

(1993) 06 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : L.P.A. No's. 28 of 1982 and 4 of 1983

Kaushalya Devi and Others

APPELLANT

Vs

Dr. Lakhbir Sood and Others

RESPONDENT

Date of Decision : 28-06-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1994) ACJ 12 : (1993) 2 ShimLC 466

Hon'ble Judges : Lokeshwar Singh Panta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Deepak Thapar, for the Appellant; K.D. Sood, Chhabil Dass and G.C. Gupta, for the Respondent

Judgement

Devinder Gupta, J.—Both the appeals arise out of a common judgment passed on 6th November, 1982, by learned single Judge of this court in F.A.O. Nos. 33 and 35 of 1977 whereby the award made on 16th May, 1977, by Motor Accidents Claims Tribunal, Solan and Sirmaur Districts, camp at Solan, awarding compensation to late Kishan Swarup Thapar, claimant, was modified.

2. Claimant Kishan Swarup Thapar, a practising advocate of Punjab and Haryana High Court at Chandigarh, received serious injuries when Fiat car bearing registration No. DLH 5220 collided with goods carrier truck No. HRA 606 on 25th August, 1970, near post office Kandaghat on Shimla-Kalka National Highway. The car was owned by Dr. Lakhbir Sood and was at the relevant time being driven by his brother Amrit Lal Sood. It was insured with Jupiter General Insurance Co. Ltd. The claimant had been engaged as a counsel by Amrit Lal Sood for conducting proceedings on his behalf in a case pending in this court, namely, Bhagwan Finance Private Limited v. State of Himachal Pradesh and it was Amrit Lal Sood who had provided lift to the claimant as per his professional engagement for bringing the claimant up to Shimla to appear in the said case on the relevant date.

3. On 24th February, 1971, a claim petition was preferred, claiming a sum of Rs.

1,25,000/- as compensation by the claimant for the injuries received by him in the accident, impleading the owner and driver of the Fiat car as also the insurance company with whom the car had been insured. Owner and driver of the goods vehicle with which car had collided as also insurance company with which goods vehicle was insured were also impleaded as respondents. It was claimed that goods vehicle came without blowing horn from Shimla side at a high speed and the driver of the car rashly and negligently did not apply the brakes and moved forward with the result, even though more than 2/3rds of the body of the truck passed by the car, the driver of the car rashly kept on moving and advancing towards the curve and struck against the body of the truck at the rear 1/3rd portion. Consequently, amount of compensation was claimed from the owners, drivers and insurance companies of both the vehicles. The claim petition was contested by the owners, drivers and insurance companies of both the vehicles.

4. The Claims Tribunal held that the accident occurred due to rash and negligent driving of the car by Amrit Lal Sood and consequently held the owner of the car, namely, Dr. Lakhbir Sood, to be vicariously liable to pay compensation. Jupiter General Insurance Co. Ltd. with whom the car had been insured was also held liable to indemnify the claim. On the question of quantum of compensation the Claims Tribunal allowed a sum of Rs. 1,000/-towards the medical expenses including ambulance charges for taking the claimant from Snowdon Hospital to Chandigarh on 31st August, 1970, Rs. 2,000/- towards loss of professional income for two months due to hospitalisation and remaining confined to bed from 25th August, 1970 to 5th October, 1970, Rs. 10,800/- as a loss of earning capacity due to restriction of movements, inability to work, etc., for a period of three years at a rate of Rs. 300/- per month and another sum of Rs. 2,000/- for physical sufferings. Nothing was awarded by the Claims Tribunal on account of loss of pleasures of life and resultant disability in using the right arm. The Claims Tribunal thus made an award of Rs. 15,800/- along with interest at the rate of 10 per cent per annum from the date of award till the date of payment.

