
(2014) 07 SHI CK 0173
In the High Court Of Himachal Pradesh
Case No : CWP No. 5227 of 2010-F

I.C.I.C.I. Lombard General Insurance Company Ltd.	APPELLANT
Vs	
Inder Singh	RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 07 SHI CK 0173

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Jagdish Thakur, Advocate for the Appellant; Anup Rattan and Sanjay Jaswal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Karol, J.—In terms of present petition, insurer has assailed the award dated 22.05.2010, passed by Motor Accident Claims Tribunal (I) Kangra at Dharamshala, H.P., in M.A.C.P. No. 44-N/II-2008, titled as Shri Inder Singh Versus Sher Singh and another. Claimant, suffering permanent disability to the extent of 40%, stands awarded compensation in the following terms:-

2. Having heard learned counsel for the parties, I am of the considered view that insurer has made out a case for interference as the amount of compensation so awarded needs to be reduced.

3. On 23.09.2007, claimant sustained injuries in a motor accident. He was severely injured and admitted in a hospital. His right leg had to be operated upon. As a result of the accident claimant sustained permanent disability to the extent of 40%. Attributing negligence on the part of Sher Singh (respondent No. 2 herein), driver of the offending vehicle, claimant filed claim petition under the provisions of Section 166 of the Motor Vehicle Act, 1988. In the said petition, based on the pleadings of parties, Tribunal framed the following issues which stand answered accordingly:-

1. Whether the petitioner has sustained injuries due to rash and negligent driven of vehicle Jeep TATA 207 No. HP-54-6194 by respondent No. 1 as alleged? OPP
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 petition is not maintainable? OPR-1 & 2
4. Whether the driver was not holding any valid & effective driving licence at the time of accident? OPR-2
5. Whether respondent No. 1 has willfully violated the terms & conditions of insurance policy? OPR-2
6. Whether the petition is bad for non-joinder of necessary parties? OPR-2
7. Whether no cause of action accrued to the petitioner as alleged? OPR-1 & 2
8. Relief.

4. Certain facts are not in dispute. That vehicle (Jeep) driven and owned by Sher Singh (respondent No. 2), hit the claimant as a result of which he sustained injuries, cannot be disputed. In any event, there is sufficient evidence on record to establish such fact.

5. As a result of such accident, claimant sustained injuries and had to be hospitalized which fact stands established through the testimony of Inder Singh (PW. 1), Dr. Shivdarshan Singh (PW. 3), Dr. Rajeev Saigal (PW. 8) and Dr. Avinash Goyal (PW. 9). MLC (Ex. PW. 9/A) and other documents pertaining to hospitalization stand proved, in accordance with law.

6. Question with regard to negligence on the part of Sher Singh (respondent No. 2) also stands established and proved on record through the testimony of Inder Singh (PW. 1) and Ankush Pathania (PW. 2). It also stands proved on record that in relation to the very same accident, FIR No. 118/07 dated 23.09.2007 stood registered against respondent No. 2. To this effect, testimony of HHC Baldev Singh No. 276, is evidently clear.

7. That vehicle (Jeep) was insured with the insurer is not in dispute. In the absence of any proof of breach of terms and conditions of the Policy, liability of the insurer cannot be disputed.

8. This leaves with the sole question of determination of compensation. Claimant proved on record income tax return showing his income to be Rs. 62,578/- for the year 2007-08. Noticeably income of Rs. 62,578/- was only with regard to a particular year which could not have been made basis for determining compensation. Thus, Tribunal erred in taking income of the claimant to be Rs. 62,578/- instead of Rs. 54,017/- also proved on record.

9. Undisputedly, at the time of accident, claimant was of 28 years. As such, Tribunal ought to have applied a multiplier of 17 instead of 18. Thus, total

amount of compensation under the head of diminishing of future prospects is required to be reduced from Rs. 4,50,561/- to Rs. 3,67,200/-.

10. One finds that the amount incurred for medical expenses stands correctly awarded. There is substantial proof on record to this effect. However, quantum under the head of pain and suffering, in my considered view, needs to be enhanced from Rs. 20,000/- to Rs. 55,000/-. This would not only balance equities but also meet the ends of justice.

11. Thus, the impugned award dated 22.05.2010 passed by Motor Accident Claims Tribunal (I) Kangra at Dharamshala, in M.A.C.P. No. 44-N/II-2008, titled as Shri Inder Singh Versus Sher Singh & another, is modified accordingly. Claimant shall be entitled to the following amount and interest shall be paid in terms of the award:-

12. With the aforesaid observations, present petition stands disposed of, so also pending application(s), if any.