(2005) 08 SHI CK 0041

In the High Court Of Himachal Pradesh

Binu Ram APPELLANT

Vs

Oriental Insurance Company and Others RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 2 ACC 806

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This appeal by the claimant u/s 173 of the Motor Vehicles Act, is directed against the award of the Motor Accident Claims Tribunal (II), Mandi in Claim Petition No. 76 of 2001 decided on 27.11.2003.

2. The facts necessary for disposal of the case are that admittedly the claimant Binu Ram met with an accident involving Car No. DAV-125 on 2.5.1999. The finding on the issue of negligence has not been challenged before me. The only questions to be decided are with regard to the quantum of compensation and the liability of the Insurance Company, if any, to pay the compensation.

3. In the claim petition it was urged that Binu Ram prior to the accident was working as coolie. After the accident, the claimant had received extensive treatment at Karsog and IGMC, Shimla. It was also stated that after the accident he cannot work as coolie and he is unable to earn any amount whatsoever.

4. The owner did not deny the accident, though negligence on the part of the driver was denied. The owner also averred that the vehicle was insured and the liability, if any, was that of respondent No. 3 Insurance Company to pay the compensation.

5. The Insurance Company in its reply took up the plea that the vehicle was being driven by a person not having a valid driving licence to drive the same. In para 24 of the reply, a general plea was taken that there was violation of the terms and conditions of the insurance policy at the time of the alleged accident.

6. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the petitioner suffered multiple injuries in accident took place near bus stand Sanarli on 2.5.1999 at 12 noon when car bearing No. DAV 125 owned by respondent No. 1 and driven by respondent No. 2 caused accident, while the petitioner was sitting on a parapet as alleged? --OPP

(2) Whether the vehicle was driven in contraventions of terms and conditions of the insurance policy as alleged? --OPP

(3) Whether the driver was not holding a valid and effective driving licence at the time of alleged accident? --OPR3

(4) Whether the respondent Nos. 1 and 2 are liable to reimburse the amount which they have spent on the medical treatment of petitioner from respondent No. 3 as alleged? --OPR 1 and 2

(5) Relief.

7. The Tribunal vide the impugned award decided Issue No. 1 in favour of the claimant. The claimant was held entitled to compensation of Rs. 25,000 and it was also held that since the owner has already borne the medical expenses incurred on the treatment of the claimant and had spent more than Rs. 25,000, the claimant is not entitled to get any further amount whatsoever. Issues No. 3 and 4 were not pressed. While deciding Issue No. 2, the Tribunal held that there was no privity of contract between the owner Lajja Ram and the Insurance Company and as such the Insurance Company is not liable to pay the compensation.

8. Mr. Praneet Gupta learned Counsel for the claimant urges that the compensation awarded by the Tribunal is extremely low and not at all in consonance with the well settled principles of assessment of compensation in injury cases. He further submits that in the present case there is sufficient evidence on record to show that though the claimant has suffered 40% disability, his earning capacity has become nil since he is unable to work as a coolie. Therefore, the assessment of compensation may be made by taking his disability as 100%. In the alternative, he submits that even if 40% disability is taken into consideration, the Tribunal has gravely erred in awarding only Rs. 25,000 as compensation to the claimant. He also submits that the Insurance Company has wrongly been exonerated from its liability to pay the compensation.

9. Mr. Sanjiv Bhushan learned Counsel appearing on behalf of the owner and driver, submits that the award of the Tribunal is just and reasonable and calls for no interference. He, however, states that the liability, if any, is that of the Insurance Company and in fact the amount that has already been paid by the owner of the claimant should be ordered to be refunded to him by the Insurance Company.

10. Mr. Ashwani Kumar Sharma, learned Counsel appearing on behalf of the

Insurance Company submits that the Tribunal has rightly held that the Insurance Company is not liable to pay the compensation.

