
(2012) 08 P&H CK 0192
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 951 of 2009

Oriental Insurance Company Ltd.

APPELLANT

Vs

Gurdev Singh and others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Constitution of India, 1950 — Article 141, 21
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2012) 168 PLR 531 : (2013) 2 RCR(Civil) 611

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; Kunal Garg, Amicus curiae, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The appellant-Insurance Company has preferred this appeal against the award dated 20.11.2008, passed by the learned Motor Accident Claims Tribunal, Panchkula, (for short, "the Tribunal"). The brief facts of the case in hand are that on 20.4.2000, the claimant-appellant, Gurdev Singh, was travelling on a scooter bearing registration No. HR-01-E0084, being driven by the driver-respondent No. 1. When they reached at a distance of about 1 k.m. from Saket Hospital, Chandimandir, a truck came from the opposite direction, hit the scooter and fled away from the spot. As a result of the accident, the claimant suffered simple and grievous injuries on his body. He was removed to the Government Medical College & Hospital, Sector 32, Chandigarh. FIR No. 59 dated 24.4.2000 was registered at Police Station, Chandimandir.

2. In this background, the injured-claimant preferred claim petition before the learned Tribunal seeking compensation. From the pleadings of the parties, the following issues were framed:-

1. Whether the accident in question had taken place on account of rash and

negligent driving of Scooter bearing registration No. HR-01-E-0084 by respondent No. 1? OPP

2. If issue no. 1 is proved, whether the claimant received injuries in the said accident, if so, to what amount of compensation he is entitled to and from whom? OPP

3. Whether the vehicle in question was being driven by respondent no. 1 without a valid and effective driving licence in violation of the terms and conditions of insurance policy? OPR-3

4. Relief.

3. After appreciating the evidence led by the parties, the learned Tribunal recorded issue-wise findings and allowed the claim petition by awarding compensation of Rs. 4,63,400/- to the claimant. Hence, the present appeal by the Insurance Company for reduction of amount of compensation.

4. Learned counsel for the appellant states that the amount of compensation awarded u/s 163-A of the Act has to be assessed as per the structured formula or in the alternative on the basis of no fault liability payable under the provisions of the Act. In support of his submissions, he placed reliance on Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala (SC) Law Finder Doc Id 14494. Learned counsel further submitted that the compensation cannot be awarded beyond what is prescribed u/s 163-A of the Act.

Heard.

5. In the instant case, the claimant-respondent suffered injuries on his left leg resulting into amputation up to the middle thigh. He suffered permanent disability. In view of the nature of disability suffered by the claimant, the amount of compensation awarded by the Ld. Tribunal though appears to be little more than what could have been as per the structured formula, but in view of the totality of the facts and circumstances of the case, it is not so. The structured formula is not a cast iron straight jacket formula. It is one of the efficacious mode to provide relief to the victim of accidents. The facts of each case need to be examined in the light of surrounding circumstances. Formula is meant only to assess fair and adequate compensation and, if it appears to the court from the peculiar facts and circumstances of the case that an additional amount of compensation is to be awarded, the same cannot be denied for the reason that the relief sought in the claim petition is not provided in the formula. Such an approach will be contrary to purpose and object of this welfare Act. The scheme of awarding compensation is not a static concept. The scheme being systematic mechanism to adequately compensate the claimant/victim is always in action aimed at to rehabilitate the victim and to compensate him in the manner so that his day-to-day life is not affected and mobility is not restricted and affords him to live with dignity.

6. The question that arose for consideration of this Court is two fold:-

(i) Whether the amount already awarded is on the higher side;

(ii) Whether without raising claim for enhancement by the claimant, a further enhancement can be made in a petition filed by the Insurance Company for curtailing the benefit already granted to the claimant.

7. The first question, as to whether the awarded compensation is already on the higher side, has to be answered not only with reference to the structured compensation, which is awarded u/s 163-A read with 2nd Schedule of the Motor Vehicle Act, but also the context in which such compensation is assessed i.e. the peculiar facts and circumstances which make up the factual matrix of the case in hand.

