

(2010) 04 P&H CK 0480

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No"s. 566-567 of 2004

New India Assurance Company
Ltd.

APPELLANT

Vs

Sajjan Kumar and Others

RESPONDENT

Date of Decision: April 26, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A , 164, 165, 166

Citation: (2010) 159 PLR 804 : (2011) 1 TAC 482

Hon'ble Judges: K.C. Puri, J

Bench: Single Bench

Judgement

K.C. Puri, J.

By this common order I intend to dispose of FAO No. 566 of 2004 titled as New India Assurance Company Ltd. v. Sajjan Kumar and Ors. and No. 567 of 2004 New India Assurance Company Ltd v. Sunil Kumar and Ors. as these appeals arise out of the same award and incident. These appeals have been directed by the appellant against the award dated 27.10.2003 passed by learned Motor Accident Claims Tribunal, Bhiwani for setting aside the same and the appellant be absolved from the liability. The facts are being taken from FAO No. 566 of 2004.

2. Briefly, it is alleged that on 26.11.1998 at about 3.00 a.m., Sunil Kumar (petitioner) accompanied by Sajjan Kumar was traveling in Maruti Car (Esteem) bearing registration No. HR-16A-5842 and they were on their journey from Bhiwani to Dadri. Sajjan Kumar was driving the said car whereas Sunil Kumar was sitting along with on the front seat. When the car reached near village Kitlana, all of a sudden, a "Neel Cow" came near and in front of car from the side of village Kitlana. Sajjan Kumar tried to save the "Neel Cow" and the vehicle and in that process, the vehicle became uncontrolled so Sajjan Kumar applied brakes and then the vehicle turned turtle. Both the petitioners received serious injuries in the said accident and further car was also damaged in toto. Since, the petitioners became unconscious, they were

taken to General Hospital, Charkhi Dadri and after giving first aid, both of them were referred to PGI MS Rohtak for treatment. In the meantime and immediately after the accident, relatives of both the injured received information and instead of taking Sajjan Kumar to PGI MS Rohtak, he was got admitted in Chadha Nursing Home, Rohtak, where he remained admitted and got treatment for substantial period. It is further pleaded that Sajjan Kumar had received grievous injuries on his person in the said accident and for treatment of said injuries he has already incurred several lacs of rupees. Sajjan Kumar was aged about 30 years at the time of accident and he was earning a sum of Rs. 8000/- per month at the relevant time by doing business in Dadri. Petitioner Sajjan Kumar has claimed compensation amounting to Rs. 8,00,000/- along with interest @ 18% per annum on account of injuries suffered by him in the accident.

3. Petitioner- Sunil Kumar was admitted in PGI MS Rohtak but finding no effective treatment there, he was got discharged and then taken to Apollo Hospital, New Delhi, where he was treated for substantial period. Since, Sunil Kumar sustained grievous injuries on his person in the said accident and for treatment of said injuries he has already incurred a sum of Rs. 10,00,000/-. Sunil Kumar was aged about 30 years at the time of accident and he was earning a sum of Rs. 10,000/- per month at the relevant time by doing business in Dadri. Petitioner Sunil Kumar has claimed compensation amounting to Rs. 15,00,000/- along with interest @ 18% per annum on account of injuries suffered by him in the accident.

4. On notice, respondent No. 1, put in appearance in court and filed written statement wherein preliminary objections inter alia of wrong statement of facts, locus standi, cause of action, maintainability of petition, nonjoinder of necessary parties and misjoinder of parties, absence of privity of contract between the parties, breach of specified condition of the insurance policy as the driver of the car was not having valid and effective driving licence at the time of alleged accident, collusion between the petitioner and respondent No. 2, mala fide on the part of petitioners and claim petition being vague and incomplete have been taken.