5. Feeling aggrieved two separate appeals were preferred, one by the claimant (F.A.O. No. 33 of 1977) and the other (F.A.O. No. 35 of 1977) by the Oriental Fire and General Insurance Co. Ltd., the successor-in-interest of insurance company with whom the car in question was insured. Learned single Judge of this court on 6th November, 1982, allowed both the appeals. It was held that since the claimant was a passenger travelling in the car and was not being carried for hire or reward, the policy of insurance was not required to cover the risk of the passengers, who are not carried for hire or reward. Therefore, the insurance company was held not liable to pay the compensation for the injuries received by him. The claimant's appeal was also allowed by awarding additional sum of Rs. 5,000/-towards loss of pleasures of life and permanent incapacity in using the right arm. Thus the claimant was held entitled for a total sum of Rs. 20,800/- along with interest at the rate of 10 per cent per annum from the date of award till payment. The amount was made recoverable from Dr. Lakhbir Sood, the

owner and Amrit Lal Sood, the driver of the car. The claimant feeling aggrieved preferred L.P.A. No. 28 of 1982 claiming further enhancement of compensation. Amrit Lal Sood has preferred L.P.A. No. 4 of 1983 seeking to quash the findings of learned single Judge in absolving the insurance company and also that part of the judgment by which additional sum of Rs. 5,000/- had been awarded towards loss of pleasures of life and permanent incapacity in using the right arm. During the pendency of appeals, the claimant expired on 26th June, 1989. Appellants in L.P.A. No. 28 of 1982 and respondents 1 (a) to 1 (d) in L.P.A. No. 4 of 1983 are the claimants-legal heirs.

6. We have heard the learned counsel for the parties and also gone through the record.

7. Mr. Deepak Thapar, who is also one of the legal heirs of the claimants, has contended that learned single Judge was not right in allowing only a sum of Rs. 5,000/- towards loss of pleasures of life and permanent incapacity in using the right arm and was also not justified in not enhancing any amount of compensation under the head loss of professional income. It was contended by him that totality of the circumstances ought to have been taken into consideration. Tribunal was not right in fixing a limit of three years for considering the loss of professional income since as a result of injuries the claimant was permanently incapacitated. It was urged by him that profession of a lawyer is a specialised one which requires constant concentration in the work and the injuries had adversely affected the claimant in discharge of his professional duties. The reasonable amount of compensation, which ought to have been allowed, should have been Rs. 50,000/- for loss of pleasures of life and Rs. 80,000/- for loss of professional income. In addition, it has been urged by him that interest ought to have been allowed from the date of institution of claim petition till the date of payment at the rate of 12 per cent per annum and insurance company also ought to have been held liable to pay the amount of compensation.

8. Mr. Chhabil Dass, learned counsel appearing for the driver of the car in question, urged that the learned single Judge was not right in holding insurance company not liable to indemnify the owner as well as driver of the vehicle. As per his submissions the policy was comprehensive one and the same did cover the risk of third party without any conditions. Learned single Judge was not right in placing reliance upon the judgment of Supreme Court in Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd. 1977 ACJ 343 (SC), in view of the ratio of judgment in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani 1958 ACJ 559 (SC).

9. Mr. K.D. Sood (appearing in F.A.O. No. 28 of. 1982) and Mr. G.C. Gupta (appealing in F.A.O. No. 4 of 1983) for the insurance company have contended that the learned single Judge has rightly applied the ratio of the judgment in Pushpabai's case 1977 ACJ 343 (SC), in view of the specific terms contained in the policy. Mr. Thapar being a passenger carried in the vehicle not for hire or

reward, policy of insurance was not required to cover the risk of such persons and that the ratio of the judgment in New Asiatic Insurance Co.'s case 1958 ACJ 559 (SC), will not apply since the question which arises for determination was not decided therein.

10. First, dealing with the question of liability of the insurance company we may also note down the submissions made by Mr. Deepak Thapar that the copy of insurance policy placed on the record cannot be taken into consideration since it was neither proved in accordance with law, nor tendered in evidence. This submission deserves outright rejection. No objection was taken by the counsel for the parties when learned single Judge took note of the copy of insurance policy, which had been filed on the record of the Claims Tribunal on 11th October, 1974. On behalf of the claimant no challenge was made even in the grounds of appeal while preferring Letters Patent Appeals that the copy of insurance policy cannot be taken note of having not been proved in accordance with law. Even the driver of the vehicle in grounds of appeal has not raised such a challenge. Issues were framed by the Claims Tribunal on 3rd July, 1973. The claim petition was thereafter got amended and on 11th October, 1974, fresh issues were framed. The order-sheet records that copy of insurance policy was filed in the court when issues were framed. The claimant adduced evidence thereafter. No objection was raised when copy of insurance policy was placed on record. Owner of the vehicle appeared as RW 1 and stated that vehicle had been insured with the insurance company and he had also got the claim for the damage sustained to the vehicle in the accident in question. Exh. R-1 is the claim form submitted by the owner of the vehicle wherein particulars of the insurance policy have been duly filled in. Survey report is Exh. R-2. No objection was raised on behalf of the claimant at that stage also that the copy of insurance policy placed on the record is not the true and correct copy of the policy. Accordingly, claimant at this stage cannot be allowed to raise such an objection.

