IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 33 of 2016

Decided on: 19.12.2024

United India Insurance Company Limited

....Appellant

Versus

Jarnail Singh and others ...Respondents

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?[1] *Yes*

For the appellant	:	Mr. Prittam Singh Chandel, Advocate.
For the respondents	:	Mr. Virender Thakur, Advocate for respondents No. 1-claimant.
	:	Mr. Rohit Thakur, Advocate vice Mr. Virender Singh Rathore, Advocate for respondents No. 2 and 3.

Ajay Mohan Goel, Judge *(Oral)*

By way of this appeal, the appellant-Insurance Company assails the award passed by learned Motor Accidents Claims Tribunal-I, Kangra at Dharamshala, H.P. in Claim Petition No. 134-K/13/2007, titled as Jarnail Singh vs. Anoop Singh and others, dated 10.03.2015, in terms whereof, learned Tribunal has allowed the claim petition in the following terms:-

"28. In the light of my aforesaid Findings on the aforesaid issues for determination the petition of the petitioner

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1 *Whether reporters of the local papers may be allowed to see the judgment?*

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against the respondents succeeds and is hereby allowed with costs with pending and future interest at the rate of 7.5% per annum from the date of petition till the date of actual payment. This amount of compensation of Rs.6,59,784/-(Rs. Six lacs fifty nine thousand, seven hundred and eighty four only) awarded to the petitioner shall be paid by respondents No.3 with interest at the rate of 7.5% per annum from the date of petition till the date of actual payment along with costs of petition on behalf of respondents No 1 and 2 being insurer of the offending vehicle involved in the accident. This amount of compensation awarded to the petitioner is inclusive of the interim compensation if already paid and the said interim compensation if already paid shall be adjusted at the time of final payment. Out of this compensation awarded to the petitioner an amount of Rs. Four lakhs shall be invested in his name in some nationalized bank for a period of three years in F.D.R. and the balance amount shall be released to him for his expenses incurred by him on his treatment. Memo of costs be prepared accordingly. The file after doing the needful be consigned to the record room."

2. Brief facts necessary for the adjudication of this appeal are that a claim petition was preferred by the claimant Jarnail Singh *inter alia* on the ground that on 03.12.2006, he had gone to

a Motor Mechanic workshop at Gaggal. After completion of his work, he was returning to his house in a Bus bearing Registration No. HP-40-3975. The Bus was on its way from Gaggal to Chatru. At around 8:00 p.m., the bus met with an accident on account of rash and negligent driving of the Driver. As a result of the accident, claimant suffered serious injuries. Residents of nearby village removed the claimant to Zonal Hospital, Dharamshala, from where he was discharged on 26.12.2006. FIR was also registered at Police Station on 03.12.2026. According to the claimant, he was working as a Motor Mechanic. He was running his workshop and his monthly earning was Rs.8,000/-. After the accident, on account of the disability suffered by him, the claimant was unable to perform his work. He had thereafter employed one Helper, who was also being paid Rs.1500/- per month by him. The claimant had already spent Rs.50,000/- on his medical expenses. According to the claimant, he suffered permanent disability on account of the accident, therefore, he was entitled for compensation to the tune of Rs.10,00,000/- (Rs. Ten Lac).

3. The claim petition was opposed by the respondents, including the Insurance Company. Whereas the owner and the driver of the Vehicle took the stand that the accident had not

taken place on account of rash and negligent driving etc., the defence of the Insurance Company was that the Driver of the vehicle was not having valid driving licence and the vehicle was being driven in violation of the conditions of the insurance policy.

4. On the basis of pleadings of the parties, learned Tribunal framed the following Issues:-

> *"1. Whether on 03.12.2006, respondent No. 2 had driven bus bearing registration No. HP-40-3975 in a rash and negligent manner and bus met with an accident at about 8 P.M. when it was on its way from Gaggal to Chetru and the petitioner was travelling in the same and he received injuries on his person in such accident, as alleged? OPP*
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> *2. If Issue No. 1 is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? OPP*
>
> *3. Whether the petition filed against the respondents No. 1 and 2 is not maintainable, as alleged? OPR1&2*
>
> *4. Whether the driver of the offending vehicle was not holding the valid and effective driving licence at the time of accident as alleged? OPR-3*

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5. Whether the vehicle was being plied in violation of the terms and conditions of the insurance company, as alleged? OPR-3

6. Relief.

5. On the basis of evidence led by the parties in respect of their respective contentions, the Issues so framed were decided by learned Tribunal as under:-

Issue No. 1	:	Yes.
Issue No. 2	:	The petitioner is entitled to a total compensation to Rs. 6,59,784/- from the respondents which is liable to be paid by respondent No. 3 on behalf of respondents No. 1 and 2 being insurer of the offending vehicle.
Issue No. 3	:	No.
Issue No. 4	:	No.
Issue No. 5	:	No.
Relief	:	The petitioner of the petitioner is allowed with costs within pending and future interest at the rate of 7.5% per annum from the date of petition till the date of actual payment per operative portion of the award.

