IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3351 of 2002
Date of Decision.11.03.2014

Satwant Kaur and others .....Appellants

Versus

Sher Singh and others .....Respondents

Present: Mr. Ashok Goel, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J.

I. The case that required straight forward adjudication.

1. The appeal is for enhancement of claim for compensation at the instance of the claimants for death of a male aged 33 years who was a teacher employed in a government school earning ₹ 5529. The claimants were widow, two daughters, son and mother of the deceased. I had directed the appellants to make a proposal for settlement on the lines of compensation regime laid down by the Supreme Court in ***Sarala Verma v DTC (2009) 6 SCC 121*** and ***Reshma Kumari v Madan Mohan (2013) 9 SCC 65***. The insurance company has shown utter insensitivity to the directions and would not come up with response to the proposal given by the insurer. Making a provision for 50% increase as the prospect of increase, deducting ¼ th amount for personal expenses and applying a multiplier of 16, the loss of dependence shall be (5916 x 12 x 16) ₹

11,35,872. The appellants have proposed a further amount of ₹ 20,000 for damage to the vehicle, ₹1,00,000 for loss of love and affection for children and ₹ 50,000 for loss of consortium and ₹ 10,000 towards funeral expenses. The total amount assessed as payable on the date of petition is ₹ 13,15,872.

II. The conduct of the insurer before this court

2. The insurance company has been grossly unfair to force an adjudication to be made when the scales proposed are as per the established principles of the Supreme Court decisions. It can be noticed that there is a general upward trend in maintaining compensation amounts by the supreme court and the suggestions have been that courts shall not be niggardly in awarding compensation. Not to be equated as a lottery, when the scales proposed are even less than what the Supreme Court has suggested (in ***Vimal Kanwar v Kishore Dhan (2013) 7 SCC 476*** the suggestion was ₹ 2 lacs for loss of love and affection and ₹ 1 lac for loss of consortium), the insurance company must act with grace and not waste the time of the court and defy the court to pass any order it pleased.

3. In the proposal, the appellants have sought for interest at 12% citing the judgment of the Supreme Court in ***Puttamma and others v K L Narayana Reddy in 2014(1) RCR (civil) 443***. The case was of the year 1998 and if the compensation would have settled immediately after filing the petition or anytime soon thereafter, the claimants would have had the benefit of the amount for all these years. A proper rate of interest depending on the rate which the banks provide for the number of years of deposit between the date of petition to the date when award

is passed could be the rate of interest. If the award is delayed by an uncooperative attitude of the insurer or through deliberately false and evasive denials of the insurer, as I have found in this case, interest could be at 12% p.a.

4. I accordingly allow for 12% interest on the additional amount and direct that the payment is distributed equally among the claimants. I impose costs of ₹25,000 against the insurer.

III. Judicial discourse that has become inevitable

5. This judgment is practically concluded in the first two paragraphs. A modest discourse is however undertaken, for charting out a procedure for being followed for efficacious disposal of all cases relating to motor accidents. This incidentally will explain as to how the briefest mode of disposal is possible with minimum judicial time lost.

IV. Identifying the malady and administering correctives

(i) To parties: Negotiate; do not litigate in motor accident cases where motor accident particulars are well established

6. We have come by a sad spectacle of over nearly 40000 cases that are required to be disposed of between the years 1985 till date, out of which 20,000 cases require adjudication only on issues of quantum in the high court only. Every case that is disposed of on contest by a Motor Accidents Claims Tribunal is not really disposed off. It gets lodged in a higher forum for further adjudication either for reduction or enhancement of compensation. Unless parties negotiate and settle for what are normatively established as scales of compensation, there shall be no end to litigations. With enormous strain on courts, litigations shall be confined to where courts' forensic skills are required to be employed

for appraisal of evidence, where there exists a point of law to be established on the issue of liability or when a disputed question of fact of involvement of the vehicle is put to test. When the accident is admitted, when the age of the deceased is known and the relationship of the claimants is not denied, there is simply no justification to expect the Tribunal to go through the whole gamut of a litigative process.

(ii) To the insurer: Take responsible defences. Make genuine attempts to gather particulars and settle the claims

7. The problem is worst confounded at the trial by irresponsible defences taken by the insurance company in the written statement merely denying all the obvious facts: such as, the accident did not take place, the vehicle is not insured, the driver did not have a driving licence; the claimants are not legal representatives. I have examined the defence in this case. The owner and driver have admitted the accident but have only contended that there no negligence in driving. The insurer's statement is utterly irresponsible making bare denials of insurance, the driving licence and every conceivable defence to deny liability. The insurer has wanted to contend that the DL was forged. The Tribunal however found that the owner has acted bona fide on the licence produced by the driver and has found that there was no breach of terms of policy. The Tribunal has found the liability as established and there is no appeal by the insurer on the liability assessed by it. When the matter was referred to Lok Adalat, the insurance company has again contended that the liability cast on the insurer was erroneous and has defied it for a return to court for consideration of the case on merits. At least before this court, when the

court directed the insurer again to negotiate for a settlement, it must have acted with responsibility to push for settlement of the amount as per the parameters laid down through decisions. I had given time by more than 4 weeks to settle the issue on the basis of the known parameters of determining compensation. There is simply no justification for dragging its feet.