11. The first question which needs to be decided is with regard to the amount of compensation payable to the claimant. Unfortunately, in the present case, the evidence produced by the claimant is not very satisfactory. The claimant in his statement has stated that he has spent about Rs. 50,000 on his treatment out of which a sum of Rs. 20,000 has been paid by Lajja Ram owner of the vehicle and some amount was borrowed from other persons. He submits that he was admitted in the hospital at Shimla for about 20 days. According to him, he is unable to move properly. He further states that his children have been withdrawn from school since he is unable to afford to pay the expenses of the children. He produced the disability certificate and also some treatment slips with regard to his treatment. These treatment slips have been exhibited as Exs. PB to PI. The claimant in cross-examination was mainly examined on the point that the owner of the vehicle has already spent Rs. 17,000 on his treatment and the claimant has been paid Rs. 10,000 by the owner.

12. P.W. 2 Dr. N.K. Parmar has proved on record the disability certificate Ex. P.W. 2/A. According to this disability certificate, the claimant has suffered 40% permanent disability due to loss of locomotor movement. He has also clearly stated that due to his disability, the claimant Binu Ram cannot work as a coolie. In cross-examination, he stated that though he was a Member of the Board which assessed the disability of the claimant but he has not personally examined the claimant. He also states that the doctor who examined the claimant can give better details with regard to the disability.

13. P.W. 3, Nakshatar states that the claimant was working as a coolie at Bus Stand, Karsog and used to earn Rs. 200 per day. In addition he was also looking after the agricultural land. According to him, the children of the claimant are now not attending the school. They were going to school prior to the accident. He has admitted that because the claimant and his relatives did not have money, therefore, the medical expenses were borne by the respondent Lajja Ram.

14. Lajja Ram respondent and owner of the vehicle has appeared as R.W. 1. He states that he had purchased the vehicle from one Hari Om who in turn purchased the same one from C. Lal. He states that he purchased the vehicle on 16.8.1998 and produced on record one affidavit of Hari Om which is Ext. R.W. 1/A. In fact this affidavit relates to the purchase of the vehicle in question by Hari Om from C. Lal and has no relevance with the sale made by Hari Om to Lajja Ram. He has also stated that he had applied to the Registering Authority as well as the Insurance Company for transfer of the Registration Certificate and insurance policy. He further states that he has spent Rs. 27,000 on the treatment of the claimant. He also admits in his cross-examination that when the accident had occurred, the vehicle was not in his name and that he applied for the transfer of the same. He further states that when he purchased the said vehicle from Hari Om neither the vehicle was in the name of Hari Om nor the insurance

policy was in the name of Hari Om. He has not produced any document with regard to purchase of the vehicle or with regard to the transfer of the registration made in his name.

15. R.W. 2, Thakur Chand is the driver of the vehicle. He has produced the original driving licence. According to him, the accident had occurred due to failure of the brakes. He submits that claimant Binu Ram was earlier working as coolie at Bus Stand Karsog. He further states that the claimant was earning about Rs. 4,000 to Rs. 5,000 per month. He also states that it is correct that Binu Ram can only walk with a limp. The Insurance Company did not lead any evidence and only produced on record the policy of insurance.

16. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim the damages. The damages may vary according to the gravity of the injuries sustained by the claimant in the accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc.; (iii) loss or diminution to the pleasures of life by loss of a particular part of the body; and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be only token damages.

17. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

18. The following observations of Lord Morris in his speech in H. West and Son Ltd. v. Shephard 1958-65 ACJ 504 (HL, England), are very pertinent:

Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.

19. Lord Denning while speaking for the Court of Appeal in the case of Ward v. James (1965) 1 All ER 563 Section 1d down the following three basic principles to be followed in such like cases:

Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, (uniformity): There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, (predictability): Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to Court, a thing very much to the public good.

20. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made. In the case of Mediana (1900) AC 113 Lord Halsbury held:

Of course the whole region or inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, orthose who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given.

21. In Perry v. Cleaver 1969 ACJ 363 (HL, England), Lord Morris of Borth-y-Gest held thus:

To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment.

