

2023:PHHC:061527

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

FAO-3202-2016 (O&M)
Date of Decision: April 29, 2023

Iffco Tokio General Insurance Company Ltd.

...Appellant

VERSUS

Pawan Kumar Taneja and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajneesh Malhotra, Advocate
for the appellant-insurance company.

Mr.Ashwani Arora, Advocate
for cross-objector/respondent No.1

ARCHANA PURI, J.

Iffco Tokio General Insurance Company has filed **FAO-3202-2016**, thereby, assailing the extent of compensation, so granted, on account of injuries sustained by Pawan Kumar Taneja, in a motor vehicular accident.

In the aforesaid appeal **XOBJC-80-CII-2017** has been filed by claimant-applicant Pawan Kumar Taneja, thereby, seeking enhancement of the compensation, so granted by learned Tribunal vide Award dated 15.02.2016.

For the convenience of the discussion, the parties are referred to as claimant and respondents, as making appearance before learned Tribunal.

As per version of the claimant Pawan Kumar Taneja, on

FAO-3202-2016

17.12.2013, he was going from Gurgaon to his college Delhi Institute of Technology, Management and Research, Village Firozpur Kalan, Sohna Road, Faridabad, along with some students and other staff members in Tavera bearing registration No.HR-66-9896, which was being driven by Mandeep, at a moderate speed. When they reached between village Harchandpur and Nimoth, a vehicle Hiwa Dumper bearing registration No.HR-74-9144, came from the front side, being driven by respondent-Hamid, at a very high speed, negligently and in zig-zag manner and struck into the Tavera vehicle. As a result of the accident, the claimant had sustained multiple and grievous injuries all over his body and he was taken to Government Hospital, Sohna, where from, he was referred to Fortis Hospital, Gurgaon. He remained admitted from **17.12.2013 to 24.12.2013** and then remained admitted from **24.12.2013 to 03.01.2014**, at Sheetla Hospital, Railway Road, Gurgaon. Thereafter, the claimant took treatment as Outdoor Patient. The claimant remained confined to bed for about 2½ months, as a result whereof, he could not attend his duties being HOD, Mechanical Engineering in Delhi Institute of Technology Management and Research, Faridabad. His working capacity was lost and as a result thereof, he could not continue with services and he was terminated.

Considering this version, so coming forth, learned counsel for the insurance company has assiduously submitted that imputation of negligence and rashness, solely on the part of respondent-Hamid, driver of the dumper bearing No.HR-74-9144 has been erroneously reached by learned Tribunal. It is submitted that in fact, the driver of the Tavera bearing registration No.HR-66-9896, namely Mandeep, was also at fault, as he had

no control over the Tavera because of it being over-loaded. As such, it is submitted that it is a case of contributory negligence, which fact, has been overlooked by learned Tribunal.

Moreover, it is submitted that if, driving licence of Hamid was concluded by learned Tribunal to be fake one, then, the insurance company was required to be completely exonerated from the liability to pay the compensation. However, it has been erroneously directed by learned Tribunal to the insurance company to make payment of the compensation and then to recover the amount from the driver and owner of the offending dumper.

Also, it is submitted that mode of 'working upon' the extent of compensation is also faulty. It is submitted that no financial loss, as such, has occurred to the claimant as he had joined Amity Institute, after the alleged accident and therefore, there is no loss of income. As such, a prayer has been made for acceptance of the appeal and to affix the liability of the driver and owner of the aforesaid dumper and 'working upon', on the basis of holding the driver of the Tavera to be contributory negligent, the compensation, ought to be scaled down extensively.