(iii) To Police and the Tribunal: Procedure established under s 158(6) MV Act ought not to be missed

8. Take this straight forward case requiring compensation. The accident has taken place on 9.12.1998. The police does not appear to have followed the mandate of s. 158(6) of M.V.Act. The procedure has been laid down fixing responsibility to police, the insurer and the registers to be maintained by the Tribunal in ***Jai Prakash v National Insurance Company (2010) 2 SCC 607***. The statutory change has come about in 1989. The section has not been seen by the police or the insurer or even the tribunal. It has taken 2 years before the Tribunal for rendering its adjudication. Now more than 13 years to reach this court for final adjudication. In this period, again consider the further misfortunes. The original papers got burnt and papers were required to be reconstructed. The matter went to Lok Adalat with two High Court judges (retired) who have attempted to settle the matter. The insurance company has pleaded the issue of liability, even though it did not prefer an appeal or cross objection denying liability as assessed by the award. Every one of the procedures for quick adjudication has been missed.

(iv) To the Tribunal: adopt simple procedures at trial

9. The Tribunal has assessed compensation and adopted

multiplier, multiplicand and conventional heads, all of which are against established decisions of the Supreme Court. The Tribunal shall flag the various actions that it shall take to ensure the motor accident cases do not get to be another genre of litigation that requires an adversarial approach.

(a) Work in close tandem with Legal Services Authority operating in the District or Sub division to ensure a coordinated effort of the police, insurer and the court staff that proper records are maintained to register motor accident cases and provide legal assistance to litigants wherever needed.

(b) Do not rush the case for trial; ensure that it is put through any of the formulations of s.89 CPC for settlement. Lok Adalat is the forum of best choice.

(c) If the trial grapples with the issue of denial of accident or insurance or DL, play a pro-active role. Use s.165 Evidence Act to gather every information through every witness who can help the tribunal gather facts. Secure best information through police on the involvement of the vehicle or otherwise and ensure appropriate criminal proceeding for non-insurance and driving without valid DL.

(d) Elicit from doctors proper evidence of disability, in all injury cases, and how the disability could impact, long term or short term, the earning capacity.

(e) Do not summon doctors, hospital authorities or court ahlmad for production and proof of MLR, FIR or documents filed in criminal courts. Get certified copies of documents from criminal courts or copies certified as true under the seal of the investigating officer and allow for exhibiting them as evidence through any of the claimants.

(f) Impose costs when the defence regarding involvement of the vehicle is found to be false. The costs shall be realistic: time taken, the number of hearings that have taken place, the expenses that could have been incurred to secure the presence of witness and logistic expenses from the place of residence of witnesses to the court (See ***Salem Advocate Bar Association, Tamil Nadu v Union of India 2005(6) SCC 344)***.

V. <u>To Tribunal: Write short judgements and use templates:</u>

- First Para: Pleadings of respective parties.
- Second Para: Finding on negligence/ involvement of vehicle
- Third Para: Finding on liability of insurer
- Determining compensation:

In fatal accident: Preparation of table

	Date of accident	
Age of deceased:		
Occupation		
Claimants:		
	Heads of claim	**Tribunal**
Sl No		Amount (Rs)
1	Income	
2	Add, % of Increase 30%/ 50%	
3	Deduction 1/2, 1/3, 1/4, 1/5	
4	Multiplicand (annualized)	
5	Multiplier	
6	Loss of dependence	
7	Medical expenses	
8	Loss of Consortium	
9	Loss of love and affection for minor children	
10	Loss to estate	
11	Funeral Expenses	
12	**Total**	

- Direct investment of the amount awarded over a period of time in a nationalized bank or public securities for widow and minor children. Secure all investment avenues through legal service authorities from the banker and give the option to parties to choose from. Release amount to parents without directing any deposit.

VI. <u>Reminders of missed opportunities</u>

Missed opportunity- 1: The motor vehicles Act contains s 158(6) that sets out a procedure for the police to report about the accident to the Tribunal and forward a filled in form containing the details of the accident for compensation. The insurer was entitled to be informed about the accident and it should have made its proper verifications about the insurance policy and the DL particulars. This was not

followed.

Missed opportunity – 2: The insurer could have, before filing the statement verified the details of accident from the police, collected details and taken responsible defences from the insured. After all, the insured is not a stranger. He has supplied the business to the insurer. It is imperative that that the time when it canvasses its insurance business of solicitation, it gathers details of the driver (more particularly when the vehicle insured is a transport vehicle) and the driving licence particulars. It should make a random check with the DL particulars of the insured's drivers now and then, verify for genuineness of DL particulars and call upon the insured to make cross verification, if it comes by doubts about the genuineness of the DL, a procedure that has been advocated by the Supreme Court in ***Pepsu Road Transport Corporation v National Insurance Co (2013) 10 SCC 217***.

Missed opportunity – 3: The case could have been settled through Lok Adalat and not allowed for interest to accumulate which has in this case totaled more than the principal amount determined- a sheer waste of public money; an adversarial approach that has consumed a decade and half. With every passing year, there are new theories, higher rate of interest, higher compensation, a needless uncertainty to the liability that could leave the insurer gasping for inability to budget for their likely liabilities.

VII. Disposition

10. Here, then is the lesson for the insurer to learn; a costly exercise that it may seem. No litigant is an adversary to court. This judgment is not to punish the insurer. It is a reminder to do what it has failed to do. It is a call to the police to punctiliously follow s 158(6) Motor Vehicles Act on pain of being punished for contempt if it fails to follow the dictum of the Supreme Court in ***Jai Prakash (supra)***. An exhortation to Tribunals to do what is efficacious. To the claimants negotiate and settle on known parameters.

(K. KANNAN)
JUDGE

March 11, 2014
Pankaj*

To Registry: (not to be published). Despatch the order copy by email to all MACTs, Director General of Police, Punjab, Haryana and Chandigarh.