(2014) 07 P&H CK 0657

In the Punjab And Haryana At Chandigarh

Case No : FAO Nos. 4996 and 6964 of 2010

Mukesh Kumar — APPELLANT

Vs

Kuldeep Singh
 The New India Assurance Company Vs Mukesh Kumar — RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 163-A

Citation : (2014) 07 P&H CK 0657

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Dheeraj Narula and Vandana Malhotra, Advocate for the Appellant; Vandana Malhotra and Dheeraj Narula, Advocate for the Respondent

Judgement

Kuldip Singh, J.—By this common judgment, I will dispose of two connected FAO Nos. 4996 and 6964 of 2010 arising out of the same accident.

2. Briefly stated, Mukesh Kumar filed a claim petition u/s 163-A of Motor Vehicle Act, 1988 for grant of compensation to the tune of Rs. 7 lacs alongwith interest on account of the injuries sustained by him in Motor Vehicular accident with Car No. DL-4CG/6890 which was being driven by said Mukesh Kumar as employee of respondent No. 1 (presently respondent No. 2). It is stated that on 26.2.2008 claimant was employed as driver on the said car which was owned by respondent No. 1 (presently respondent No. 2) but registered in the name of respondent No. 2 (presently respondent No. 3). It was insured with respondent No. 3 (presently appellant). Claimant was driving the car and was going from Chandigarh to Sirsa. On the said date, at about 7.30 p.m. when the car reached in the area of village Janiana, Police Station Bhuna, District Fatehabad, a Neel Gaye (cow) suddenly came in front of the car. In the process of saving the said cow, the car went out of the control and fell into a pit on the side of the road. As a result of which claimant sustained injuries. Daily Diary Report No. 25 dated 27.2.2008 was lodged at police station Bhuna.

3. Claimant claims that he was getting monthly salary of Rs. 3300/-. He received multiple injuries and was permanently disabled to the extent of 100% due to loss of sight of right eye. He is now unfit to drive car. Plastic surgery was also conducted on his skull and nasal bone. He remained admitted as an indoor patient in NC Jindal Institute of Medical Sciences, Model Town, Hisar w.e.f. 26.2.2008 to 9.3.2008. He spent Rs. One lac on his treatment. He further requires Rs. 50,000/- for follow up treatment.

4. Respondent No. 2 appeared but failed to file written statement and was proceeded against ex parte. Respondent No. 1 in the written statement admitted that claimant had met with an accident and received injuries. It was stated that respondent No. 2 is the registered owner but the said car was purchased by respondent No. 1. It was stated that respondent No. 1 is not liable to pay any compensation and the liability, if any, is that of respondent No. 3 with whom the car was insured.

5. Respondent No. 3, Insurance Company, in the written statement, took the plea that there was no contract between respondent No. 1 and respondent No. 3. Hence, there is no contractual responsibility to indemnify respondent No. 1 who is neither the insured nor respondents No. 1 and 2 ever approached respondent No. 3 for change in the policy. The factum of receipt of injury as a result of the accident was denied. It was stated that the petition is liable to be dismissed.

6. From the pleadings of the parties, following issues were framed:

(i) Whether the petitioner suffered injuries upon his person as the result of a vehicular accident caused while he was driving Maruti Car No. DL-4CG/6890, if so, its effect? OPP.

(ii) Whether the petitioner is entitled to any compensation u/s 163-A of the Motor Vehicle Act, if so to what extent and from whom? OPP.

(iii) Whether the petition in question is not maintainable in the present form? OPR.

(iv) Whether the insured has violated any term and conditions of the Insurance Policy in question, if so to what effect? OPR.

7. While deciding issues No. 2 and 4, the Tribunal took the view that claimant suffered 40% disability. It was noticed that the age of the claimant was 30 years as on 26.2.2008. Therefore, after assessing that the compensation on account of total disability is calculated at Rs. 4,48,000/-, 40% thereof i.e. Rs. 1,79,520/- were allowed for the disability. Rs. 5000/- were allowed on account of pain and suffering and Rs. 15,000/- were allowed for medical expenses. Total compensation was calculated at Rs. 1,99,520/- which was rounded of to Rs. 2 lacs.

8. While deciding about the liability of the Insurance Company to pay, it was noticed that as per the Insurance Policy Ex. RX, the owner had paid Rs. 25/- as

premium on account of W/c to employee. It was also noticed that car in question was purchased on 16.2.2008 and got insured on 18.2.2008. Therefore, Insurance Company was held liable to pay the amount.

9. Against this award, the Insurance Company as well as claimants have come up in appeal.

10. I have heard learned counsel for the parties and have also gone through the case file carefully.

11. First of all, I will decide the claim of the Insurance Company that it is not liable to pay the compensation. The admitted Insurance Policy is Ex. RX where Rs. 25/- were paid on account of W/c i.e. workman compensation to the employee.

12. Learned counsel for the Insurance Company has vehemently argued that as per the policy Ex. RX, respondent No. 2 is recorded as registered owner though c/o respondent No. 1. Address of respondent No. 1 is given in the Insurance policy. The Insurance policy was issued by the Sirsa Branch of the company. However, respondent No. 2 belong to New Delhi. The claimant has produced on file the affidavit of transfer dated 16.2.2008 to show that he had purchased the vehicle on 16.2.2008.