11. The policy is described as for "private car (comprehensive)". The certificate of insurance describes the use of the vehicle only for social, domestic and pleasure purposes and for the insured's business and it specifically says that the policy does not cover use for hire or reward. There is an important notice printed on the certificate that:

The insured is not indemnified if the vehicle is used or driven otherwise than in accordance with this Schedule. Any payment made by the company by reason of wider terms appealing in the certificate in order to comply with the Motor Vehicles Act, 1939, is recoverable from the insured. See the clause headed "Avoidance of certain terms and right of recovery".

12. The certificate also mentioned that any person is competent to drive the vehicle provided that the person driving holds a licence to drive the motor car or has held and was not disqualified for holding or obtaining such a licence.

13. Section I of the policy indemnifies the insured against loss or damage to the

motor car and/or its accessories.

14. Section II deals with liability to third parties. Condition (1) thereof says that:

The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured;

(b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured.

15. Conditions (3) and (4) which are otherwise generally known as "other drivers accident clause" and "other vehicles accident clause", respectively, are material and are set out as:

(3) In terms of and subject to the limitations of the indemnity which is granted by this section to the insured the company will indemnify any driver who is driving the motor car on the insured's order or with his permission provided that such driver

(a) is not entitled to indemnity under any other policy

(b) shall, as though he were the insured, observe, fulfil and be subject to the terms, exceptions, conditions and limitations of this policy in so far as they can apply.

(4) In terms of and subject to the limitations of the indemnity which is granted by this section in connection with the motor car the company will indemnify the insured whilst personally driving a private motor car (but not a motor cycle) not belonging to him and not hired to him under a hire-purchase agreement.

16. In *New Asiatic Insurance Co. Ltd.*'s case 1958 ACJ 559 (SC), similar terms contained in the policy of the owner of a Chevrolet car, which was being driven under authority of the owner by one Pessumal, were construed in the light of the provisions of Sections 94, 95 and 96 of Motor Vehicles Act, 1939 (Act No. 4 of 1939), hereinafter referred to as "the Act". The vehicle had been got insured by the owner with the New Asiatic Insurance Co. Ltd. The car met with an accident resulting in death of an occupant and injuries to others. Injured as well as heirs of deceased instituted separate claims. Notices u/s 96 (2) of the Act were issued to the insurance company since liability to the third party had been insured by the owner under the policy. The insurance company contested the notice saying that the same was bad in law and company was not liable to satisfy any claim against the person who was driving the vehicle. In the alternative a prayer was made that company be added as a party to the suit or be authorised to defend the suit in the name of the defendant. Single Judge of the Bombay High Court

held the notice issued to the insurance company u/s 96 (2) to be bad in law and set aside the same. The claimants filed Letters Patent Appeal which was allowed and the insurance company carried the matter in appeal to the Supreme Court. The question which had arisen for decision was as to whether the person driving the vehicle would be covered by the terms of condition 3 of Section II of the policy. The Supreme Court held that under said condition 3 of Section II of the policy, the insurance company indemnifies any person who is driving the motor car on the insured's order or with his permission. Since Pessumal was driving the vehicle with the permission of the owner, therefore, the company had undertaken to indemnify driver, in accordance with condition 3 of section II of the policy. The court further held that:

...The contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis-a-vis the third parties, in view of the provisions of the Act. We are of the opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy, it is reasonable to conclude that proviso (a) of para 3 of section II is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of third parties' claim against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended.

17. Negating the other contentions raised by the insurance company, the court held that the High Court was right in saying that the insurance company had insured Pessumal, who was driving the car under the orders and permission of the insured, in view of condition 3 of section II of the policy and the insurance company does come within the expression "insurer" used in Section 96 of the Act.