5. On merits, it is alleged that no such alleged accident took place with Maruti Car (Esteem) insured with the answering respondent. It is further contended that even otherwise, petitioners were traveling in the car unauthorisedly and without any authority as the car was insured for private use only and not meant for passengers. The answering . respondent prayed for dismissal of the claim petition. Respondent No. 2 did not appear despite service. Respondent No. 3 filed separate written statement and took up preliminary objections inter alia of wrong statement of facts, maintainability of petition, cause of action and nonjoinder of necessary party.

6. On merits, it is contended that respondent has no concern whatsoever with the accident in question. The answering respondent was only the Financier of the vehicle in question i.e. car No. HR-16A-5842, no liability could be fastened upon the said respondent. In this manner, respondent No. 3 has categorically denied the

claim of the petitioners and prayed for dismissal of petitions with costs.

7. Following issues were framed:

1. Whether the accident in question had taken place on 26.11.1998 while driving car bearing No. HR-16A/5842 wherein petitioners had suffered multiple injuries on their persons? OPA. 2. To what amount of compensation, if any, the petitioners are entitled to and if any, if so from whom? OPP.

3. Whether respondents are not liable to pay any compensation in view of preliminary objections raised by them in their respective written statements ?OPR.

4. Relief.

8. The parties have led their respective evidence on the aforesaid issues. The Tribunal, after appraisal of the evidence and after hearing learned Counsel for the parties, awarded Rs. 2,86,710/- as compensation to the claimant-Sajjan Kumar whereas Rs. 3,46,063/- to claimant Sunil Kumar along with interest @ 9% per annum from the date of filing the petition till its realization. The respondents No. 1 to 3 were held liable to pay the compensation amount.

9. Feeling dis-satisfied with the aforesaid award, appellant-New India Assurance Company Ltd. has filed the instant appeals.

10.I have heard the learned Counsel for the parties and have gone thorough the records of the case. Learned Counsel for the appellant has submitted that claim petition u/s 163-A of the Act is not maintainable inasmuch as both Sajjan Singh and Sunil Kumar have claimed their income more than Rs. 40,000/- per year. Sajjan Singh has claimed his income as Rs. 8000/- per month whereas Sunil Kumar has claimed his income as Rs. 10,000/-. So, the claim petition is not maintainable.

11. To support this contention, learned Counsel for the Insurance Company has relied upon authority Gurmeet Singh v. Chandigarh Transport Undertaking and Ors. (2007)146 PLR 574, Oriental Insurance Company Ltd. v. Bimla Devi Rani and Ors. 2008 ACJ 181 (Himachal Pradesh High Court), Ram Sarup v. Lakhpat Singh and Ors. (2009 153 PLR 633. [National Insurance Company Vs. Annie Varkey and Others](#), Punjab and Haryana High Court, [Haseena Sulthana and Others Vs. National Thermal Power Corporation Limited and Another](#), (Andhra Pradesh High Court) and [Chandra Singh and Another Vs. Gayatri Devi and Another](#), .

12. In reply to the above noted submissions, learned Counsels for the claimants has submitted that the Division Bench of Punjab and Haryana High Court in authority Oriental Insurance Co. Ltd v. Smt. Saroj and Ors. (2007) 145 PLR 602, has held that where the income of the deceased was set up for more than Rs. 40,000/- per annum but if his income is found to be below Rs. 40,000/- the claim petition u/s 163-A of the Act is maintainable. ,

13. In the following authorities the various High Court have held that the claimant can restrict the income to Rs. 40,000/- per annum, so as to claim compensation u/s 163-A of the Act.

(1) [The New India Assurance Co. Ltd. Vs. Sri Abdul Bhasheer @ Basheer and Others](#), .

(2) Naresh Kumar v. Vikas Rathi and Ors. 2009(1) AICJ 67 (Punjab and Haryana);

(4) [Rukmani Devi Vs. New India Assurance Co. Ltd. and Another](#),

14. In authority Ravinder and Anr. v. Subhash Chand and Ors. 2006(2) RCR (Civil) 525 (Punjab and Haryana) this Court allowed the amendment to convert the petition u/s 166 to 163-A of the Act by restricting the income of Rs. 40,000/- per annum. I have given my thoughtful consideration to the submissions made by both the learned Counsel for the parties and have gone through the records of the case.