13. The contention of the learned counsel for the Insurance Company is that the change of ownership was never reported to the Insurance company, therefore, there was no contract to indemnify between the Insurance company and respondent No. 1. The Tribunal has taken the view that policy was issued by Sirsa office of respondent No. 3 (presently appellant). Respondent No. 2 is resident of New Delhi. She would not have come to Sirsa to get the car insured. Delivery receipt was also issued at Sirsa. Insurance Policy Ex. RX shows that respondent No. 1 got the said car insured. Name of respondent No. 2 has been mentioned as insured only because she was registered owner. The Tribunal also observed that the application for insurance submitted to respondent No. 3 was not produced nor any receipt of payment was produced to show that respondent No. 2 had applied for the insurance and paid the premium. Facts and circumstances clearly make out that after the purchase of the vehicle on 16.2.2008, respondent no. 1 got the vehicle insured and this fact was within the notice of respondent No. 3-Insurance Company. Therefore, respondent No. 3 cannot back out from its liability.

14. It being so, I do not find any force in the appeal of the Insurance Company. Consequently, FAO No. 4996 of 2010 stands dismissed.

15. Now I come to the appeal bearing FAO No. 6964 of 2010, filed by Mukesh Kumar claimant.

16. Claimant had claimed his income to be Rs. 3300/- p.m. According to him, he lost his one eye.

17. Learned counsel for the claimant has sought enhancement on the ground that the loss of one eye had disabled him to work as a driver. Therefore, the disability is 100% and not 40% as calculated by the Tribunal. Therefore, compensation on account of disability should be enhanced. Further entire medical bills amounting to Rs. 44,990/- should be allowed. Enhancement has also been sought for pain and suffering.

18. As per the disability certificate Ex. P5, claimant suffered 40% disability. Learned counsel for the claimant-appellant has referred to the statement of Dr. C.P. Dadhich PW2 who has stated that he was the member of the Medical Board, being Eye Surgeon, which assessed the disability of the claimant. Disability was assessed at 40%. The certificate in this regard is Ex. P5. He further stated that due to loss of vision of one eye, claimant-driver, is 100% unfit for driving. However, the doctor has not stated that disability is 100%. It means that though claimant cannot work as a driver but he can certainly undertake any other avocation.

19. Learned counsel for the claimant-appellant has argued that as per Schedule II of the Motor Vehicle Act, 1988 in case of permanent disability, the percentage of loss of earning capacity shall be as per Schedule I under the Workman''s Compensation Act, 1923. It has been further argued that as per Schedule-I of the Workman''s Compensation Act, for loss of sight to such an extent as to render the claimant unable to perform any work for which eye sight is essential, the percentage of loss of earning capacity is 100%.

20. I am of the view that in Schedule I Part II in case of loss of one eye without complication and the other being normal, the percentage of loss of earning capacity is 40%. Therefore, no error can be found with the findings recorded by the Tribunal that the disability is 40%. However, the learned counsel for the claimant-appellant has argued that the Tribunal made wrong calculation even while assessing 40% disability. The Tribunal had assessed the income of the deceased at Rs. 3300/- p.m. and the annual income at Rs. 39,600/-. It applied the multiplier of 17 and came to the conclusion that for 100% disability, compensation comes to Rs. 4,48,800/-. However, this is factually incorrect as the calculation factually comes to Rs. 3300x12x17= Rs. 6,73,200/-. Therefore, 40% of the said amount was to be granted as compensation. Therefore, 40% compensation comes to Rs. 2,69,280/- and not Rs. 1,79,520/- The said arithmetical error is liable to be corrected.

21. So far as the medical expenses are concerned, in the IInd Schedule of the Motor Vehicle Act, 1988 maximum Rs. 15,000/- can be granted for the medical expenses. Learned counsel for the appellant has relied upon The Oriental Insurance Company Limited Vs. Smt. Kulwinder Kaur and Another, and has pressed that in suitable cases where the treatment is long or loss is heavy, compensation cannot be kept confined within the limits prescribed by second Schedule of Section 163-A of Motor Vehicle Act, 1988.

22. I am of the view that in the present case, there was no long treatment or heavy loss. Claimant claimed Rs. 44,990/- whereas as per Schedule II, he is entitled to Rs. 15,000/- only. I am of the view that this Court cannot grant more compensation on account of medical expenses than fixed in the Schedule unless the Schedule is held to be illegal. Therefore, Rs. 15,000/- as medical expenses are upheld. Rs. 5000/- were rightly granted on account of pain and suffering. There is no ground to interfere in the same also. It being so, the claimant is entitled to compensation for 40% disability which is assessed at Rs. 2,69,280/- by correcting arithmetical mistake. No enhancement under any other head is to be allowed.

23. As a result of the foregoing discussion, FAO No. 4966 of 2010 is dismissed.

24. FAO No. 6964 of 2010 is partly allowed to the extent that by correcting the arithmetical mistake, compensation for 40% disability is calculated at Rs. 2,69,280 in place of Rs. 1,79,520/-. The enhanced compensation shall be paid by Insurance Company with interest @ 7.5% p.a. from the date of filing of claim petition till its realisation.