
(2015) 04 P&H CK 0307

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. Nos. 2229 and 2513 of 2002 (O&M)

National Insurance Co. Ltd. and Others

APPELLANT

Vs

Jagat Narain Goel and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) ACJ 512 : (2015) 179 PLR 186

Hon'ble Judges : Karam Chand Puri, J

Bench : Single Bench

Advocate : R.M. Suri, for the Appellant; Ashwani Arora, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Karam Chand Puri, J.—By this common judgment I intend to dispose of FAO No. 2513 of 2002 titled as National Insurance Co. Ltd. versus Jagat Narain Goel and others preferred by appellant-National Insurance Co. Ltd. against the impugned award and FAO No. 2229 of 2002 titled as Jagat Narain Goel versus Raj Kumar and others, preferred by the claimant for enhancement of the compensation amount. For convenience facts are being taken from FAO No. 2513 of 2002 titled as National Insurance Co. Ltd. versus Jagat Narain Goel and others.

2. Challenge in these appeals is the Award dated 04.01.2002 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri vide which claim petition preferred by the Jagat Narain Goel-claimant was allowed with costs and an amount of Rs. 2,40,000/- was awarded as compensation along with interest @ 9% p.a., from the date of filing the claim petition till payment from respondent Nos. 1 to 3 were held jointly and severally liable to pay the amount of compensation but the payment was ordered to be made by respondent No. 3 Insurance Company.

3. Claimant-Jagat Narain Goel has preferred claim petition under Section 166 of

Motor Vehicles Act (in short - the Act)

4. Brief facts of the present case are that claimant has sought compensation of Rs. 10,00,000/- on account of injuries sustained by him in a motor vehicular accident on the allegations that on 14.4.2000 while he was going from Jagadhri to Yamuna Nagar on his cycle on the left hand side of the road with all care and caution and when at about 11.30a.m., he reached Kanhaya Chowk, Yamuna Nagar at that time Haryana Roadways bus bearing registration No. HR-37-1049 driven by respondent No. 1 rashly and negligently without giving any horn came from behind i.e., Jagadhri side and the bus struck against the cycle of the claimant behind him. Due to the impact, claimant fell down and his left leg came under the left front tyre of the bus resulting into composite fracture of his left leg and therefore it was amputated. The bus is owned by respondent No. 2 and stood insured with respondent No. 3 Insurance Company.

5. The claim-petition has been contested by respondent Nos. 1 to 3 vide their separate written statements. Respondent No. 1 pleaded in his written statement that on 14.4.2000 he was driving Haryana Roadways bus bearing registration No. HR-37-1049 slowly on his left side of the road and was going from Jagadhri to Yamuna Nagar and at about 11.30a.m., the bus reached near Kanhaya Chowk, at that time the claimant who was also going to Yamuna Nagar, all of a sudden turned his cycle without seeing behind and so despite the fact that he (respondent No. 1) tried his best to avoid the accident by applying brake to the bus but in vain and the bumper of the bus struck behind the cycle of the claimant and so he fell down on the road and received injuries. Therefore, no accident had taken place due to the rash and negligent driving by respondent No. 1. Other allegations contained in the claim petition have been denied. Similar stand was taken by respondent No. 2 in his written statement. However, respondent No. 3 alleged that driver of bus bearing registration No. HR-37-1049 was not having driving licence and the bus was not validly insured with it. Denying other averments respondent prayed for dismissal of the claim petition.

6. No rejoinder was filed. From the pleadings of the parties, following issues were framed:--

"1. Whether the accident resulting into injuries was caused due to rash and negligent driving of bus No. HR-37-1049 by respondent No. 1.? OPP

2. Whether the claimant is entitled to the compensation. If so how much and from whom? OPP

3. Relief."

7. The Tribunal, after assessing the testimony of the witnesses partly accepted the claim petition and allowed as aforesaid.

8. Feeling dissatisfied with the above said Award dated 04.01.2002, the Insurance Company has directed the present appeal.

9. I have heard learned counsel for the parties and have gone through the records of the case.

10. National Insurance Company Ltd. has directed the appeal to avoid the liability on the ground that driver of the offending vehicle was not holding a valid driving license. It is submitted that even the Tribunal has observed that driver of the offending vehicle was not holding a valid driving license, the Tribunal has fastened the liability against the Insurance Company on the ground that the license in favour of driver of offending vehicle has been renewed. It is submitted that once it is proved that license is fake, the subsequent renewal of the same does not make the license valid.

