

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 6175 of 2015(O&M)

Date of Decision: September 18 , 2015.

United India Insurance Company Ltd. APPELLANT (s)

Versus

Dheeraj Gulati and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Suman Jain, Advocate
for the appellant.

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

LISA GILL, J.

United India Insurance Company Limited has preferred this appeal impugning award dated 10.07.2015 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as, the 'Tribunal').

Appellant – Insurance Company challenges the quantum of compensation awarded to claimant-respondent No.1, Dheeraj Gulati on account of the injuries suffered by the said respondent in a motor vehicular accident which took place on 25.11.2013.

Factual matrix of the case is that, a claim petition under Sections 166/140 of the Motor Vehicles Act, 1988 was preferred by the injured-

respondent No.1 claiming that he alongwith Shrikant, Manminder, Ankush and Anuj Gupta had gone to Paonta Sahib in car No. HR02-AC-8744. They were returning to Yamuna Nagar on 25.11.2013. Anuj Gupta was driving the said car in a rash and negligent manner. Claimant as well as the other occupants had asked him many times to drive carefully but to no avail. When they were just ahead of Tajewala Check-Post in the area of Khizrabad at about 10.30 p.m., the said car struck against a tree and fell into a ditch. Due to the said impact, all the occupants sustained grievous injuries. Shrikant, Manminder, Ankush and Anuj Gupta died and claimant sustained fractures on his both legs, right arm and injuries on chest, head and other parts of the body. He was taken to Civil Hospital, Yamuna Nagar and then referred to PGI, Chandigarh. He remained admitted in PGI, Chandigarh till 03.12.2013. Iron rods were inserted in both his legs but the bones were not united and fixator is still present on his right leg. DDR dated 26.11.2013 was registered at Police Station Khizrabad on the statement of father of Anuj Gupta. Claimant averred to be a mason (Rajmistri) doing the work of Plaster of Paris (POP) etc. earning ₹15,000/- per month. He was aged 22 years at the time of accident.

Claim was resisted by the respondents and the following issues were framed by the Tribunal:-

- “1. Whether the accident in question allegedly resulting into injuries to claimant Dheeraj Gulati in the road side accident, which took place on 25.11.2013, due to rash and negligent driving of car bearing registration No.HR02-AC-8744 by respondent No.1? OPP
2. If issue no.1 is proved, what amount of compensation the claimant is entitled to and from whom? OPP

3. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy? If so, to what effect? OPR-3
4. Relief.”

Learned Tribunal on appreciation of the evidence on record concluded that the accident in question took place due to the rash and negligent driving of offending vehicle by Anuj Gupta (since deceased).

Learned Tribunal while considering the fact that claimant suffered 30% disability, awarded a total sum of ₹6,44,942/- detail of which is as under:-

Medicines, hospitalization etc.	:	₹2,33,902/-
30% permanent disability	:	₹3,11,040/-
Pain and suffering	:	₹30,000/-
Transportation, Special diet etc.	:	₹20,000/-
Loss of amenities of life	:	₹50,000/-
Total	:	₹6,44,942/-

Learned counsel for appellant-Insurance Company vehemently argues that learned Tribunal has wrongly assessed the permanent disability of the claimant to be 30%. He refers to the statement of PW6 Dr. Dipender Sandhu, Medical Officer, Civil Hospital, Yamuna Nagar to submit that it was a temporary disability of 30% which the claimant had suffered and the same could have reduced to 5% after union of the fracture.

Said argument of learned counsel for the appellant is clearly misconceived on a bare perusal of the statement of PW6 Dr. Dipender Sandhu as well as the Disability Certificate, Ex.P33. It is apparent that the claimant suffered not only 30% temporary disability but 30% permanent disability as well. This fact is clearly mentioned in Disability Certificate dated 03.12.2014,

photocopy of which has been produced in Court. Testimony of PW6 Dr. Dipender Sandhu also reflects the same position. PW6 Dr. Dipender Sandhu has specifically stated as under:-

“Stated that on 03.12.2014, patient name Dheeraj son of Vinod Kumar, aged 23 years had appeared before the medical board for assessment of his disability. After clinical and radiological examination patient had found 30% permanent disability and 30% temporary disability on account of operated case of right side infected non-union femur fracture, right side lateral condylar femur fracture, left side malunited tibia fracture, right side distal radial fracture, restricted left knee and right list movement, stiff right knee movement with external fixator institu, reassessment recommended after a period of 8 months. The abovesaid disability whole body disability, not the particular limb. Disability certificate is Ex.P33.

The above named patient admitted in our hospital on 06.06.14 to 02.09.14, the patient again admitted on 10.10.14 to 11.10.14 and thereafter patient admitted on 18.10.14 to 21.01.15.”

Therefore, reference to the temporary disability of 30% which may have reduced, is clearly untenable. Learned Tribunal has specifically awarded the compensation on account of the 30% permanent disability suffered by the claimant. Learned counsel for the appellant is unable to point out any evidence on record which warrants reduction of the compensation so awarded.

It is argued that there is no evidence on record to prove that the accident in question took place due to the rash and negligent driving of the offending vehicle by Anuj Gupta (since deceased). Even an FIR was not registered in this case which goes to show that no such accident had in fact taken place on account of the rash and negligent driving of the abovesaid person.

However, this argument is not borne out from the evidence on record. DDR dated 26.11.2013 registered at Police Station Khizrabad on the basis of statement of one Subhash Gupta cannot be of any avail to the appellants. Said Subhash Gupta has not been examined to prove that accident did not occur due to rash and negligent driving by Ankur Gupta. There is no evidence on record to refute the evidence on record in the shape of the testimony of the claimant Dheeraj Gupta himself as well as the medical evidence to indicate to the contrary. Dheeraj Gupta was an occupant of the ill-fated car. He has clearly stated that on gaining consciousness, he called his family members who reached the spot. Police also arrived there and he was taken to the hospital. Contention that he never regained consciousness to have been able to make the call, therefore his version should be rejected, is unacceptable in the facts and circumstances of the case.

It is a settled position that registration of FIR is not a *sine qua non* for proving the negligence in such cases. It has been held by the Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others, 2011(2) RCR (Civil) 153** that in cases under this Act, it is the touchstone of preponderance of probabilities on which the case of the claimants has to be tested. There should not be insistence on proof beyond reasonable doubt as in criminal cases. Claimants have succeeded in establishing the occurrence of the accident in question involving the offending vehicle being driven by respondent No.2. Learned counsel is unable to point out any evidence to prove to the contrary.

No other argument has been raised.

Learned counsel is unable to point out any illegality, infirmity or

perversity in the impugned award dated 10.07.2015 passed by learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri which would warrant interference by this Court.

Consequently being devoid of any merit, this appeal is dismissed.

September 18 , 2015.
'om'

(LISA GILL)
JUDGE