IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7140 of 2015 (O&M)
Date of decision: November 19, 2015

Shriram General Insurance Company Limited
...Appellant

Versus

Raghbir Singh and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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?**

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

K. KANNAN, J. (Oral)

CM No. 22557 CII of 2015

For the reasons stated in the application, delay of 2 days in filing the appeal is condoned.

Main case

1. The appeal is by the insurance company raising a dispute about the involvement of the insured vehicle and questioning the quantum as assessed by the Tribunal.

2. The accident took place on 27.12.2011 when the claimant, who is a milkman, was hit by the 1st respondent by his negligent conduct in driving the insured vehicle with the 2nd respondent. A FIR had been lodged on 5.1.2012 and the contention was that there had been a delay of more than

9 days in filing the FIR and, therefore, accident could not be true. The Tribunal relied on the evidence of the claimant himself by the fact that a criminal case had been registered and the 1st respondent who was facing a criminal trial has not even stepped into the witness box to deny the fact. The Tribunal drew an adverse inference by non-examination of the 1st respondent. Unless there was a case of collusion between the driver and the owner on one hand and the claimants on the other hand, the insurer ought to have produced the driver to give his own version about the non-involvement of the vehicle. If such evidence was not made available, the Tribunal would be fully competent to rely on criminal court record and on the version of the injured claimant to make the owner and driver primarily liable. I, therefore, discard the argument made by the learned counsel that the accident had not been proved.

3. Even as regards the quantum, the learned counsel directed his attention only to the loss of amenities that has been assessed for 30% disability of fracture of femur. According to him, a Division Bench of this court had provided for only Rs. 2,000/- for percentage of disability. Since 30% disability was qua the limb, the assessment for the whole body must have been taken merely at 15% and at best not more than 30,000/- rupees could have been awarded.

4. I discard the above argument also as pedestrian and does not accord with the scientific principle of assessment brought by the judgment of the Supreme Court in Raj Kumar Versus Ajay Kumar (2011) 1 SCC 343, where need to discard an approximation of compensation at the rate of percentage and move towards better tools of assessment. An injury that

caused a fracture and a mal-union that established a functional disability at 30% will have to be assessed from the point of view of how the disability has impacted an impairment of the earning skills. The loss of earning capacity itself is an independent head of claim recognized under the Motor Vehicle Act. A mal-union on any bone that caused a functional disability would impair amenities of life like, ability to walk, squat, run etc. While an approximation of loss of amenities by reckoning it in terms of financial equivalent by any equal percentage will be appropriate, the Tribunal has not even assessed the loss of earning capacity that could have ensued. There ought to be an assessment of loss of income that has been occasioned when the claimant had taken treatment. The Tribunal has not made assessment for loss of income that has arisen from the date of the accident till he was fully recovered. Considering that the overall assessment is Rs. 2 lakhs that includes Rs. 90,000/- as loss of amenities, it would make up for the failure of the Tribunal to address two of the other heads which have been outlined above. On overall consideration, I would find the assessment is just and I will make no intervention. The appeal by the insurer is accordingly dismissed.

5. The amount deposited by the insurance company at the time of preferring the appeal is ordered to be remitted to the credit of the case before the Tribunal for being released to the claimant in part satisfaction of the award.

6. The appeal is dismissed.

November 19, 2015 **(K.KANNAN)**
prem **JUDGE**