18. In the said case no question had arisen as to whether insurance company would be liable to pay compensation for the injuries sustained by a claimant or in case of a death to pay compensation to the heirs, when the person concerned was travelling as a passenger in a car, not being carried for hire or reward. This question was considered in Pushpabai's case 1977 ACJ 343 (SC). The legal heirs of deceased P.T. Udeshi lodged a claim against the owner of the vehicle, which was driven by its Manager in a rash and negligent manner resulting in death of Mr. Udeshi. Insurance company was also impleaded as a respondent. It was contended by the owner of the vehicle that Mr. Udeshi was travelling in the vehicle on his own responsibility and for his own purpose and absolutely gratis and not on behalf of or at the instance of the owner. Claims Tribunal found the accident to be a result of negligent driving of the vehicle by the Manager of the company. It also found the company to be liable to pay the compensation on account of the negligence of its employee. On appeal being carried by the owner,

the High Court absolved the owner of the liability holding that the Manager was not taking Mr. Udeshi in the course of his employment, nor under the authority of the owner. The claimants took the matter in appeal to the Supreme Court. The owner was held liable vicariously for the acts of the driver. On the question as to whether insurance company was liable to indemnify the claim or not, exactly similar provisions, as are contained in the policy in question in section II, were considered by the court, in the light of the provisions of Section 95 of the Act. In addition to other liabilities, the policy in Pushpabai's case 1977 ACJ 343 (SC), also contained an endorsement by which the insurance company had insured the liability regarding the accident to passengers in the following terms:

In consideration of the payment of an additional premium it is hereby understood and agreed that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger...

19. Similar endorsement is not contained in the policy in question and it does not insure regarding liability to passengers contained in Clause 1 of section II of the policy. The court held that:

The legal liability is restricted to Clause 1 (a) which states that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clauses 1 and 1 (a) are not very clearly worded but the words "except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939," would indicate that the liability is restricted to the liability arising out of the statutory requirements u/s 95. The second part of Clause 1 (a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks which are not covered u/s 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under Clauses 1 and 1 (a) is the risk required to be covered u/s 95 of the Motor Vehicles Act.

20. The aforementioned judgment in Pushpabai's case 1977 ACJ 343 (SC), in clear terms states that the real purport of Clause 1 in section II of the policy in the case, which was appended to the cover, is the risk required to be covered u/s 95 of the Act.

21. Section 95 of the Act was also construed in Pushpabai's case 1977 ACJ 343 (SC), and in para 22 of the report, the court held that:

It is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea

of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act.

22. Since Section 95 of the Act did not require that policy of insurance should cover risk to the passengers, who are not carried for hire or reward, the learned single Judge was right in holding that the insurance company in the instant case was not liable to indemnify the claim. In view of the judgment in Pushpabai's case 1977 ACJ 343 (SC), we need not to refer the other decisions, which were cited by the counsel appearing for the insurance company.

23. On the question of quantum of compensation, the learned single Judge awarded a sum of Rs. 5,000/- as compensation under the head loss of pleasures of life and permanent incapacity. Learned single Judge also noticed the fact that the claimant himself argued the appeal before him and he did not complain of any pain in the hip joint though as per the opinion of the doctor possibility of pain in future could not be ruled out.

24. The basis for arriving at the figure of Rs. 5,000/- has not been indicated by the learned single Judge. Claimant while appearing as AW 6 stated that after the accident he remained in Snowdon Hospital up to 31st August, 1970, and was removed to Chandigarh in an ambulance where he remained in bed till 5th October, 1970 and even thereafter he was not allowed to move for about a month since the muscles had lost strength. It was further stated by him that as a result of accident he had suffered a permanent injury of shoulder joint of the right arm and he was left with muscular movement only and not the movement of joint. He was not in a position to lift the weight and the leg injury interfered in his profession as an advocate. He could not travel without an escort. It had resulted in the loss of his practice for which he had claimed a modest sum of Rs. 36,000/-, elaborating it at Rs. 300/- per month for 10 years, as a result of injuries. It was stated by him that he had lost certain pleasures of life because he always felt to be a handicapped person and not socially equal to his colleagues. This resulted in withdrawing from the society and was not even in a position to lift his grandchildren in his arms. Claim to the tune of Rs. 84,000/- was made for which he elaborated that it was at Rs. 500/- per month for 14 years. During cross-examination he clarified that he was not attending social functions though rarely he would attend with great difficulty. For the first three years he did not attend any work but thereafter his appearance was restricted only to High Court at Chandigarh. He had to curtail his visits outside Chandigarh and to the District Court, which resulted in loss of his earning capacity.

