
(2003) 02 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 538 of 1992 and Cross Objection No. 64-CII of 1992

The New India Assurance Company Limited

APPELLANT

Vs

Dalip Singh @ Dalip Kumar and Another

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 168
Workmens Compensation Act, 1923 — Section 4

Citation : (2004) ACJ 313 : (2003) 135 PLR 141 : (2004) 1 RCR(Civil) 404

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; R.S. Sangwan, for the Respondent

Judgement

H.S. Bedi, J.—Dalip Singh, was the driver of truck No. RSE-6381, which was involved in an accident with another vehicle, whose identity could not be ascertained, at about 11.30 P.M. on March 29, 1990. He accordingly filed a claim petition for grant of compensation on account of injuries suffered by him, including loss of income as well as money spent on his medical treatment. The owner of the truck, Hira Lal Saini (respondent No. 2), did not contest the claim. The Insurance Company, however, pleaded that it was not liable to pay any amount and raised several pleas in this regard including the plea that as the claimant himself was the driver of the truck, no claim for compensation lay under the Motor Vehicles Act and the claim ought to have been made under the Workmen's Compensation Act.

2. On the pleadings of the parties, the following issues were framed:-

1. Whether the claimant sustained injuries due to rash and negligent driving of truck No. RSE-6381 by respondent No. 1 of his driver if so its effect?
2. What amount of compensation the claimant is entitled and from whom?
3. Whether the Insurance Company is absolved from its Liability to pay the

amount?

4. Relief.

3. Under issue No. 2, the Tribunal held that as per provisions of Section 140 of the Motor Vehicles Act, 1988 (hereinafter called as the "Act") the claimant was entitled to the payment of Rs. 15,000/- by way of no fault liability". The Tribunal also held that the claimant was entitled to compensation for the injuries sustained by him as per the schedule given in the Act and as the disability suffered by him was to the extent of 50% only, the amount of compensation as worked out u/s 4 of the Workmen Compensation, Act, was payable. The Tribunal further observed that a sum of Rs. 53,820/- spent by the claimant towards his medical expenses was to be reimbursed to him and accordingly made an award of Rs. 1,18,820/- alongwith interest in his favour. The present appeal has been filed by the Insurance Company, whereas cross-objections have been preferred by the claimant.

4. Mr. L.M. Suri, the learned senior counsel appearing for the appellant has argued that as per the provisions of the Workmen's Compensation Act, the amount of the no fault liability of Rs. 15,000/- as well as the medical expenses of Rs. 53,820/-, which had been awarded to the claimant, was not awardable as the Compensation Act itself precluded a claimant from seeking compensation u/s 140 of the Act and as such, the award of the Tribunal in so far as it had chosen to grant the compensation under both the statutes was not in order.

5. Mr. R.S. Sangwan, the learned counsel appearing for the claimant has, however, controverted the stand taken by Mr. Suri and has argued that as per the provisions of Section 167 of the Act, it was open to the Tribunal to grant compensation for injuries suffered as this matter was to be read into the provisions of the Compensation Act,

6. I have heard the learned counsel for the parties and have gone through the evidence with their assistance.

7. It would be seen from a bare reading of Section 168 of the Act that the Tribunal is competent to make an award of the amount of compensation which appears to it to be just, meaning thereby, that it is open for the Tribunal to fix the various heads under which compensation was to be awarded, which was to represent an amount which was proved to be just. On the other hand, Section 4 of the Compensation Act read alongwith the schedule clearly specifies the amount of compensation payable for death and injuries and there is no provision authorising the authority/Court to grant such compensation as it considers just under the circumstances. It is, therefore, obvious that no option has been left before the competent authority under the Compensation Act. To my mind, therefore, the amount of Rs. 53,820/- given by way of compensation for injuries and Rs. 15,000/- under the no fault liability clause under the Act by the Tribunal was not justified.

8. Mr. Sangwan has then argued that as per the finding of the Tribunal, compensation payable for the kind of injuries suffered by the claimant was Rs. 1,07,640/-, but as the disability of the claimant had been assessed at 50% half of the amount has been ordered. He had urged that this finding was erroneous as it had come in the evidence of Dr. M.R. Sapra (PW-5), who had examined and treated the claimant and had found injuries on the right side of the chest, fracture of the ribs, a tear of the right lobe of the liver and haemorrhagic shock and that he had been initially operated upon twice and discharged but on account of complications had been operated upon a third time on 17.6.1990 and that his disability had been assessed at 50%, though it had been opined that he would henceforth not be able to drive a heavy vehicle but at best could do sedentary work. It is true that as per the assessment made by the doctor, the disability of the claimant has been assessed at 50%, but to my mind, the vocation of the claimant is a factor which must also to be taken into account as the doctor has found that the claimant, who was a driver by vocation, would henceforth be unable to drive a heavy vehicle and he had been left fit for a sedentary job. Judicial notice can be taken of the fact that jobs are hard to come by and it is more than likely that he would be unqualified to hold a sedentary job. The disability must, therefore, be assessed at 100%. To my mind, therefore, the Tribunal was in error in granting only a sum of Rs. 53,820/- by way of compensation. The claimant is, thus, held entitled to the full sum of Rs. 1,07,640/- as being disabled to the extent of 100% keeping in view his vocation. He shall have his interest as determined by the Tribunal. The claimant would, however, be not entitled to any amount under no fault liability clause or expenses incurred on medical treatment. The appeal and the cross-objections are disposed of in the above terms. The amount of the award shall be paid to the claimant within a period of four months from the date that a certified copy of this judgment is supplied to the parties. Dasti.