6. Learned Tribunal allowed the claim petition in terms already mentioned hereinabove. Feeling aggrieved, the Insurance Company has filed this appeal.

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7. Learned Counsel for the appellant-Insurance Company has vehemently argued that the award under challenge is not sustainable in the eyes of law. He submitted that learned Tribunal erred in awarding Rs.3.00 Lac as compensation in favour of the claimant without appreciating that for 15% disability, that was suffered by the claimant, he could not have been awarded Rs.3.00 Lac as compensation. Learned Counsel submitted that the compensation awarded under other headings was also excessive and as learned Tribunal had erred in allowing the claim petition by awarding an excessive amount in favour of the claimant, the same was liable to be set aside. No other point was urged.

9. On the other hand, learned Counsel for the claimant submitted that there was no infirmity in the award under challenge. He submitted that the award was passed by learned Tribunal by granting appropriate compensation in favour of the claimant in terms of the law of the Hon'ble Supreme Court which stands referred to in the award itself. He further submitted that the compensation awarded under various headings was reasonable and taking notice of the fact that the petitioner had suffered from permanent disability, with which he had to live his entire life, the compensation cannot be said to be excessive.

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Accordingly, he prayed that as there is no merit in the present appeal, the same be accordingly dismissed.

10. I have heard learned Counsel for the parties and also gone through the impugned award as well as the record of the case.

11. The main grievance of the appellant is that as the claimant had suffered 15% disability of his left limb, therefore, the award of Rs.3.00 Lac as compensation in lieu thereof was excessive. A perusal of the award demonstrates that while awarding an amount of Rs.3.00 Lac as compensation for the disability suffered by the claimant on account of the accident, learned Tribunal has relied upon the judgment of Hon'ble Supreme Court of India in case *Master Malikaarjun vs. Division Manager national Insurance Company Ltd. and another, AIR 2014, SC 736*. A perusal of the judgment referred to by learned Tribunal of Hon'ble Supreme Court demonstrates that for the purpose of assessing the fair compensation which could have been awarded to a minor, who was before the Hon'ble Supreme Court, the Hon'ble Supreme Court by referring to its earlier judgments was pleased to hold as under:-

> *"12. Though it is difficult to have an ac- curate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, haying regard to the*

relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circum- stances to take different yardstick.

……."

12. The contention of learned Counsel for the appellant is that as this is a judgment which relates to a minor children, therefore, basing the award of compensation thereupon by learned Tribunal is bad. This Court does not concurs with the submission made by learned Counsel for the appellant. In fact, this Court is of the considered view that permanent physical disability suffered by a victim of an accident is an event which literally shatters the life of the victim. The victim has to live with this disability lifelong. Whereas the trauma that a child may have to go through may be more as compared to a major on account of maturity which a major may be having as compared to a child to handle the situation but fact of the matter remains that whereas a child suffers the disability for a much longer period as compared to

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someone who is in his twenties, thirties or forties but such a person, who also happens to be a bread earner of the family as is there in the present case, is adversely affected on account of the disability as it takes away the effectiveness of the victim as far as the performance of his work is concerned.

13. In the present case, the claimant happens to be a Motor Mechanic. His work obviously is physical in nature. Taking this fact into consideration and further the age of the claimant, who was 31 years old when the accident took place, it cannot be said that the compensation of Rs.3.00 Lac awarded by learned Tribunal to the claimant is excessive. While making this observation, this Court is also taking into consideration the fact that in terms of the averments made in the claim petition, the claimant had stated that he was earning Rs.8,000/- per month before the accident took place from his work as a Motor Mechanic. As far as the compensation awarded under other heads is concerned, learned Tribunal has compensated the petitioner under the pain and suffering by awarding lump sum amount of Rs.1,50,000/-, medical expenses to the tune of Rs. 22,284/- on the basis of bill Ext.P-1 to Ext. P-51, compensation on account of conveyance and food nourishment to the tune of Rs.2500/- as lump sum, compensation on account of indoor patient in the

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hospital for 24 days @ Rs.2000/- per day, i.e. Rs.48,000/- only, including attendant charges. As far as the compensation awarded on account of loss of income is concerned, the findings returned by learned Tribunal while awarding an amount of Rs.56,000/- for the same are cogent findings as this amount has been awarded by learned Tribunal by holding that on account of injuries suffered by the claimant, he could not run his shop from 03.12.2006 to 04.07.2007. Similarly, the compensation on account of future amenities and loss of expectation of life of Rs.50,000/- can also not be said to be excessive. Therefore, as this Court is of the considered view that the award passed by the learned Tribunal *per se* does not suffer from any perversity either on the facts or otherwise, this appeal is without merit.

In view of above discussion, as there is no merit in the present appeal, the same is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

December 19, 2024
(narender)