On the contrary, learned counsel for the claimant has refuted the claim of the insurance company. He has assiduously submitted that learned Tribunal has rightly reached the conclusion that no case of contributory negligence is made out and that rashness and negligence, was in fact there on the part of driver of the dumper. In the light of the same, further, it is submitted that on account of the injuries sustained in the accident in question, claimant's performance in the Delhi Institute of Technology,

Management and Research in the capacity of being HOD/Asstt. Professor, was poor, as a result whereof, he was constrained to leave the job. No doubt, in the Amity Institute, he was re-employed, but however, fact remains that his earnings scaled down from **Rs.80,000/-** to **Rs.65,000/-** per month and therefore, it was required to be taken into consideration and working upon the same, keeping in view the disability, so suffered by the claimant, due to the injuries, there is definitely loss of earnings, which has been rightly, so appraised by learned Tribunal.

Also, it is submitted that overall, keeping in view the extent of monthly salary of the claimant, the loss of income, for the period of two months, had been calculated in a wrongful manner. Only, an amount of **Rs.25,000/-** has been given, whereas, it should be **Rs.1,60,000/-**. Further, it is submitted that addition in loss of income, on account of future prospects, ought to be made. Thus, in the given circumstances, a prayer has been made for enhancement of the compensation, so awarded by learned Tribunal.

So far as, the fact of accident is concerned, the same stands amply established from the evidence brought on record. It is specific claim of the claimant Pawan Kumar Taneja that accident had taken place, due to the rashness and negligence, on the part of respondent-Hamid, driver of the offending dumper. The claimant, while in the witness box as PW-9, in his affidavit Ex.PW9/A, has categorically imputed rashness and negligence, on the part of respondent-Hamid, driver of the offending dumper.

Furthermore, even claimant has examined Mandeep, driver of the ill-fated Tavera as PW-11 and even the said witness, imputed rashness

and negligence on the part of driver of the offending dumper. Besides the aforesaid, criminal Ahlmad Lakhi Chand has also been examined as PW-2, who had brought the record of criminal case, vis-a-vis, the accident in question, which is bearing **FIR No.1176** dated **17.12.2013**, under Sections 279, 337 and 338 IPC, P.S. Sohna, Gurgaon. He has also categorically deposed about Hamid to be facing trial in the aforesaid case. In the light of the clear and specific evidence, coming on record, the fact of the criminal trial being faced by Hamid, qua the accident in question, has been amply established.

In view of the aforesaid, it is pertinent to mention that driver of the offending dumper had joined the proceedings and had filed reply to the petition, but therein, he had denied the accident in question, what to talk of plea, about the contributory negligence. In fact, driver of the offending dumper was the best person to rebut the claim of the imputation of rashness and negligence, on his part, in causing the accident. However, he had chosen to remain away from the witness box. In the given circumstances, the plea of contributory negligence, as so raised, at the behest of insurance company, does not stand established. Thus, in the light of the evidence, so adduced, the Tribunal has rightly concluded about there to be no contributory negligence, on the part of driver of the Tavera and has rightly reached the conclusion of accident, being result of rashness and negligence of respondent-Hamid, driver of the offending dumper.

In this backdrop, also further it stands amply established about the injuries sustained by the claimant, in pursuance of the accident in question. Besides the claimant, so deposing about the injuries sustained by

him, further, Dr.Priyanki Bordoloi, Medical Officer/Senior Registrar, Fortis Hospital has been examined as PW-3, who has also in her affidavit Ex.PW3/A, categorically deposed about Pawan Kumar Taneja, to have been examined by her on 17.12.2013 and she prepared the copy of MLR, which is Ex.P4. PW-7 Dr.Pankaj Aggarwal, Medical Officer, General Hospital, Gurgaon, who was member of the Board, which examined the patient for the assessment of the disability, also proved the disability certificate Ex.P10. The finding recorded therein is to the effect that '**post traumatic operated unstable fracture C6 C7 with numbness B/L LL and mild weakness.'** The claimant was assessed to be case of permanent disability to the extent of 18%. Besides the same, various witnesses have been examined to prove the expenditure incurred on the treatment. PW-1 Mahesh Kumar, Manager, Medical Records, Fortis Hospital, who deposed about the admission of Pawan Kumar Taneja in the hospital on **17.12.2013** and that he was discharged on **24.12.2013**. He proved the bills Ex.P1 to Ex.P3, relating to hospitalization of the claimant and expenditure treatment on his treatment. Furthermore, PW-8 Surender Singh, Record Keeper of Sheetla Hospital, Gurgaon has also deposed about Pawan Kumar Taneja to have remained admitted in the hospital from **24.12.2013 to 04.01.2014** and he has also proved the final bill of the expenditure, so incurred, which is to the extent of **Rs.33,000/-** and the same is Ex.P11.

