IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1316 of 1991 and
Cross Objection No.17 CII of 2001
Date of decision 7 . 5. 2010.

United India Insurance Company

...... Appellant.

versus

Iqbal Singh and others.

...... Respondents.

Present : Mr. Neeraj Khanna, Advocate
Mr. Ravinder Arora, Advocate for the appellant.
Mr. Gurcharan Dass, Advocate for the respondent No.1 and cross-objectors.
Mr. R.M.Suri, Advocate for the Lrs of respondent No.2.

CORAM : HON'BLE MR.JUSTICE K.C.PURI.

K.C.PURI. J.

The appellant-United India Insurance Company has directed this appeal against the award dated 3.6.1991 passed by Shri SK.Sardana, learned Motor Accident Claims Tribunal, Ambala for setting aside award whereas claimants preferred cross-objections for enhancement of the compensation amount awarded by the Motor Accident Claims Tribunal.

Factual matrix comprising the claim petition shorn of details is that on 23.3.1989 at about 11.00 AM, the claimant was going towards Mahesh Nagar side on his scooter No. HYX-7880 on his correct left side at a very slow speed when a truck bearing registration No. HNE-5897 which was coming from Jagadhri side at a very fast speed being driven by respondent No.1 in a rash and negligent manner and without blowing horn, came towards its right hand side (wrong side) and hit the scooter of the claimant, which he was driving, as a result of the impact, the claimant fell down and was dragged along with truck and fell into Nallah on that small bridge and received various injuries on his person, head, face, arms legs, chest, stomach and other parts of the body which bled profusely. The claimant was immediately taken to Civil Hospital, Ambala from which he was referred to PGI, Chandigarh on the same date. Due to the accident, the claimant remained on bed continuously for about six months and was unable to carry out his daily official duties because of fracture of both bones of left leg, fracture of left arm and other fracture on the body of the claimant and grievous head injuries. The claimant remained on leave from his department because of this accident, mental torture, agony and pain besides financial loss and his personality has also been affected. Therefore, he has claimed compensation to the tune of Rs.4,00,000/-.

On notice, respondent No.1 filed written statement and pleaded that the accident ocurred due to rash and negligent driving of

the truck in question. The respondent No.2 in his written statement denied the accident in question.

Similarly, respondent No.3 in its written statement pleaded that the accident in question took place due to rash and negligent driving of the claimant himself.

Following issues were framed :-

1. **Whether the accident in question was caused due to rash and negligent driving of truck No. HNE 5897 driven by respondent No.1 causing injuries to the claimant?**
2. **If issue No.1 is proved, to what amount of compensation, if any, the claimant is entitled to and from whom ?**
3. **Relief.**

The parties have led their respective evidence on the aforesaid issues.

The Tribunal, after appraisal of the evidence and after hearing learned counsel for the parties, awarded Rs.2,00,650/- as compensation to the claimants along with interest @ 12% per annum from the date of petition till its realization. The respondents were held jointly and severally liable to pay the amount of Rs.2,00,650/- along with interest @ 12% per annum.

Dissatisfied with the Award dated 3.6.1991 passed by Motor Accident Claims Tribunal, Amabla appellant-United India

Insurance Company has preferred the instant appeal. However, claimants preferred cross-objections No.17 CII of 2001 for enhancement of the compensation amount awarded by the Motor Accident Claims Tribunal.

I have heard the learned counsel for the parties and have gone thorough the records of the case.

Learned counsel for the appellant-Insurance Company has submitted that Tribunal has awarded an amount of Rs.2,00,650/- to the claimant on account of injuries suffered by him in a Motor Vehicle Accident. The liability of the Insurance Company cannot be more than Rs.1,50,000/- in view of Section 95(2) and 110 of the Motor Vehicles Act, 1948. Hon'ble Apex Court in authority *National Insurance Company Ltd. vs. Keshav Bahadur and others reported in 2004(2) RCR (Civil) page 99* has held that even if the vehicle is comprehensively insured and a higher premium was paid on that score, the limits of liability with regard to the 3^{rd} party risk does not become unlimited or higher beyond the statutory liability fixed under the Act. No extra premium in respect of making the liability unlimited was paid in the present case and as such the learned Tribunal should have restricted the liability of Insurance Company to the extent of Rs.1,50,000/-.

Learned counsel for the claimants, on the other hand, supported the Award regarding limit of liability of Insurance Company.

The date of accident is relevant for determining the limited

liability. On the facts of the present case, according to the claimant, accident has taken place on 23.3.1989 i.e. prior to the enforcement of amended Act on 11.7.1989 and as such the liability has to be assessed keeping in view section of section 95(2) of the Motor Vehicle Act, 1939.

The argument advanced by counsel for the Insurance Company carries weight and has to be accepted.

The terms of the policy has also to be looked into. From the policy Ex.R-1, it is revealed that it is a comprehensive policy. As per policy Ex.R-1, basic premium of Rs.180/- has been paid in respect of liability of 3rd party (public risk). Rs.8/- has been paid for LL to pay driver or cleaner as per END/IMI-16-8rupees have been paid. Rs.48/- has been paid in respect of four labourers and premium of Rs.99/- has been paid in respect of trucks costs. There is a column in Ex.R-1 regarding add for increase to 3rd party, which reads as under :-

Policy No. *110202/25/1/2388/88*	*Insured's Estimated Value of Vehicle*	*Non Electrical Accessories*	*Electrical & Electronic Accessories*	*Total IEV*
	Rs.	Rs.	Rs.	Rs.3,30,000/-
SCHEDULE OF PREMIUM				
A. OWN DAMAGE	Rs.	B. Liability to Public Risk		Rs.

