shinder Kaur @ Surjit Kaur and others** 2019(2) Law Herald 1339, which cannot be said to have been discharged on mere surmises and conjectures, in absence of any positive evidence, which was conspicuously missing in the case at hand. Further in **National Insurance Co. Ltd. vs. Laxmi Narain Dhut** (2007) 3 SCC 700, Hon'ble the Supreme Court held that, "Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid 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 of fulfilling the condition of the policy regarding use of vehicle by duly licenced driver or one who was not disqualify to drive at the relevant time…." On the aforesaid premise, this Court finds no force in the submission canvassed on behalf of the appellant.

7. To proceed further as regards the grant of compensation is concerned, it would be worthwhile to refer to the judgment in **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. and another**, 2023(1) RCR (Civil) 44, wherein Hon'ble the Supreme Court observed that, "This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and

suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives.” Further, while allowing the appeal the compensation was enhanced by taking into consideration the following:

> “56. The evidence on record indicates that the appellant suffered paraplegia due to the accident. Paraplegia is a form of paralysis of lower body. It restricts everyday routine more particularly the physical activity and leads to (i) deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In short, paraplegia impairs physical, mental and psychological health and has devastating impact on the social and financial well being of the victim.
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> 57. In the case on hand, the appellant was in the business of selling utensils and used to travel to various villages to sell the same. With this disability in the form of paraplegia being suffered by the appellant, it is not possible for him now to walk a long distance or stand for a long period. His business could be said to have been gravely impacted. Further, the appellant at the time of accident was just 19 years old…”
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> Xx xx xx
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> 112. The total compensation awarded by us under different heads is as under:

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|---|---|---|
| 1. | Loss of earning due to disability : | Rs.7,77,600/- |
| 2. | Loss of earning for 6 months: | Rs.48000/- |
| 3. | Medical expenses | Rs.1,55,000/- |
| 4. | Future medical expenses | Rs.2,16,000/- |
| 5. | Attendant charges | Rs.4,32,000/- |
| 6. | Litigation charges | Rs.50,000/- |
| 7. | Loss of conveyance | Rs.50,000/- |
| 8. | Pain and suffering | Rs.1,00,000/- |
| 9. | Marriage prospects | Rs.3,00,000/- |
| 10. | Loss of amenities | Rs.50,000/- |
| | Total | Rs.21,78,000/-” |

8. Hon’ble the Supreme Court in **Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, UP State Road Transport Corporation**

2023(1) RCR (Civil) 349, a case wherein the permanent disability had been caused to the claimant, a 37 year old man, as his right lower limb had been hinderging his mobility proving functional disability severely impacting his earning capacity and having to use prosthetic limb, awarded Rs.38,70,120/- (including Rs.2,00,000/- for pain and suffering, Rs.15000/- special diet, Rs.2,00,000/- loss of amenities of life) by observing that it is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

9. Reverting to the facts of the present case, as are evident from the Award, the claimant, who was a Superintendent of Police in ITBP, had met with an accident on 27.07.1990, he was shifted to Civil Hospital, Kartarpur from where he was referred to Civil Hospital, Jalandhar, where he was kept in the emergency room. Thereafter, he was referred to the Civil Hospital, Ludhiana and remained hospitalised upto 07.08.1990. Dr. S.N. Bhatti, who treated him stated in his evidence that the claimant was examined by him in his hospital on 03.08.1990. His eyelids were swollen and black. The right eye showed apparent pupillary defect. He was advised VEP, CT Scan tests and from these reports he found that there was total damage to the eye sight. He proved the copy of the report Ex.PA and annexures as Exs.P1 and P2. The loss of eye sight was 100% in the right eye which was permanent. The injury caused, not only adversely impacted his personal life, where he no longer remained the way he was prior thereto but

his service career as well, leading to his not being promoted to the next higher post.

10. Considering the peculiarity of facts and circumstances in light of the aforesaid dictum of law, this Court finds that the ends of justice would be adequately met, by enhancing the amount of compensation awarded to the claimant thus:

i. Pain and suffering : Rs.50,000/-
ii. Attendant, special diet, conveyance charges : Rs.50,000/-
iii. Loss of amenities/enjoyment of life : Rs.50,000/-
iv. Loss of future prospects on account of disability 100% : Rs.2,00,000/-

11. As a corollary, the enhanced amount of compensation of Rs.2,90,000/- over and above the amount of Rs.60,000/- already awarded by the Tribunal, alongwith interest @ 7.5% per annum shall be paid to the claimant-appellant within a period of two months from the date of receipt of a certified copy of this judgment, failing which, the amount shall accrue an interest at the rate as already awarded by the Tribunal.

12. Sequely, the appeal filed by the insurance company is dismissed, however, the cross-objections filed by the claimant-respondent No.1 are partly allowed by modifying the award to the extent aforesaid.

**(AMAN CHAUDHARY)**
**JUDGE**

19.12.2023
Hemant

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