PW-6 Narender Kumar, OT Technician, Thakral Nursing Maternity Home, Gurgaon has proved receipts Ex.P8 and Ex.P9, which related to the physiotherapy conducted upon Pawan Taneja. Besides the same, PW-10 Neha, Accountant, Shiv Mahima Patient Bureau, Guragon,

FAO-3202-2016

also proved the receipt Mark 'F', but however, the same has rightly been discarded, on account of counter file Mark-R1, to be not relating to the claimant. The total of bills, which has been taken into consideration by the Tribunal, comes to be **Rs.5,61,877/-**.

Even though, it is submitted by learned counsel for the claimant/cross-objection that this amount has been worked upon on lower side, as an amount of **Rs.12 lakh** was incurred on the treatment, but however, the aforesaid submission is not convincing. The bills, which have been proved on record, ought to be taken into consideration. There is nothing, as such, deposed by the claimant as well as no other evidence, coming on record, about some other amount, to have been incurred on the treatment of the claimant. Thus, the amount, so considered, has been appropriately worked upon by learned Tribunal.

Furthermore, the disability of Pawan Kumar Taneja has been assessed to be permanent to the extent of **18%**, on account of '**post traumatic operated unstable fracture C6 C7 with numbness both lower limb and mild weakness.**' The aforesaid fact, as already observed above, stands amply established.

Considering the same, furthermore, it is pertinent to note that at the relevant time of the accident, the claimant was working as HOD/Asstt. Professor at Delhi Institute of Technology, Management and Research, Village Firozpur Kalan, Sohna Road, Faridabad and his earnings also stand established to be **Rs.80,000/-** per month. PW-4 Rajiv Chaturvedi, Account of the said institute has been examined, who had proved the salary details of the claimant. From the same, it is evident that in the month of November

FAO-3202-2016

2013, the claimant had drawn salary of **Rs.80,000/-** and for the month of December, he had drawn salary of **Rs.73,156/-**. However, for the month of January and February 2014, the claimant was shown to be absent. He also proved the relieving letter dated 22.07.2014 Ex.P5 and copy of the salary record Ex.P6. In his cross-examination, it has come that an explanation was called by the Principal of the concerned Institute from the claimant on **28.06.2014** and on **14.07.2017**, the claimant was given letter by the Principal, in respect of unsatisfactory performance and show cause notice was also given that he shall be relieved after the expiry of notice period, w.e.f **15.08.2014**.

Keeping in view the same, it is evident that claimant's work was not found upto mark, after taking place of the accident in question. It is only on account of the working efficiency having been effected, on account of the injuries, sustained in the accident in question. Though, it is submitted by learned counsel for the insurance company that of its own, the claimant had left the Delhi Institute of Technology, Management and Research and was re-employed at Amity Institute and therefore, there was no loss of income, but however, the aforesaid submission is not tenable. On account of explanation, so called by the Principal, about his working to be not satisfactory, it is quite obvious that some constrained circumstances have arisen, on account of loss of working capacity that Pawan Kumar Taneja had to leave his job. Simply, on the score of claimant having left the job, within the notice period, does not establish that he had left the job willfully.