8. The first issue in this regard that needs to be addressed is whether the formula given in 2nd Schedule of the Motor Vehicle Act is sacrosanct, such that no deviation is possible from it. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Hon"ble Supreme Court, while discussing the provision of deducting compulsory and uniform 1/3rd deduction towards personal expenses for death cases falling u/s 163-A, observed that the same is in the nature of a guideline. In a later judgment delivered by the Hon"ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, the Hon"ble Supreme Court has exhaustively discussed the principles underlying the assessment of compensation in injury cases especially with reference to the effect of disability on earning capacity of the injured/claimant. After laying down detailed principles for determining the compensation to be assessed by the Court in injury cases, in para 21 of the said judgment the Hon"ble Court observes that in case of a claim u/s 163-A i.e. for injury cases, "...the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation...". The use of the word "May" by the Hon"ble Apex Court shows that applicability of 2nd Schedule to cases filed u/s 163-A is not circumscribed by the limits laid down therein. In the opinion/understanding of this Court, the effect of the use of the word "May" is that the Courts can supplement 2nd schedule in matters on which it is silent i.e. through the principles as laid down in Raj Kumar's case (supra). In this regard, observations of the Hon"ble Apex Court In Para 5 Raj Kumar's judgment (supra) are most relevant, and are reproduced as under:

5. The provision of the Motor Vehicles Act 1988 (the Act, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make the good the loss suffered as a result of the wrong done as far as money can do so, in a fair, reasonable and equitable manner.

The Court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. A person

is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned, [see C.K. Subramania Iyer v. T. Kunhikuttan Nair, R.D. Hattangadi v. Pest Control (India) Ltd. And Baker v. Willoughby].

9. The above referred decisions of the Hon''ble Supreme Court, in the opinion of this Court, take into account the socio-economic dynamics of our society, thereby permitting a deviation from the 2nd schedule, as and when found necessary by the appropriate court to advance the cause of justice.

10. Further, in the landmark judgment of Sarla Verma (supra), apart from the issues of multiplier, personal deduction and income assessment in case of a deceased (for cases falling u/s 166 of the Motor Vehicle Act), the Hon''ble Apex Court was pleased to lay down certain parameters for awarding compensation under conventional heads like funeral expenses, loss of consortium/estate, transportation and medical expenses (incurred if any before death occurred). If we were to compare the quantum of compensation for loss of consortium as given in 2nd schedule with the quantum as laid down in Sarla Verma, we would find that there is an appreciable difference between the two i.e. Rs. 5000/ Rs. 2000/- under the 2nd schedule and Rs. 20000/ Rs. 10,000/- in Sarla Verma's case. The question that instantly crops up is as to how fair is it to award loss of consortium on a lower scale in cases falling u/s 163-A. One can understand a fixed income assessment on a structured basis as a quid pro quo for doing away with the need to prove negligence on the part of the claimants but it is hard to fathom the logic of a differential quantum qua the conventional heads like loss of consortium, only on the basis that proceedings have been preferred u/s 163-A and Section 166. Can it be argued or held that loss of consortium will be less for a family member if he files a claim u/s 163-A, but will automatically become higher in case the claim is filed u/s 166 or the case filed u/s 163-A itself is converted into one u/s 166?. This would be absolute mockery of justice dispensing process. The same goes true for funeral expenses and for medical expenses also.

11. u/s 163-A, the medical expenses actually incurred i.e. supported by medical vouchers, have been restricted to Rs. 15000/-, whereas, there is no such restriction laid down in Sarla Verma's case wherein the medical expenses have been held to be claimable in case the deceased was actually given medical help before death with no pre-set limits. Going a bit further, notice can be taken of the fact that since the year of insertion of section 163-A (in 1994) and 2nd schedule in the Motor Vehicles Act, the same has not been amended even once till date, and this despite the observation of the Hon''ble Supreme Court in Sarla Verma's decision that there is discrepancy in the multiplier applied u/s 163-A. The Court can take judicial notice of the fact that inflation/price escalation in all

spheres of life has touched unprecedented heights. What could be stated to be a reasonable amount of compensation in 1994, say for funeral expenses (Rs. 2000/-), is not valid for the present in view of the price escalation during the interregnum period.

12. Statutory law has remained static, caught in a time wrap but the Hon"ble Supreme Court has consistently been evolving the law relating to motor accident compensation in the broadest manner possible, keeping in mind that the provisions of Motor Vehicle Act relating to compensation in accidental death/injury cases, are in the nature of social welfare legislation which makes it imperative for the Courts to pass on the benefit of such provisions, as much as can be permitted through judicial interpretation.

13. There can be no doubt about the fact that the decision of Hon"ble the Supreme Court in Sarla Verma's case and Raj Kumar's case is covered in the broad sweep of Article 141 of the Constitution of India. It would therefore be appropriate to hold that the decisions of the Hon"ble Supreme Court in Sarla Verma's and Raj Kumars cases can be suitably applied even in cases falling u/s 163-A, and 2nd schedule of the Motor Vehicle Act is not a watertight compartment. Consequently, it would be appropriate to hold that in so far as the limits of conventional heads in the 2nd Schedule has no co-relation with the benefit granted u/s 163-A i.e. of the need to do away with proving negligence, a deviation may be made in assessing/awarding compensation under the heads medical expenses, funeral expenses, loss of consortium/loss of estate. In this regard courts can resort to the ratio of the decisions of the Hon"ble Supreme Court in Sarla Verma (supra) and Raj Kumar (supra) which, as already stated above, is the law of the land.