22. In Phillips v. Western Railway Co. (1874) 4 QBD 406, Field. J. while emphasizing that damages must be full and adequate, held thus:

You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.

23. Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tort feasor to say that he had amply atoned for his misadventure". The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing", should be kept in mind by the Court in determining compensation in e personal injury cases.

24. McGregor on Damages, 14th Edn., para 1157, referring to heads of damages in personal injury actions states:

The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medicaLand other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.

25. In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, speaking about the heads of compensation, the Apex Court held thus:

Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance: (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they shall include; (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

26. In Concord of India Insurance Co. Ltd. v. Nirmala Devi 1980 ACJ 55 (SC) the Apex Court held:

The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

27. This Court in Brestu Ram v. Anant Ram and Ors. 1989 (2) Sim. L.C. 298, held:

It is pecuniary loss, i.e., capable of calculation in terms of money, and non-pecuniary loss i.e., loss that cannot be easily assessed with accuracy-pecuniary loss is the loss suffered by the victim due to the loss of earnings or other profits which he had been earning and was to earn in future at the same rate or at same promoted scale. Non-pecuniary loss consists of damages awarded for pain and sufferings, loss of amenities and loss of enjoyment of life and prospects. Under non-pecuniary loss, for want of accurate assessment, a global figure could be arrived at and paid as compensation. Under pecuniary loss the assessment can be made easily by taking into consideration at least the monthly income actually earned by the victim and the difference between what he would be capable to earn on disablement.

It is well settled that in disablement cases compensation has always to be higher than even in cases of death since it is given to the living victim of the accident both for his personal loss and for economic loss. It can be said that the bodily injury is to be treated as a deprivation which entitled the victim to claim damages, which vary according to the gravity of the injury. Further, due to this injury, there can be loss of earnings, completely or partial due to the accident on his capacity to earn the same. Another consequence may be the loss he suffers on account of the enjoyment of life or full pleasures of living.

28. Taking into consideration the law laid down by the Hon''ble Apex Court and this Court, 1 am constrained to observe that the award of the learned Motor Accident Claims Tribunal assessing the compensation at Rs. 25,000 is abysmally low and not at all in consonance with the principles enunciated above. In fact even this amount has been set off against the amount spent by the owner. The Tribunal has been extremely conservative in awarding compensation. In addition, the learned Motor Accident Claims Tribunal has not awarded the compensation under the various heads to which undoubtedly the claimant was entitled to claim compensation.

29. No doubt it is true that in the present case, the evidence led by the claimant is not very satisfactory. However, the approach of the Tribunal is even more unsatisfactory. The Tribunal while assessing the compensation has not followed any of the well settled principles relating to assessment of compensation in injury cases some of which have been enunciated above. The law in this regard is well settled and every Motor Accident Claims Tribunal is expected to have knowledge of basic law.

30. The Tribunal has awarded only an amount of Rs. 25,000 to the claimant for pain, suffering and shock caused to him and has further ordered that since as per the compromise Ex. DA, such amount has already been spent/paid to him by

the owner of the vehicle, therefore, he is not entitled to get any amount whatsoever. By setting of the amount, the claimant has not been awarded any amount and his claim petition was dismissed. The Tribunal has not awarded the compensation under various heads to the claimant. It has not even attempted to do so.

31. It stands proved on record that the claimant belongs to a very poor strata of society. It is also apparent from the evidence that he was working as coolie prior to the accident. This fact can also be gauged from the statement of the other witnesses that it was the owner of the vehicle who bore the medical expenses of claimant Binu Ram since neither the claimant nor his relatives had any wherewithal to pay this amount. The claimant stated that he was earning Rs. 10,000 p.m. prior to the accident by working as a coolie and by agricultural work. This version of the claimant seems to be exaggerated and cannot be accepted. This is against his own evidence that he had no money to spend on his treatment and now he cannot even afford to send his children to school. However, the fact remains that the claimant was working as a coolie at the bus stand, Karsog. In fact even the driver of the car when he appeared as R.W. 2 admitted that the deceased was earning about Rs 4,000 to Rs. 5,000 per month. However, in my opinion, even this statement cannot be accepted. Karsog is a small town and a coolie may not be able to earn that much amount. Keeping into consideration the fact that the accident had occurred in 1999 and the fact that the claimant was a coolie and also keeping in view the minimum wages payable at that time it would not be unreasonable to assess his income at Rs. 2,000 per month. The age of the claimant as per disability certificate was 40 years at the time of the accident. The assessment of compensation shall have to be made on this basis.

