
(2000) 02 AHC CK 0154
In the Allahabad High Court
Case No : F.A.F.O. No. 247 of 1984

Oriental Fire and Genl. Ins. Co. Ltd. and Another	APPELLANT
Vs	
V.D. Naithani and Others	RESPONDENT

Date of Decision : 24-02-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (2000) ACJ 939

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : Vineet Saran, for the Appellant; C.D. Bahuguna and L.P. Naithani, for the Respondent

Final Decision : Partly Allowed

Judgement

U.S. Tripathi, J.—The above first appeal from order has been directed against the judgment and order/award dated 19.12.1983 in Motor Accident Claim Case No. 2 of 1979, passed by Motor Accidents Claims Tribunal, Pauri Garhwal Camp at Kotdwara, awarding a sum of Rs. 44,000 (Rupees forty-four thousand) with interest at the rate of 9 per cent per annum from the date of application, i.e., 22.12.1978 up to the date of payment.

2. The respondent No. 1 has also filed cross-objection against the above award for enhancement of compensation.

3. The facts, giving rise to this appeal and cross-objection, briefly narrated were that the respondent No. 1-claimant, V.D. Naithani, aged about 44 years at the time of accident was employed as Sanitary Inspector/Food Inspector at Jahrikhal, District Pauri Garhwal and was getting Rs. 723 per month as his salary. He had also a touring job. On 20.6.1978 he was travelling from Pauri to go to Gumkhal in bus No. UPY 1841 owned by one Harish Prasad Ghildyal respondent No. 2, plying under the control and management of the Garhwal Motor Owners Union Ltd., Kotdwara and was insured with the appellant. When the above bus reached

between Peeplipani and Jwalpa Devi on Pauri-Kotdwara Road at about 4.30 p.m. it met with an accident in which the respondent No. 1 sustained severe injuries in his left leg resulting into fracture of knee-cap, tibia, fibula and other bones besides internal injuries. He was given first aid at the Primary Health Centre, Pattisain and thereafter was admitted in District Hospital, Pauri where he remained from 20.6.1978 to 20.7.78. Having no improvement in his injuries he was shifted to Safdarjung Hospital, New Delhi on 21.7.1978 where under medical advice his left leg was amputated. He remained as indoor patient in the said hospital till 14.10.78. The claimant incurred a sum of Rs. 10,808 towards costs of medicines, costs of conveyance, lodging and boarding, etc. It was also alleged by the claimant that he was to be promoted as Chief Sanitary Inspector, but due to accident and injury in the left leg he would not be getting further promotion in touring job and that he became handicapped and was unable to perform necessary manual work and have to keep attendant for this purpose. He further contended that during remaining 14 years of service he would have been getting promotional job of which he was deprived due to injuries and amputation of left leg and that he also suffered mental and physical pain and developed inferiority complex. On the above allegation the claimant/respondent No. 1 filed claim petition for the recovery of Rs. 1,00,000 as compensation.

4. The petition was contested by the owner and the insurance company besides Garhwal Motor Owners Union. The owner of the bus respondent contended in his written statement that vehicle No. UPY 1841 met with accident due to sudden failure of brakes which was unavoidable and the driver in order to avoid a major accident dashed the vehicle against the rock due to which it overturned on road and in the meanwhile the claimant opened the door of the vehicle and tried to jump out of it and while jumping his leg was pressed in between the door and surface of the vehicle. The claimant sustained injuries due to his negligence and was not entitled to any compensation. The appellant insurance company contested the claim on the ground that the vehicle in question was not insured with it and it was not liable for compensation.

