(2010) 12 P&H CK 0309

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 1042 of 1995 (O and M)

Kulwant Singh APPELLANT

Vs

Ninderpal Kaur and Ors RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(4), 149(5)

Citation : (2010) 12 P&H CK 0309

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

CM No. 32111-CII of 2010

For the reasons stated in the application, appeal is restored to its original number. Application is allowed.

FAO No.1042 of 1995

1. The appeal is for enhancement of compensation for the injury suffered in the motor accident where the claimant, who had been originally treated for fracture of the leg with crush injury, later suffered an amputation by surgical intervention. He had been admitted in the hospital between 15.03.1992 to 21.03.1992 and later from 18.01.1993 to FAO No. 1042 of 1995 (O&M) - 2-24.01.1993. The amputation had been done in the second spell of hospitalization.

2. The claimant had contended that he was a turner and having his own shop, earning Rs. 5,000/-to Rs. 6,000/-per month. The Tribunal took the loss of earning capacity at Rs. 500/-per month in a case where the disability attributed to the amputation at 80%. The Tribunal took the loss of income as Rs. 1,000/- and provided for cost of medicines at Rs. 6,000/-, pain and suffering at Rs. 5,000/-, loss of future earnings at Rs. 96,000/-and loss of prospects of marriage

at Rs. 25,000/-. There was specific evidence that he had been engaged to be married just before the accident and engagement was broken after the injuries in the accident. I would reassess the compensation in the light of law laid down by the Hon''ble Supreme Court recently in a judgment in Raj Kumar Vs. Ajay Kumar and Another, and proceed to determine compensation for loss of earning capacity on a scientific basis taking his annual income at the relevant time in the year 1993 to be Rs. 15,000/-and take the loss of earning capacity for amputation as 70% as provided under the Workmen''s Compensation Act and adopt a multiplier of 18 for a person, who was aged 22 years. I would also provide to him an additional amount of Rs. 75,000/-towards disability to compensate for the loss of amenities of life for a person to carry through the rest of his life and go pass the age of youth with an amputated leg and assess Rs. 75,000/-towards disability. I will retain the amount of Rs. 25,000/-provided for loss of prospect of marriage. The Tribunal had provided Rs. 1,000/- for loss of past income and, in my view, that is FAO No. 1042 of 1995 (O&M) - 3-grossly low considering the fact that from 15.03.1992 to 24.01.1993, he could not have worked for he had been continuously under treatment and he had suffered an amputation in the year 193. I would provide for loss of past income at Rs. 25,000/-. The amount of compensation shall, therefore, be as what is provided in the tabulation as under:

Age: 22 Period of hospitalization: 15.03.1992 to 21.03.1992 and 18.01.1993 to 24.01.1993. Heads of claim Tribunal High Court 1. Loss of income 1,000 25,000 2. Medicines, Hospital 6,000 charges, Attendant charges, Special diet 3. Pain and suffering 5,000 25,000 4. Disability - 75,000 5. 70% loss of earning capacity 96,000/- 1,89,000 6. Loss of prospect of marriage 25,000 25,000 Total 1,33,000 3,39,000

3. Heads of claim Tribunal High Court Loss of income 1,000 25,000 Medicines, Hospital 6,000charges, Attendant charges,Special diet Pain and suffering 5,000 25,000 Disability -75,000 70% loss of earning capacity 96,000/-1,89,000 Loss of prospect of marriage 25,000 25,000 Total 1,33,000 3,39,000 The amount in excess over what has been awarded already by the Tribunal shall attract interest at 6% from the date of petition till date of payment.

4. As regards the liability, the Insurance Company had been exonerated on the ground that the driver of the offending vehicle did not have a valid driving licence. Even if there had been a violation of terms of policy, the right of a third party to enforce the claim against an insurer is protected in the light of law laid down by the Hon''ble Supreme Court FAO No. 1042 of 1995 (O&M) - 4-in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and in National Insurance Company Limited v. Swaran Singh (2004) 3 SCC 279. The learned Counsel pleads that there is not even a ground of appeal seeking for the liability of the Insurance Company. I would accord this to be an entitlement coming through an interpretation of a proviso to Sections 149(4) and 149(5) of the Motor Vehicles Act, as undertaken by the judgment in Kamla referred to above, I will not, therefore, take the issue of lack of pleadings in the grounds of appeal as

irrelevant, hence it is a pure question of law. The award shall, therefore, be enforceable by the claimants against the Insurance Company and the Insurance Company in turn shall have a right of recovery against the insured/owner.

5. The award is modified and the appeal is allowed to the above extent.

