
(1993) 09 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 1165 of 1985 and Cross Objection No. 6 - CII of 1986

New India Assurance Company and Another

APPELLANT

Vs

Renu Walia and Another

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1995) ACJ 1128 : (1994) 108 PLR 464

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : L.M. Suri and Arun Kumar, for the Appellant; R.P. Singh Walia, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chaudhary, J.

1.This order will dispose of FAO No. 1165 of 1985 filed by the New India Assurance Co. Ltd., and Cross-Objection No. 6-CII of 1986 filed by Smt. Renu Walia, claimant-Objector the have arisen out of the common award of the Motor Accident Claims, Tribunal, of Kurukshetra.

2. In the appeal, the challenge to the award is that the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal) vide its award dated 27.5.1985 had awarded Rs. 1,43,000/- as compensation to Smt. Renu Walia, under various heads which is on the higher side.

3. In the cross-objection, the plea taken by the claimant-objector is that the Tribunal had not awarded sufficient compensation for the injuries sustained by her. According to the claimant-objector, the Tribunal while awarding compensation had not taken into consideration the nature of injuries, permanent disability suffered by her, expenses incurred on medical treatment, for pain and suffering, loss of enjoyment of life, expenditure to be incurred on future treatment, transport and for general damages. Therefore, the claimant has

prayed for enhancement of the compensation to Rs. 2 lacs from Rs. 1,43,000/-.

4. The brief history of the case which led to the filing of the appeal and cross objection is that Smt. Renu Walia, had filed a claim petition before the Motor Accident Claims Tribunal, Kurukshetra claiming Rs. two lacs, as compensation for the injuries sustained by her in a car accident on 24.2.1984. In the cross-objection, the claimant objector has restricted her claim to Rs. two lacs. However, the Motor Accident Claims Tribunal, vide its award dated 27.5.1985 had awarded a compensation of Rs. 1,43,000/- on various heads which read as under: -

(i) For expenditure incurred Rs. 35,000/- (ii) For future operation Rs. 5,000/- (iii) Amount of medical expenditure to be incurred Rs. 5,000/- (iv) For pain and suffering Rs. 20,000/- (v) For loss of enjoyment of life. Rs. 20,000/- (vi) Expenditure to be incurred on transportation in future Rs. 10,000/- (vii) General damages @ Rs. 250/- P.M. for 16 years Rs. 48,000/- ----- Total:- Rs. 1,43,000/- -----

In addition, the claimant Renu Walia was also awarded interest @ 12% P.A. from the date of claim petition till realisation.

5. The Tribunal came to the conclusion that the accident had taken place due to rash and negligent driving of the driver of Car No. PJU 3107 in which besides the claimant Renu Walia, three other claimants in different claim petitions before the Tribunal, namely Kamaljit Singh, Sarswati Devi and Ved Kumari had also sustained injuries in the said accident. The Tribunal had awarded a sum of Rs. 3,000/- to Kamaljit Singh, Rs. 7000/- to Saraswati Devi and Rs. 5000/- to Ved Kumari as compensation with 12% PA interest from the date of their claim petitions till realisation. The liability to pay compensation was joint and several and respondents No. 1 to 3 were held liable to pay the said compensation. The Tribunal further held that in terms of the Policy of Insurance Exhibit R-2, the liability of the Insurance Company was unlimited as it had undertaken to issue a policy indemnifying Mohan Lal and Company, appellant No. 2, owner of the offending vehicle for unlimited amount.

6. The case of the claimant before the Tribunal was that in the accident, she sustained fracture in the left leg as also a fracture of the femur of the right leg and that she. had also sustained multiple abrasions besides other grievous and simple injuries. It was alleged that a sum of more than Rs. 40,000/- had already been spent on her treatment and that her treatment at that time was continuing. She further alleged that stitches had also been given on her fore-head and that a permanent scar had been left on her fore-head and that due to grafting, her stomach as well as back bone were cut and stitched leaving permanent scars on the stomach. It was also alleged that she had been permanently disabled and could not attend to her daily routine and that her matrimonial life had also been impaired. She had suffered pain both physical and mental and that she was left with no social life, it was also the case of the claimant that she had developed an

inferiority complex as a result of the injuries suffered by her. It was further alleged that she being President of the Lions Club, Ambala City, had been participating in other social activities, but after the accident her life had become dependent upon others and was leading a miserable life. It was also asserted that she had to employ a male servant on a monthly salary of Rs. 500/- and a Teacher for teaching her son who was studying in nursery class and had to pay Rs. 150/-per month to him.

7. In order to substantiate her claim, Renu Walia, claimant, had produced Dr. O.P. Mohindru, who was running a private clinic at Shahbad. This witness while appearing as PW-1 had stated that on 24.2.1984 Renu Walia was brought in injured condition to his hospital and she was given first aid. He further stated that he had charged Rs. 130/- for her treatment.