32. As noted above, there are no details with regard to the period of admission of the claimant in hospital. It appears that the claimant is an uneducated person working as a coolie and he did not keep any of the record about his medical treatment and expenses. However, it has come on record that the claimant was taken to hospital by the driver and he remained admitted in hospital. Therefore, the statement of the claimant that he was admitted in hospital for about 20 days is accepted to be true.

33. There is sufficient materials placed on record by way of documents exhibits PB to PI to show that the claimant even after his initial treatment did not fully recover and was getting treatment thereafter also. Specific reference may be made to Exhibit PC. The claimant was admitted at Karsog on 29.2.2000 and discharged on 2.3.2000. A perusal of the O.P.D. ticket Ex. PD shows that the claimant has suffered RSA (right side accident) one year back. He has been advised limb elevation, crepe bandage for application and active ankle movements. There is another treatment slip dated 2.5.2000 Ex. PE, which shows that he suffered further complications thereafter. Thus it stands proved on record that the claimant was hospitalised for 20 days and remained under treatment for

one year after the accident and was virtually immobile during this period.

34. The claimant and his witnesses have also led evidence to show that even the claimant''s children have been withdrawn from the school because of the fact that he was unable to earn any amount. The claimant is an uneducated person. The only job which he could do was that of a coolie. This is a job involving manual work only. The claimant knows no other work. He is not a skilled or educated person to do any other job whatsoever. Therefore, his disability of 40% has rendered him incapable of earning any amount and his loss of earning capacity is 100%.

35. It is in the light of the these aforesaid observations that the assessment of compensation has to be done in this case. As far as medical expenses are concerned, the claimant is not entitled to any amount because admittedly his medical expenses and transportation charges were borne by the owner Lajja Ram. Though the claimant stated that he has spent some amount himself, this does not appear to be plausible. However, the claimant must have been attended upon by his family members and must have spent some amount on special diet during this period. Therefore, he is awarded Rs. 10,000 on account of attendant charges, special diet and any other minor medical expenses which he may have spent on himself.

36. Keeping in view the nature of the injury of the claimant, the period of admission in hospital, the extent of his disability etc., it would be reasonable to award the claimant a sum of Rs. 30,000 for pain and suffering. The claimant has suffered disability of 40% due to the negligence of the driver of the car. Even the driver admits that the claimant has developed a permanent disability and cannot walk properly. The claimant who was doing the work of a coolie is unable to do any work whatsoever. His entire life is changed. The claimant was the only bread winner of the family but due to the disability he has now become aperson dependent on the aid and benevolence of others. Keeping in view all these circumstances into consideration, he is awarded Rs. 60,000 for loss of amenities, future discomfort and the disability which he will have to suffer throughout his life.

37. The most important and vital issue is with regard to the loss of income of the claimant. As already held above, the claimant is unable to work as a coolie. This fact is stated by P.W. 2. P.W. 3 Nakshatar also states that he is unable to work as a coolie which is supported by the medical evidence that he has suffered 40% disability. This is a case of a person who can only do manual work and no other work. Therefore, the loss has to be assessed by taking his earning as Rs. 2,000 per month i.e., Rs. 24,000/- per annum. Keeping in view the age of the claimant to be approximately 40 years, it would be reasonable to apply the multiplier of 15. Thus, the total compensation under this head works out to Rs. 3,60,000. The total compensation payable works out to Rs. 4,60,000.

