

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.149, CO No.177 & 204
of 2001

Decided on: March 30, 2007

Jagteshwar P. Singh

.....Appellant.

VERSUS

Ram Dhan and others

.....Respondents.

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The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Bhupender Gupta, Senior Advocate, with Ms Charu Gupta, Advocate.

For the Respondents : Mr. Naveen Bhardwaj, Advocate, for respondent No.1.

None for respondent No.2.

Mr. K.D. Sood, Advocate, for respondent No.3.

Surjit Singh, Judge (Oral)

This judgment is to dispose of the appeal and the cross-objections, particulars of which are mentioned hereinabove, because all of them arise out of the same award of the Motor Accident Claims Tribunal.

2. Relevant facts may be noticed first. Shri Jagteshwar P Singh appellant, hereinafter called claimant, sustained injuries in an accident, involving truck No.HP-24-2713 owned by Ram Dhan, respondent No.2, and driven by Prem Sagar, respondent No.1. The truck was insured with New Indian Assurance Company, respondent No.3. It was alleged that the accident took place due to rash or negligent driving of the said truck by respondent Prem Sagar and that, as a result of that accident, claimant

Whether the reporters of the local papers may be allowed to see the Judgment?

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sustained multiple injuries, including dislocation and fracture of hip joint, fracture of ankle joint, comminuted fractures and some other fractures and dislocations, a head injury and a number of lacerated wounds and abrasions. The claimant was stated to be 63 years of age and employed in USA, earning \$1,00,000/- per annum. The injuries were stated to have resulted in permanent disability affecting the earning capacity of the claimant. A sum of Rs.6,31,710.54p was alleged to have been spent on medical treatment and Rs.29,970/- on traveling in connection with the treatment. Total loss of Rs.33,00,000/- was alleged to have been sustained, on account of absence from duty owing to the injuries. A sum of Rs.40,00,000/- was claimed on account of permanent disability. A total sum of Rs.1,03,61,680.54p was claimed as compensation. It was not denied by the insurer that the vehicle was insured with it but it was alleged that the driver was drunk at the time of the occurrence of the accident and, hence, it was not liable to indemnify the insured. The insured denied that the accident took place due to rash or negligent driving of the truck. Driver himself did not file any reply. The Tribunal concluded that the accident had taken place because of the rash or negligent driving of the truck. It did not accept the plea of the insurer that the driver of the truck was drunk. Claimant was held entitled to a sum of Rs.1,75,000/- by way of compensation. The Tribunal, however, did not specify the compensation awarded under various heads nor did it give any indication as to how it had worked out the compensation at Rs.1,75,000/-.

3. The claimant is aggrieved by the quantum of compensation awarded. According to him, the compensation is too meagre.

4. The Insurance Company has filed Cross-Objections, i.e. CO No.204 of 2001. It is aggrieved by the finding that it is liable to pay the compensation by way of indemnification of the insured, on account of its having failed to prove its plea that the driver was drunk and thus there was

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breach of condition of the policy. The insured has also filed Cross-objections, i.e. CO No.177 of 2001. His grievance is with regard to the finding of the Tribunal that the accident took place because of rash or negligent driving of the vehicle.

5. I have heard the learned counsel for the parties and perused the record.

6. Admittedly, the claimant was 63 years of age at the time when the accident took place. There is no evidence in support of the claimant's plea that he had been employed in America on annual salary of \$1,00,000/- However, looking to the social status of the claimant, it can legitimately be presumed that his earnings must have been quite handsome. So, it is held that he is entitled to a sum of Rs.1,00,000/-, on account of actual loss of earnings and future loss of earnings, in view of the fact that there is a disability certificate indicating that injuries have resulted in 25% disability, though it is not specified in the certificate whether the disability is permanent or temporary. Looking to the injuries, particularly the dislocation and fracture of hip joint, fracture of ankle joint, comminuted fractures as also the fact that the injuries have resulted in disability to the extent of 25%, the claimant deserves to be suitably compensated, on account of pain, suffering and loss of amenities of life. A sum of Rs.1,00,000/- should be just and reasonable compensation on this count. There are vouchers on record, which prove that a sum of Rs.1,31,615/- had been spent on medical treatment. The claimant is awarded this amount on account of medical expenses. The claimant got himself treated at Delhi, though he is resident of Solan. Therefore, it can legitimately be presumed that a sum of Rs.15,000/- was spent on traveling of the claimant and his attendants in connection with the treatment at Delhi. Thus, the total amount to which the claimant is entitled comes to Rs.3,46,615/-.

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7. Now coming to the Cross-Objections, i.e. CO No.204 of 2001, filed by the Insurance Company, the evidence on record does not sufficiently prove that the driver was intoxicated to an extent that he was not in a position to drive safely. Hence, the Objections filed by the Insurance Company are rejected.

8. Insured's contention in the Cross-Objections is that the accident had not taken place on account of rash or negligent driving of the truck. The evidence on record, which has been taken into account by the Tribunal, proves beyond doubt that the accident took place because of rash or negligent driving of the truck. Hence, the Cross-Objections filed by the insured are also held to be without merit.

9. In view of the above discussion and findings, appeal filed by the claimant is accepted and he is awarded a sum of Rs.3,46,615/- by way of compensation, together with interest @ 9% per annum from the date of the accident to the date of the payment of the aforesaid amount of compensation, instead of an amount of Rs.1,75,000/- with interest @ 12% per annum, as awarded by the Tribunal. Cross-Objections filed by the Insurance Company and the insured are dismissed.

March 30, 2007_(sd)

**(Surjit Singh)
Judge.**