5. The Motor Accidents Claims Tribunal framed necessary issues arising out of pleas of the parties and on considering the evidence of the parties held that it is established that the accident was caused due to rash and negligent driving of the vehicle No. UPY 1841 and the owner of the bus is liable to pay compensation. The claim was not bad for non joinder of the driver of the vehicle. The vehicle in question was insured with the Oriental Fire & Genl. Ins. Co. Ltd., Dehradun since 1960 and for the period of 4.6.1978 to 3.6.1979. It was further held that the claimant proved that he incurred Rs. 9,000 towards medical expenses and was also entitled to Rs. 15,000 towards pecuniary loss and loss of emoluments of service due to his disability as well as Rs. 20,000 as damages on account of amputation of left leg and loss of physical amenities and comforts, in all total amount of Rs. 44,000 (Rupees forty-four thousand) from the insurance company. With these findings he partly allowed the petition for the recovery of Rs. 44,000 along with interest at the rate of 9 per cent per annum from the date of

application up to the date of payment against the insurance company.

6. Aggrieved with the above judgment/ award the insurance company has preferred this appeal and the claimant has preferred cross-objection.

7. Heard Mr. Vineet Saran, the learned counsel for the appellant and Mr. L.P. Naithani assisted by Mr. CD. Bahuguna, learned counsel for claimant/respondent No. 1 and perused the record.

8. It was contended by the learned counsel for the appellant that according to plea set up by the owner of the bus, there was no rashness and negligence on the part of the driver of the bus in question and, therefore, insurance company was not liable for compensation. It may be mentioned at this stage that the owner of the vehicle has not filed any appeal. Only the insurance company has challenged the order of the Tribunal in this appeal. Moreover, it is apparent from the perusal of provisions of Section 96 (2) of the Motor Vehicles Act 1939, which was in force at the time of accident and the decision of the case that the ground for challenge to a claim by the insurer of the vehicle is limited and confined to the matters which are within the purview of Section 96 (2) read with Section 96 (6) of the Act (old Act). Similar would be the position in the appeal against the award as held by Hon"ble Supreme Court in the case of British India Genl. Ins. Co. Ltd. v. Captain Itbar Singh 1958 ACJ 1 (SC). It has also been held by the Division Bench of this court in United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta 1985 ACJ 245 (Allahabad), that in appeal by insurer, plea that in absence of finding by Tribunal as to rash and negligent driving of vehicle he is not liable to pay any amount, cannot be raised by the insurer. Therefore, the insurance company appellant cannot raise this plea.

9. Moreover, in this case, there is specific finding of the Tribunal that accident took place due to rash and negligent act of the driver of the bus. There was also evidence of respondent No. 1 in this regard. Having gone through the above evidence I find that the finding regarding rash and negligence of the driver of the bus recorded by the Tribunal is correct.

10. The next point raised by the learned counsel for the appellant was that quantum of compensation awarded by the Tribunal was without any evidence as there was no evidence on record to show that the claimant/respondent No. 1 spent a sum of Rs. 9,000 in medical expenses and there was also no evidence about the physical and mental pain regarding which the Tribunal awarded a sum of Rs. 20,000. This point has also no force, as the claimant/ respondent No. 1 has stated that he spent a sum of Rs. 10,000 in the treatment of his injury. He also stated that he claimed Rs. 50,000 (Rs. fifty thousand) towards physical pain and mental agony.

11. The learned counsel for the claimant-respondent No. 1 further contended that the insurance company cannot raise any argument regarding quantum of compensation. In support of his above contention, he placed reliance on case law in Indian Mercantile Insurance Co. Ltd. v. Chamla Devi 1980 ACJ 169 (P&H) and

Raddipalli Chinnarao v. Reddi Lorurdu 1980 ACJ 470 (AP). The liability of insurance company is to indemnify the liability of owner. The defences, which can be raised by the insurance company are contained in Section 96 of Motor Vehicles Act 1939. The insurance company, therefore, cannot challenge the quantum. Moreover, in this case, Tribunal had assessed the compensation on the basis of evidence on record, though it has been challenged by claimant in the cross-objection. Therefore, above contention of the learned counsel for the appellant has also no force.

