

(2013) 07 P&H CK 0857

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO NO. 6767 of 2011 and Cross-objections No. 11-CII of 2012

National Insurance Co. Ltd.

APPELLANT

Vs

Vaneet Kumar and Others

RESPONDENT

Date of Decision: July 31, 2013

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: Gopal Mittal, for the Appellant; Rakesh Gupta, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

This appeal by National Insurance Company Limited, the insurer and cross-objection by Vaneet Kumar, respondent no. 1 are directed against the award dated 18.08.2011 passed by learned Motor Accidents Claims Tribunal, Patiala (for short "the Tribunal"). Vaneet Kumar, the cross-objector has been the claimant before the Tribunal. He sought compensation for the damage suffered by his TATA Indigo car bearing registration No. PB-11AE-1967 in a road side accident that took place on 20.05.2008. The claim petition brought by Vaneet Kumar u/s 166 of the Motor Vehicles Act, 1988 has been allowed vide award dated 18.08.2011 awarding a sum of Rs. 1,50,000/- as compensation to the claimant with interest @ 6% per annum from the date of filing of petition till the date of realization thereof. While the insurer seeks reduction of the amount of compensation, the claimant seeks its enhancement. The facts relevant to the question in controversy are that the car has been 2005 model. It was totally damaged in the accident. By the total damage of the car, the claimant was left without vehicle as he had no money to purchase another vehicle.

2. The claim-petition has been resisted by the respondents, who have not only denied the accident to have occurred on account of rash and negligent driving of vehicle No. PB-12H-7757 but have also denied the particulars about the vehicle as well as the claim of the claimant.

3. Taking into account the evidence coming on record, learned Tribunal assessed a sum of Rs. 1,50,000/- as compensation in favour of the claimant.

4. Learned counsel for the appellant has contended that the vehicle was stated to have been lying with M/s. Deli Motor Garage at Bahadurgarh in Fatehgarh Sahib District. He has further contended that the insurance company applied for permission to get the car surveyed. In this regard respondent No. 3 deputed K.P.S. Oberoi, Surveyor and Loss Assessor to inspect the vehicle in the presence of the claimant. According to him, the vehicle was not available there and K.P.S. Oberoi, RW-1 was informed by the owner of the workshop that the claimant had sold the damaged vehicle which was got repaired by the purchaser and the vehicle was not available with him. He has further submitted that the vehicle was, thus, repairable and was sold by the claimant and, therefore, he was not entitled to Rs. 1,50,000/- also. He has also referred to the statements of Rajesh Kumar Mangla, CW-1, a Surveyor and Loss Assessor as well as Deputy Singh Mann, CW-2, Works Manager and has submitted that their reports were not acceptable. Referring this court to the statement of Vaneet Kumar it is contended that the car was of the year 2005 and was purchased by the claimant in the year 2008 and as stated by him that the new car was of the price of 4 or 5 lacs, so the old car was not of this price even and, therefore, the Tribunal has awarded compensation on a higher side.

5. Learned counsel for respondent no. 1-cross objector has submitted that the car was totally damaged. He drew attention of the Court to the photographs of the car Ex. C-3 to Ex. C-14 and has submitted that the car was totally damaged. He has also drawn attention of the Court to Ex. C-2, the assessment made by R.K. Mangla for the loss suffered by the car.

6. R.K. Mangla vide Ex. C-2 has estimated the loss at Rs. 4,97,682/-. The car was of the year 2005. It was a second hand car purchased by Vaneet Kumar. He has not come out with the amount for which he purchased this car. However, he has admitted that the value of the car on the date of his appearance in the court could be 2 or 2-1/2 lacs. A car, the original price of which, as stated by Vaneet Kumar, was four or five lacs cannot be said to be a case of loss in a sum of rupees near five lacs after three years of its purchase. Therefore, the estimate prepared by R.K. Mangla cannot be accepted.

7. Now a question arises as to whether it is a case of total loss of the car or partial loss. It cannot be taken from the facts that the claimant has sold the car and the same has been got repaired by the purchaser that it was not a case of total loss. In a case of total loss the vehicle can be got repaired and used. Ex. C-3 to Ex. C-14 clearly

show that it was a case of complete loss of engine as well as complete loss of front portion as well as the body of the car. So it was a case of near complete loss.

8. Even if it is taken that the value of the new car was four or five lacs, still the amount of Rs. 1,50,000/- as compensation is on lower side. Taking it as a case of near complete loss, I hold that a sum of Rs. 2,00,000/- could be just and proper compensation to compensate the loss suffered by Vaneet Kumar in the accident. In these circumstances, the appeal fails and is dismissed. The cross objections, on the other hand, succeed and are allowed enhancing the compensation from Rs. 1,50,000/- to Rs. 2,00,000/-, which shall be payable to the claimant-cross-objector by the appellant with interest @ 6% per annum from the date of filing the petition till the date of realization thereof.