8. Dr. P.S. Gandhi, PW-1, had stated that on 14.2.1984 Renu Walia was admitted in the Civil Hospital, Ambala City at about 11.20 PM and she had injuries on both the lower limbs and on the scalp. According to this Doctor, There was a fracture of the shaft of the right femur and supra, condylar fracture of the left femur. He further deposed that steinman pins were passed in both the lower limbs and this patient was referred the PGI, Chandigarh on 26.2.1984.

9. The claimant, in support of her claim, had also produced Dr. Vinod Singal. This witness while appearing as PW-4 had stated that Renu Walia was admitted in the PGI, Chandigarh. This witness found following injuries on her person:-

1. Fracture shaft right femur.
2. Commuted fracture lower end of left femur.
3. Fracture left patella.
4. Fracture pubic ramus.
5. Multiple lacerated wounds over the forehead and scalp.

This witness had further stated that on 5.3.1984 open reduction and internal fixation of the fractures of right femur was done and during this operation "K" nail (khotscher Nail) was inserted in the right femur. This Doctor had also deposed that on 14.3.1984 open reduction and internal fixation with plate and screws and bone grafting was done in respect of the fracture of the left femur. According to this witness, the plate and the screws in the left femur were removed on 21.3.1984 and that one screw was still there in the left femur. This witness had also stated that K-nail was also there in the right femur.

The testimony of this witness also reveals that Renu Walia claimant was advised another operation for the removal of the K-nail from the right femur as well as for the removal of the screw from the left femur. This Doctor had clearly stated that die (date which was inserted was imported one and the same must have cost Rs. 3500/- alongwith the screws. The claimant, who was discharged on 3.4.1984, was again admitted in the PGI on 20.7.1984. According to this

witness, Renu Walia claimant was operated upon for the third time and was discharged on 23.7.1984. This witness had further deposed that after two weeks Renu Walia had come to the PGI, Chandigarh for the removal of the stitches. This Doctor had observed the following disabilities:-

1. Limitation of knee movements on right side from 0.20 and beyond restricted.
2. Limitation of knee movements left side from 0.10" beyond restricted.
3. Weakness of left knee muscles by 30%.

According to this Doctor, Renu Walia claimant had suffered disability to the extent of 60.6% in both of her lower limbs. When the claimant was examined by this Doctor on 13.12.1984, she was advised to walk with the help of crutches. As per testimony of this witness, the claimant could not move her right knee beyond 20 degree and her left knee beyond 10 degree. There was also weakness of the left knee muscles to the extent of 30%. This witness had stated in clear terms that since the claimant could not bend her knees, so was difficult for her to sit without the help of an attendant. Even she was not in a position to walk in the house without the help of her crutches. Dr. Vinod Singal (PW-4) had clearly opined that since Renu Walia had suffered multiple fractures, therefore, she was likely to remain in this very condition for the remaining period of her life and there were no chances of recoupment. It is also, revealed from the testimony of this witness that during the period Renu Walia remained admitted in the PGI, she remained in the Private Ward and that no medicine was provided to her by this Institute, and that a sum of Rs. 100/- per day was charged for a private room given to her.

10. In view of the statement of Dr. Vinod Singal (PW-4) this Court has reached the conclusion that Renu Walia claimant, had suffered multiple fractures, she was operated upon thrice in the PGI and had suffered 60.6% permanent disability. Besides paying Rs. 3500/- as the cost of imported plate and screws inserted while doing bone grafting, the claimant had to incur huge expenditure for the purchase of medicines and charges of the private room. Her life has become totally miserable and she will have to lead a handicapped life throughout depending upon others.

11. Taking into consideration the permanent disability, nature of the injuries and expenses incurred on medical treatment, I am of the view that the Tribunal had not awarded adequate compensation to her. In this view of the matter, the claimant deserves higher compensation. As such, the cross-objections are allowed and the cross-objector is awarded Rs. 60,000/- for pain and suffering instead of Rs. 20,000/- as awarded by the Motor Accidents Claims Tribunal, Rs. 10,000/- instead of Rs. 5,000/- which the objector had to incur on future medical treatment and Rs. 60,000/- instead of Rs. 48,000/- as general damages. In other words, the claimant shall be entitled to Rs. 57,000/- in addition to what has been awarded by the Tribunal with 12% interest from the date of the claim petition.

12. The Award of the Motor Accident Claims Tribunal, Kurukshetra, dated 27.5.1985 is modified to the extent indicated above.

13. The appeal of the New India Assurance Co. fails and the same is hereby dismissed.

14. There will, however, be no order as to costs.