12. The learned counsel for claimant-respondent No. 1 in support of the cross-objection of the claimant, contended that considering the nature of injuries, which the claimant sustained in the accident, in which his left leg was amputated and he was deprived of his promotion and considering the area in which the claimant resides, his life became miserable because of loss of one leg. The learned counsel for the claimant-respondent No. 1 further contended that in the case of Jitendra Singh Vs. Islam and Others, , Rajasthan High Court enhanced the award from Rs. 54,000 to Rs. 3,04,000 in the case in which there was injury on the leg of the claimant and his left leg was amputated and in other case of Dr. B.D. Bagri Vs. Daulat Ram and Others, , in which the claimant sustained injury on the leg and right leg was amputated from below the knee, Punjab and Haryana High Court awarded compensation of Rs. 2,00,000. Having considered the nature of injuries and evidence on record, I find that the compensation awarded by the Tribunal was less.

13. The following observation of the Hon'ble Supreme Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , is to be taken into consideration while awarding compensation payable to the victim of an accident:

Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

14. In this case the claimant has stated that he spent Rs. 10,000 towards

medical expenses. The Tribunal awarded Rs. 9,000 as damages by way of medical expenses. It is in the evidence of claimant that he was treated in District Hospital, Pauri and thereafter he took treatment in Safdarjung Hospital, New Delhi where his left leg was amputated and artificial leg was provided. In such treatment the damages towards medical expenses should not be less than Rs. 10,000 as stated by the claimant.

15. The claimant further stated that he suffered physical pain, mental agony and loss of normal walk in hill area where he resided and claimed Rs. 50,000 towards physical pain, mental agony and discomfort. The Tribunal awarded only a sum of Rs. 20,000 towards physical pain, mental agony and discomfort and on account of amputation of left leg and the loss of physical amenities and comforts. The claimant was serving on the post of Sanitary Inspector and had some status in society. Considering the nature of injuries, pain and suffering stated by the claimant the claim of Rs. 50,000 cannot be said to be excessive and Tribunal wrongly reduced compensation on this score to Rs. 20,000.

16. The claimant has also stated that due to injury he suffered pecuniary damages and the loss of emolument in service due to his disability. He further stated that due to above injuries he could not be promoted and suffered loss of Rs. 200 per month as his emoluments. It is not clear from the evidence of the claimant on which date the promotion of the claimant was due, of which he was deprived and what was the salary of promotional post. In the absence of such evidence and details I find that Rs. 15,000 awarded by the Tribunal towards pecuniary damages appears reasonable.

17. In this way the reasonable compensation would have been as follows:

(1) Towards medical expenses Rs. 10,000 (2) Towards physical pain, discomfort and mental agony Rs. 50,000 (3) Towards loss of pecuniary damages Rs. 15,000 _____ Total Rs. 75,000

(Rupees seventy-five thousand only)

Therefore, the quantum of compensation is to be enhanced accordingly.

18. The liability of insurance company is up to Rs. 50,000 (Rupees fifty thousand only) and the amount exceeding Rs. 50,000 is liable to be paid by owner of the vehicle respondent No. 2.

19. In view of the above discussion and observations, I find that the appeal filed by appellant has no force and is liable to be dismissed, while cross-objection is to be partly allowed and the total compensation to the claimant be enhanced to Rs. 75,000, (Rupees seventy-five thousand only) from Rs. 44,000 (Rupees forty-four thousand).

20. The appeal is, accordingly, dismissed. The cross-objection is partly allowed. The compensation awarded to the claimant is enhanced from Rs. 44,000 (Rupees forty-four thousand only) to Rs. 75,000 (Rupees seventy-five thousand only).

Out of the above compensation the insurance company shall be liable to pay Rs. 50,000 (Rupees fifty thousand only) and the remaining compensation shall be paid by the owner of the vehicle respondent No. 2. It is made clear that on the above compensation the claimant is also entitled to interest at the rate and from the date as awarded by the Tribunal.