15. All the above mentioned authorities relied upon by the learned Counsel for the appellant have been handed down by Single Bench of this Court and other High Courts. In authorities relied upon by the learned Counsel for the respondents, it has been held by this Court and Single Bench of various other High Courts that claim petition u/s 163-A of the Act, is maintainable, if the income is found to be less than Rs. 40,000/- per annum or the claimant restricted his income to the extent of Rs. 40,000/- per annum. The Division Bench of Punjab and Haryana High Court, which would prevail upon all other Single Bench judgments. In authority Oriental Insurance Co. Ltd. v. Smt. Saroj and Ors." case (supra) it has been held that where the income by the claimant is pleaded more than Rs. 40,000/- per annum but the same was found to be Rs. 40,000/- by the Tribunal, in that case, the claim petition u/s 163-A of the Act is maintainable.

. 16. Learned Counsel for the appellant has further submitted that the amount in respect of Rs. 2,86,170/- has been allowed to Sajjan Kumar, the detailed of which is as under:

1. Amount spent on medicines Rs. 1,15,310/-

2. Conveyance charges Rs. 56,400/-

3. Special diet Rs. 3,000/-

4. On account of pain & sufferings Rs. 10,000/-

5. On account of permanent disability Rs. 1,02,000/-

17. It has been further submitted that the present claim petition has been filed u/s 163-A of the Act. The amount of compensation can only be granted within para-meter of Section 163-A of the Act.

18. It has been further contended that amount of Rs. 56,400/- in respect of conveyance charges and Rs. 3000/- in respect of special diet cannot at all be

granted. The amount granted on account of pain and suffering as per the provisions of Section 163-A of the Act can be restricted to the claimant to the tune of Rs. 5000/-.

19. I have carefully considered the said submissions. The said arguments carries weight and has to be accepted. As per Clause 4 of the act an amount of Rs. 5000/- can only be granted for pain and suffering whereas the Tribunal has granted an amount of Rs. 10,000/-. It is nowhere mentioned that claimant is entitled to claim Rs. 56,400/- in respect of conveyance charges and Rs. 3000/- in respect of special diet.

20. Section 163-A of the Act is a special provisions and the amount of compensation can be granted within the para-meter of Section 163-A of the Act. So, in these circumstances, the Tribunal has granted Rs. 64,400/- in excess. The details of which is as under

1. Conveyance charges Rs. 56,400/-
2. Special diet Rs. 3,000/-
3. On account of pain & sufferings Rs. 5,000/-

So, in these circumstances, claimant Sajjan Kumar is held entitled to claim Rs. 2,20,310/- instead of Rs. 2,86,710/- allowed by the Tribunal. The appeal of the Insurance Company regarding FAO No. 566 of 2004 is partly accepted to that extent.

21. The Tribunal has granted an amount of Rs. 36,200/- to Sunil Kumar regarding conveyance charges Rs. 3000/- on account of special diet and Rs. 10,000/- in respect of pain and sufferings. Sunil Kumar is held not entitled to claim Rs. 36,200/- in respect of conveyance charges, Rs. 3000/- in respect of special diet and Rs. 5000/- in respect of pain and sufferings.

So, the appeal qua Sunil Kumar stands accepted to the extent of Rs. 44,200/-, the detailed of which is given as under:

1. Conveyance charges Rs. 36,400/-
2. Special diet Rs. 3,000/-
3. On account of pain & sufferings Rs. 5,000/-

So, Sunil Kumar is held entitled to claim Rs. 3,01,863/- in stead of Rs. 3,46,063/- awarded by the Tribunal. The appeal qua Sunil Kumar stands also partly accepted to that extent. A copy of this judgment be sent to the trial Court for strict compliance.