14. There is still another reason as to why the provisions of 2nd Schedule may prove to be inadequate in certain situations, while assessing fair compensation in injury cases. For example, a person suffers a head injury in a motor vehicular accident and as a result of such injury, he losses effective control over his legs and/or hands though strictly speaking, there is no disability in the legs or hands of the claimant. In such a situation, reference to the Schedule of the Workmen Compensation Act for assessing the loss of earning capacity/disability will prove to be futile in as much as the Schedule of said Act does not mention head injury at all. In such a situation, is the claimant left with no remedy even though he has suffered grievous injuries in the accident? Obviously, law cannot and should not fail a genuine claimant and hence, judicial interpretation assumes utmost significance.

15. Accordingly, even in cases filed u/s 163-A of the Motor Vehicle Act, where the claimant has been injured e.g. amputation of leg in the present case, the Courts can go beyond the pre-set limit of Rs. 15000 for medical expenses imposed by 2nd schedule. Medical expenses would not only be restricted to immediate and urgent medical attention as such an interpretation would be restrictive/retroactive and not in consonance with the spirit of the welfare legislation.

Medical expenses must include, keeping in mind the nature of injury suffered, provision for all such expenses as have to be reasonably incurred or can be expected to be incurred to enable the injured claimant to stand back on his feet and lead a normal life, wherein, he can not only go about his daily personal routine but also lead a productive life so as to be able to support himself and/or his dependent family members financially, physically as well as psychologically. Suffice to say that such a right of the injured claimant is a right to live with dignity, a right which is implicit in Article 21 of the Constitution of India.

16. In so far as the second question is concerned i.e. authority/power of this Court to enhance the compensation in an appeal preferred by the Insurance Company for reduction on the compensation awarded by the Ld. MACT, Learned Amicus Curiae forcefully submits that the salutary provision as contained in Order 41 Rule 33 of the CPC comes to the rescue of the Appellate court which vests the Appellate Court with the sufficient powers to do substantial justice between parties, irrespective of which party has actually approached the Appellate Court. Order 41 Rule 33 is reproduced as under:-

33. Power of Court to appeal-The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection {and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees}:

[provided that the Appellate Court shall not make any order u/s 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

17. Referring to the aforesaid provision, Learned Amicus argued that a careful perusal of the reproduced Rule clearly brings out the scope of authority of Appellate Court which is to consider advancing the cause of justice and not be bogged down by the fact as to who has approached the Court. He concludes by stating that there is no bar on the Appellate Court to return a finding which is in favour of the Respondent/s even though he/they has/have not approached the court with a prayer for the same.

18. As a corollary of the above discussion on the two questions raised in this Appeal, this Court has no hesitation in holding that there is no infirmity in the judgment of the Ld. MACT even though it has exceeded the quantum of compensation as fixed by the 2nd Schedule of the Motor Vehicle Act. Further, it is also held that this Court has the statutory powers to enhance the compensation in an appeal which is preferred not by the claimants but by the Insurance

Company praying therein for reduction in the compensation already awarded by the Id. MACT.

19. Consequently, keeping in mind the fact in the present case that the claimant/respondent's left leg had to be amputated (as a result of the injuries sustained in the accident), this Court is inclined to enhance the compensation already awarded to enable the Respondent/claimant to get fixed an artificial limb on his left leg/knee so as to enable him to lead a normal life, as much as may be possible through the use of such an artificial limb.. Learned Amicus Sh. Kunal Garg was directed to enquire from reliable sources as to the expected cost of an artificial limb in the present case and also the life span of such an artificial limb. After making due inquiries from Saket Hospital, Sector 1, Panchkula as also on the internet, Ld. Amicus has submitted that the artificial limb (of reasonable quality) in the present case would cost about Rs. 20,000/- and the life span of the same is about five years. Therefore, the compensation awarded to the claimant/Respondent is enhanced by Rs. 40,000/- half of which shall be utilized by the claimant to purchase an artificial limb and the remaining half shall be deposited in a fixed deposit which shall be used by the claimant/Respondent to purchase a new artificial limb when the life of the artificial limb that he purchases now is used up. The interest accrued in the fixed deposit shall take care of the price escalation in the cost of the artificial limb. The Respondent claimant is also directed to supply a copy of the purchase receipt of the artificial limb to the Regional office of the Appellant Insurance Company, situated in Chandigarh, Haryana or Delhi, as the case may be. In view of the above, this appeal is dismissed.