So far as, re-employment of the claimant is concerned, Mark 'Q' is the appointment letter issued by Amity University, Gurgaon, which is

dated 09.09.2014. Even though, this document has not been duly exhibited, but since, the proceedings are the summary proceedings, the strict rules of evidence, are not applicable. Thus, this document, as such, even if taken into consideration, then also, it reveals about the total emoluments of the claimant to be **Rs.65,000/-** per month. Thus, it becomes evident from **Rs.80,000/-** per month, the earnings of the claimant as reduced to **Rs.65,000/-** per month and therefore, it cannot be said that there was no loss of earnings, on account of disability, as submitted by learned counsel for the insurance company. Thus, the compensation has to be worked upon, while considering the disability.

Even though, the disability has been assessed as 18% and it is stated to be of limb, but however, it is of the lower limb, which also has to be kept in mind, while making assessment of the compensation. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side. In any case, the test for determining the effect of permanent disability, on future earning capacity involves the following 3 steps, as was laid down in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343* and reiterated in *Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796*, where, it was concluded that the ascertainment of impact of disability has to be seen, firstly to 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 disability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age and the

third step is whether the claimant is totally disabled from earning any kind of livelihood, or whether, in spite of the permanent disability, he could still effectively carry on the activities and functions, which he was earlier carrying on, or further, 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. As already observed aforesaid, the claimant was case of '**post traumatic operated unstable fracture C6 C7 with numbness both lower limb and mild weakness**'. Thus, it was the disability of lower limb. The claimant was earlier working as HOD/Asstt. Professor and therefore, his working efficiency has definitely been effected, on account of the aforesaid impact of the injury and in these circumstances, his functional disability can appropriately taken to be **18%**.

At this juncture, it is pertinent to mention that learned Tribunal had erroneously worked upon the loss of future earnings, while considering the salary of the claimant to be **Rs.80,000/-** per month. Thus, the annual earnings comes to be **Rs.9,60,000/-** However, learned Tribunal had erroneously work upon the loss of earnings, on the basis of the salary, as a whole. As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, earnings are to be worked upon, the salary minus taxable income (if so liable). Considering the same, the extent of earnings of the claimant, does fall within the taxable limits. It is pertinent to mention that for the assessment year **2013-2014**, the income tax was '**Nil**' upto amount of **Rs.2,00,000/-**, but however, for the next amount

from **Rs.2,00,000-Rs.5,00,000/-**, it was **10%** of the amount exceeding **Rs.2,00,000/-** and for the amount from **Rs.5,00,000-Rs.10,00,000/-**, it was **20%** of the amount exceeding **Rs.5,00,000/-**.

In the case in hand, the income tax on the annual earnings of **Rs.9,60,000/-**, to be paid so calculated, is herein given:-

Income	Tax
Upto Rs.2,00,000/-	Nil
Rs.2,00,000-Rs.5,00,000/- (Rs.3,00,000/-)	Rs.30,000 (@10%)
Rs.5,00,000-Rs.9,60,000/- (Rs.4,60,000/-)	Rs.82,000 (@20%)
Total	Rs.1,22,000/-

After deducting the aforesaid income tax, the residue earnings, as such, comes to be **Rs.9,60,000-Rs.1,22,000=Rs.8,38,000/-**.

Keeping in view the age of the claimant to be 44 years, addition of **25%**, on the count of 'future prospects' has to be made, which comes to be **Rs.8,38,000+Rs.2,09,500(25%)=Rs.10,47,500/-**. Thus, the total loss of future earnings, considering the aforesaid observations, comes to be **Rs.10,47,500x18/100x14=Rs.26,39,700/-**.

Besides the aforesaid, learned Tribunal had fell in error, while making assessment of loss of income. It has been taken to be **Rs.25,000/-**. However, in the month of January and February, 2014, the claimant was shown to be absent. At that time, prior to the accident, he was earning **Rs.80,000/-** per month. Thus, the loss of income for two months comes to be **Rs.1,60,000/-** instead of **Rs.25,000/-**.

Besides the aforesaid two counts, compensation granted on various other counts, as granted by learned Tribunal, stand affirmed.