38. Since no amount has been awarded to the claimant on account of medical

expenses, no further adjustment has to be made against the amount spent by Lajja Ram. The claimant is also held entitled to interest at the rate of 6% per annum on this amount from the date of institution of the claim petition i.e., 7.9.2001 till the date of deposit of the amount. Interest has been awarded at the rate of 6% per annum since a major portion of the compensation awarded is on account of the future loss of the income.

39. The other important question to be decided in this appeal is with regard to the question as to which of the respondents is liable to pay the compensation.

40. The Tribunal has exonerated the Insurance Company solely on the ground that there was no privity of contract between the Insurance Company and the owner of the vehicle. From the pleadings of the parties, I find that the Insurance Company had not specifically raised this plea before the Tribunal.

41. Mr. Ashwani Kumar Sharma learned Counsel contends that in fact from the material on record it is apparent that the vehicle was insured in the name of one C. Lal who did not have an insurable interest in the vehicle. He submits that in fact the Insurance Company was to indemnify only C. Lal. He further submits that question of transfer of policy of Insurance does not arise in this case since the policy was in the name of C. Lal who had ceased to be the owner of the vehicle. According to him. C. Lal had no insurable interest and as such there was no question of transfer of the policy since the policy was taken out in the name of C. Lal after he had ceased to be its owner.

42. On the other hand Mr. Sanjiv Bhushan submits that the claimant in his statement has stated that he applied for the transfer of policy to the Insurance Company and the Insurance Company has not led any evidence to the contrary.

43. The Motor Accident Claims Tribunal held that the Insurance Company is not liable on the ground that there is no privity of contract between the Insurance Company and the insured. The question whether such a policy could be transferred when admittedly the policy was never transferred in the name of Hari Om has not been decided by the Tribunal. As per the evidence, Harj Om had purchased the vehicle on 16.8.1998. The policy was issued after the said date in the name of C. Lal. The question which arises is whether such a policy in favour of a person who (sic) to be the owner of the vehicle and who had no insurable interest could ferred in the name of the subsequent purchaser. 1 am refraining from (sic) question since in my view the Insurance Company has not specifically (sic) up this plea and neither of the parties was aware of this specific controversy. In my opinion, this is a question which should have been decided by the Tribunal at the first instance. Therefore, the case is remanded back to the Tribunal below only to decide the dispute inter se the owner (insured) and the Insurance Company (insurer). The parties, if they so desire, may file application(s) for amendment/application(s) of their pleadings. It is, however, made clear that the Tribunal shall decide the question whether C. Lal had any insurable interest and whether the Insurance Company can be held liable to pay

the compensation or not.

44. The claimants cannot be denied the benefit of this award. The Insurance Company is directed to deposit the entire awarded amount. In case the Tribunal decides that the Insurance Company is not liable then the Insurance Company can recover this amount from the owner of the vehicle by filing execution proceedings before the Tribunal.

45. In view of the above discussion, the appeal filed by the claimant is allowed and it is held that the claimant shall be entitled to total compensation of Rs. 4,60,000 along with interest at the rate of 6% per annum from the date of institution of the claim petition till deposit of the amount. The Insurance Company is directed to deposit this amount in the Registry of this Court within 12 weeks from today failing which it shall be liable to pay interest at the rate of 12% per annum from today.

46. The case is remanded to the Motor Accident Claims Tribunal, Mandi to decide the dispute inter-se the owner Lajja Ram and the Insurance Company in the aforesaid terms. Lajja Ram and Insurance Company were duly served and represented before the Tribunal below, therefore, neither the claimant nor the driver of the vehicle are required to appear before the MACT below. The Tribunal shall consider on merits any application for amendment of the pleadings filed by either of the party and after deciding the same shall give reasonable opportunity to both the parties for deciding the matter in accordance with law. The matter shall be decided on or before 30th June, 2006. The owner and the Insurance Company are directed to appear before the Motor Accident Claims Tribunal (II), Mandi on 26th September, 2005.

47. The appeal is disposed of in the aforesaid terms with no orders as to costs.