BASIC PREMIUM Add 3% Extra on Electrical or Electronic fitting as per END IMT 71 Add 1.05 % on I.E.V END IMT.21 Add for Additional......Tons	500-00 3465-00	BASIC PREMIUM Add for LL to authorised non-fare paying passengers as per ENDIMT 14(b) Limit per passenger Rs. Limit per accident Add for LL to paid driver and/or Cleaner as per ENDIMT 16 Add for increased TP Limits Section Section 11 1 (i) Unlimited Section 11 1 (ii) Rs............	180 -00 8.00
Less .25E/E % for voluntary Excess of Rs.....as per END IMT 21) Add .... Less % No Claim Bonus Less 10% Special Discount	825-00	Add for 4 Labs Terrorist Risk Less 10% Special Discount	48.00 99.00
	3140-00	COMPREHENSIVE PREMIUM (A+B)	3475-00

There is column in Ex. R-1 regarding add for increase to 3rd party. No premium has been paid for making the liability for 3rd party unlimited. Although, it is a comprehensive policy. This aspect of the case has been dealt in by Hon'ble Supreme Court in *__National Insurance Company Ltd. vs. Keshav Bahadur and others' case (Supra)__* and it has been held that the liability of the Insurance Company would be limited even in a case of comprehensive insurance unless higher premium is paid to make the risks of 3rd party unlimited. So, I have no hesitation in holding that the appellant United Insurance Company is liable to pay the amount to the extent of Rs.1,50,000/- along with interest as awarded by the Tribunal.

So, the appeal of the Insurance Company stands accepted to that extent only.

Now reverting to cross-objections preferred by the claimants for enhancement of compensation are concerned, the claimants have moved an application under Order 41 Rule 27 CPC claiming that on account of injuries sustained by him he got the voluntarily retirement on 16.9.1999 and has suffered a loss to the extent of Rs.9,54,034/- as per calculations made in the application.

However, after careful perusal of the application, it is revealed that the same deserves outrightly dismissal. Claimant-Iqbal Singh appeared as his own witness and has given his age as 48 years. The claim petition was filed in the year 1989.

According to the application under Order 41 Rule 27 CPC, the claimant got voluntary retirement on 16.9.1999. So, according to the said calculation the age of claimant was 58 years which is normally the age of retirement of Government employee. An application Ex.P-1 has been placed along with the application Annexure P-1 has been attached with the application under Order 41 Rule 27 CPC vide which the notice of voluntary retirement has been issued. From the perusal of the said document it is revealed that notice under voluntary retirement under Order 48 CCS(Pension Rules) has been sought.

From the perusal of the said rules it is clear that after putting a service of 30 years, any one can get voluntary retirement. It is not mentioned in the notice that he is seeking voluntary retirement on account of injuries sustained by him in the accident. So, the highly exaggerated claim in the calculation made by the cross-objector-claimant is without any basis and as such the application under Order 41 Rule 27 CPC stands declined.

Now reverting to the cross-objections, learned counsel for the cross-objector-claimant has submitted that claimant has suffered following injuries :-

1. Compound fracture (left leg)
2. Intercondyler left tibia (knee joint).
3. Left Radius (left side bone of arm).
4. Volar Bartas (wrist joint)
5. Posterior roxus acelabulum (back side of hip joint)
6. Inferior Public ramus (of front side or hip socket)
7. Diastasin Symphysis Public (Centre of hip joint from front side open),
8. Disruption left sarociliac joint (Centre of hip joint from back side)
9. Head injury.

The claimant suffered 40% permanent disability. He was not able to walk properly to perform duty. It is further contended that Tribunal has awarded only Rs.40,000/- in respect of treatment whereas he has spent a sum of Rs.65,000/- to 70,000/- on his treatment. So, prayer has been made for enhancement of compensation.

The Tribunal has allowed a sum of Rs.2,00,650/- to the claimant. The details of which is given as under :-

1. On account of leave without pay and half pay for eight

months from March 1989 to 31.8.1989 Rs.25,650-00

2. On account of special diet etc. Rs.40,000-00

3. On account of pain and sufferings Rs.30,000-00

4. On account of permanent disability Rs.25,000-00

5. On account of conveyance Rs.20,000-00

6. Loss of future earnings Rs.60,000-00

The Tribunal has granted an amount of Rs.30,000/- in respect of pain and suffering, which amount required to be enhanced to Rs.50,000/-. Keeping in view the long treatment. No amount has been granted in respect of future expenses on treatment. Another sum of Rs.30,000/- stands allowed on that account. So, in this manner, the amount of compensation stands enhanced to Rs.2,50,650/- instead of Rs.2,00,650/-. The increased amount of Rs.50,000/- shall be paid along with interest @ 7% per annum from the date of appeal till the payment by respondent Nos.1 and 2. As the liability of Insurance Company has been held to the extent of Rs.1,50,000/- only. So, the cross-objections preferred by the claimant stands accepted to the extent mentioned above.

A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 07, 2010
sv