Considering the same, now the compensation payable to claimant-cross objector Pawan Kumar Taneja, is re-appraised as herein given:-

Loss of future earnings	:	Rs.26,39,700/-
Loss of income (for two months)	:	Rs.1,60,000/-
Medical expenses	:	Rs.5,61,877/-
Pain & Suffering	:	Rs.20,000/-
Loss of amenities	:	Rs.20,000/-
Special diet and transportation	:	Rs.20,000/-
Total	:	Rs.34,21,577/-

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.34,21,577-30,66,077 =Rs.3,55,500/-**.

Now, comes the question relating to the liability fixed upon the insurance company to pay at first instance and recovery rights thereof.

It is not disputed and moreover, it stands established, from the evidence on record that the driving licence, allegedly possessed by respondent-Hamid was fake licence, as there is extract Ex.R6, relating to driving licence bearing No.9836/MTR/07, which shows about this driving licence to have not been issued by Licensing Authority, Mathura. As per the document, the driving licence by this number was issued in the name of one Achint Pathak s/o Pramod Pathak, which was valid from 16.07.2007 to 15.07.2027. Even though, RW-1 Kulwant Singh, Clerk in the office of RTA, Nuh, has though deposed about the said driving licence bearing above-

said number as well as licence No.2775/Nuh/12, was renewed by their office, in the name of Hamid, but it does not, matter much. The entry relating to renewal of the fake licence, will not prove to be of any help to the persons, who have been made liable.

Even though, the insurance company submits that it should be completely exonerated from the liability and that it is not liable to pay the compensation to the claimant, at first instance and then have recovery rights, vis-a-vis, driver and owner of the offending vehicle, but however, the aforesaid submission is not tenable.

At this juncture, it is pertinent to make reference to the decision rendered in *Sonukunwarbai and others vs. Oriental Insurance Company Limited & Ors., decided on 21.04.2023, in SLP(C) 22971-2018*, wherein, the principle of pay and recover has been followed, so far as, insurance company is concerned, in case the driver of the offending vehicle did not possess an appropriate licence. In the case under consideration, it was noted that the insurance company, as such, cannot be exonerated in toto, but however, keeping in view the fact that driver of the offending vehicle did not hold an appropriate licence, it was stated to be violation of the conditions of the policy and in that event also, the insurance company is liable to pay the compensation and recover the same from the owner of the offending vehicle.

Even, reference is made to the decision rendered in *Parminder Singh vs. New India Assurance Co. Ltd. and others, 2019 ACJ 2401*, wherein also, it was observed that in case of fake licence, the liability of the insurance company to pay and recover order was the appropriate one. In *Ram Chandra Singh vs. Rajaram and others, 2018(5) RCR (Civil) 381*, the

Hon'ble Supreme Court, while considering the case of fake driving licence, had reached the conclusion that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then insurer is to stand absolved. However, mere fact that the driving licence is fake, not sufficient to absolve the insurer, merely because the owner of the vehicle did not dispute that driving licence was found to be fake by itself, is not sufficient reason to absolve the insurer. In the case in hand also, even though, from the evidence adduced, the licence is established to be fake one, this solely does not give a reason to the insurance company to be absolved from liability, in toto. However, the principle of pay and recover, ought to be followed, as there is no other evidence adduced, vis-a-vis, the conduct of the owner, to have permitted the driver to drive the vehicle, despite knowing about the fact of driving licence to be fake.

Considering the aforesaid, learned Tribunal had correctly fastened the liability upon the insurance company, at first instance, to make the payment to the claimant and thereafter, to recover the amount, so paid along with interest, from the driver and owner of the offending vehicle.

In the light of the aforesaid terms, **FAO-3202-2016** stand dismissed, whereas, **XOBJC-80-CII-2017** stand allowed.

As such, the impugned Award dated 15.02.2016 stands modified, to the extent of compensation, as indicated aforesaid. Keeping in view the interest rates having been reduced drastically, on the enhanced amount of the compensation i.e. **Rs.3,55,500/-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of

compensation. The remaining terms of the impugned Award shall remain the same.

April 29, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No