25. Dr. Kuldeep Singh, Medical Officer, Surgery Department, General Hospital, Chandigarh, specified the nature of injuries suffered by the claimant, namely, fracture of the right humerus and acetabulum left of the hip bone. As regards the first injury neck of humerus was found fractured and he opined that the shoulder injury suffered by the claimant would lead to a stiff shoulder and the hip injury would lead to osteoarthritis of the hip joint leading to pain and restricted

movement at the hip joint.

26. Learned counsel for the claimant placed reliance on number of judgments in support of his submissions for enhancement of the amount of compensation. All cases cited at the Bar have turned around on their peculiar facts and circumstances. No particular case can be taken as a guide for determination of general damages on account of pain and suffering caused as a result of accident in another case. In the matter of determination of compensation, on account of pain and suffering, loss of pleasures of life, etc., facts of each case have to be dealt with in the light of various other surrounding circumstances, such as status of the claimant in life, chances of recovery, seriousness of the injuries suffered, subsisting agony, shock, pain and also duration of injuries.

27. The claimant was a lawyer by profession. In addition to regular appearance in Punjab and Haryana High Court at Chandigarh, he had been appearing in Supreme Court of India and also in other courts outside the State. Profession of the lawyer needs unhampered concentration and full devotion to the cases. The claimant in clear and specific terms stated that he was not in a position to lift any weight not even grandchildren, pain and suffering subsisting for long would naturally result in incapacitating the performance of professional duties. In *Tejinder Singh Gujral v. Inderjit Singh* 1988 ACJ 407 (P&H), after considering number of cases, for the injuries suffered by a lawyer, the single Judge of the Punjab and Haryana High Court held a sum of Rs. 50,000/- as damages awarded by the Claims Tribunal to be just and adequate on account of pain and suffering. General damages to the tune of Rs. 40,000/- were considered to be just and adequate on account of pain, suffering and loss of pleasures of life on account of injuries received by shortening of a leg in another case by a single Judge of the Punjab and Haryana High Court in *Swatantra Kumar Lamba v. Sheila Didi* 1988 ACJ 74 (P&H).

28. To a lecturer in the Department of Botany of the Punjab University, Chandigarh, for mental agony, pain or suffering general damages of Rs. 40,000/- were allowed in 970960--> .

29. Considering the facts and circumstances of the instant case and also the nature of injuries suffered by the claimant, his status in life, against the claim of Rs. 84,000 made by the claimant for loss of pleasures of life and permanent incapacity, we think that a sum of Rs. 30,000/- would be the just amount of compensation instead of Rs. 5,000/- awarded by the learned single Judge.

30. Learned single Judge did not consider the question of enhancement of compensation under the head pleasures of life, which the Claims Tribunal had restricted only for a period of three years. Statement of the claimant that he had started functioning partially after three years was taken as a factor in allowing damages at the rate of Rs. 300/- p.m. for three years only. Since the claimant could not attend to the regular work except attending High Court, in our view the claimant ought to have been allowed the amount of compensation for another

three years and under the said head instead of Rs. 10,800/-, as awarded by the Claims Tribunal, we hold the claimant to be entitled for a sum of Rs. 21,600/-. Accordingly, we hold the claimant to be entitled to a total compensation for a sum of Rs. 56,600/-.

31. On the question of interest, in view of the judgments in *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 (SC), *Chameli Wati v. Delhi Municipal Corporation* 1985 ACJ 645 (SC) and *Jagbir Singh v. General Manager, Punjab Roadways* 1987 ACJ 15 (SC), the claimant is held entitled to interest on the amount of compensation at the rate of 12 per cent per annum from the date of application till payment.

32. No other point was urged.

33. In view of the above discussions, while dismissing L.P.A. No. 4 of 1983, we allow L.P.A. No. 28 of 1982 and modify the award in the case by holding the claimant to be entitled to a sum of Rs. 56,600/- as the just and adequate amount of compensation for the injuries received by him, which amount of compensation the appellants in L.P.A. No. 28 of 1982 are entitled to recover from Dr. Lakhbir Sood and Amrit Lal Sood jointly and severally along with interest at the rate of 12 per cent per annum from the date of filing the claim petition till payment.

34. In the peculiar circumstances of the case, the parties are left to bear their respective costs.