11. However, in reply to the above noted submissions counsel for the driver and the owner of the offending vehicle has submitted that basic authority in this respect is National Insurance Co. Ltd. Vs. Swaran Singh and Others, (2004) 1 ACC 1 : (2004) ACJ 1 : AIR 2004 SC 1531 : (2004) 118 CompCas 396 : (2004) 1 JT 109 : (2004) 136 PLR 510 : (2004) 1 SCALE 180 : (2004) 3 SCC 297 : (2004) 1 SCR 180 : (2004) AIRSCW 663 : (2004) 1 Supreme 243 , wherein it is held that mere absence, fake or invalid license at the relevant time are not the defences available against the insurer or 3rd parties. To avoid its liability towards the insured also the insurer has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of conditions of policy. Burden is on the insurer to establish breach of policy by leading cogent evidence. It is submitted that owner of the offending vehicle is State of Haryana. The concerned authority would have employed the driver only after going through the license. The same was said to be renewed validly. So, it is submitted that Insurance Company has failed to prove the terms of breach of the policy.

12. I have carefully considered the submissions made by both the sides and have gone through the records of the case.

13. So far as the arguments advanced by counsel for the appellant-Insurance Company to the effect that subsequent renewal in respect of fake license does not make it a valid document is concerned, that submission carries weight and has to be accepted but the question in the present lis is whether the Insurance Company has been able to prove the fact that owner i.e. State of Haryana was in the knowledge of the fact that concerned authority has the knowledge that license was fake when the driver was employed, that evidence is missing in the present case. So, the Insurance Company has failed to prove that there was negligence and fault on the part of the owner to exercise reasonable care in compliance of the condition of the policy.

14. So, in these circumstances, appeal preferred by the appellant-Insurance Company is without any merit and the same stands dismissed.

FAO No. 2513 of 2012

15. This is an appeal directed by the claimant for enhancement of compensation.

Claimant has claimed a sum of Rs. 10,00,000/- on account of injuries suffered by him in the motor vehicular accident. However, the learned tribunal has allowed a sum of Rs. 2,40,000/-. A sum of Rs. 40,000/- were allowed in respect of expenses on treatment. Another sum of Rs. 2,00,000/- was allowed in respect of loss of earning and pain and suffering, past, future and present and on account of permanent disability.

16. Learned counsel for the appellant has submitted that in the present case, knee on the left leg of claimant has been amputated. It is submitted that Dr. Vipin Jain (PW-1) has stated that as a result of amputation of left thigh, the claimant has become 75% permanent disable. The Tribunal has assessed the income of claimant as Rs. 2500/- per month against Rs. 10,000/- claimed by the claimant Jagat Narain. His age has been found to be 43 years. So, an amount of Rs. 2,40,000/- granted by the Tribunal is on lower side. The plight of a person whose left leg knee has been amputated can be well imagined. No amount of compensation could compensate his misery but the Court has to allow just and fair compensation in such case. The amount of Rs. 40,000/- allowed in respect of treatment does not call for any interference. The accident has taken place in the year 2000 and as such the amount has to be allowed by keeping in view the price index of that year. The claimant is held entitled to claim following amounts:--

"Rs. 40,000/- stands allowed for treatment;

A sum of Rs. 2,00,000/- allowed in respect of pain and suffering. Income of the claimant has been taken as Rs. 2500/- per month by Tribunal.

Age of the claimant has been assessed as 40 years. So, multiplier of 14 is applicable, at the age of 43.

The claimant is held entitled to Rs. 3,15,000/- in respect of loss of earning. This amount has been calculated by taking into account 75% disability i.e. Rs. $2500 \times 12 \times 14$ which comes to Rs. 4,20,000/-. 75% of the same comes to Rs. 3,15,000/-.

Rs. 15,000/- stands allowed in respect of transportation and special diet during the period of hospitalizations."

17. So, the claimant is held entitled to a sum of Rs. 5,70,000/- in all. The said amount carries interest @ 7 1/2% per annum from the date of application till payment. The liability to pay the aforesaid amount shall be same as held by the Tribunal.

18. The appeal stands disposed off accordingly.

19. A copy of this judgment be sent to the trial Court for strict compliance.