IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

XOBJC-63-CII of 2012 in/&
FAO No. 5314 of 2011 (O&M)
Date of Decision : 23.08.2016

Ajit Singh ....Appellant

Versus

Nirmal Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Arora, Advocate
for the appellant.

None for respondents no. 1 and 2.

Mr. Paul S. Saini, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimant-appellant seeking enhancement of compensation for the injuries suffered by him on 11.06.2009 in a motor vehicle accident with vehicle bearing registration HP-64-1819 (later referred to as 'the offending vehicle'), which hit Mahindra Pick-up bearing registration no. PB-65-G-7321, being driven by claimant-appellant. As a result of accident, claimant and one Pawan Kumar, co-passenger with claimant in his vehicle, received serious injuries. Claimant was taken to Government Medical College and Hospital, Sector 32, Chandigarh, where he was operated and a rod was inserted in his right knee. He was discharged on 14.06.2009. Thereafter, he remained under follow-up treatment for about three months. Claimant alleged that he spent ₹1 lac on his treatment. He was 45 years of age and was working as driver with M/s Singh Electrical, Ramgarh and was getting monthly salary of ₹5000/-. Due to accident he could not work for one year and remained unemployed.

2. The Tribunal allowed compensation of ₹23,996/- to claimant, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Hospitalization, pain and suffering	₹3000
(ii)	Special diet	₹2000
(iii)	Transportation expenses	₹1000
(iv)	Bills of purchase of medicines and investigation expenses	₹7996
(v)	Compensation for 5% disability	₹10000
	Total	**₹23996**

3. In appeal, New India Assurance Co. Ltd., insurer of the offending vehicle, filed cross-objections with the plea that driver of the offending vehicle was not holding a valid driving licence, as such, insurer cannot be burdened to pay amount of compensation.

4. I have heard learned counsel for parties and perused the paper-book and record of the Tribunal with their assistance.

5. Learned counsel for the appellant has argued that claimant remained admitted in hospital for four days. He was a driver by profession. Due to fracture injuries, he could not attend his job for a considerable period as he remained confined to bed. Even thereafter, he was not in a position to drive the vehicle and remained without job for one year. His permanent disability has made him unfit to drive the vehicle. The Tribunal has not allowed any compensation for loss of income, future medical expenses and compensation allowed by the Tribunal towards pain and

suffering, nutritious diet and transportation expenses is also on lower side.

6. Learned counsel for respondent no. 3-Insurance Company has argued that the Tribunal has allowed compensation as per evidence on record which calls for no enhancement. He has further argued that driver of the offending vehicle was not possessing driving licence at the time of accident. This fact was proved by calling Ahlmad of the Court where challan in case bearing FIR No. 85 of 2009, Police Station Pinjore was presented. This witness has stated that on file of the criminal case, there was no driving licence of respondent no. 1-Nirmal Singh. This proves that Nirmal Singh was not possessing any driving licence at the time of accident, as such, insurer is entitled to recover amount of compensation paid to claimant from owner of offending vehicle.

7. Firstly, I take submissions of learned counsel for respondent no. 3-cross-objector, seeking right to recover amount of compensation from owner of the offending vehicle. Under Section 149 (2) (a) of the Motor Vehicles Act (later referred to as 'the Act'), defence was available to Insurance Company to avoid its liability to pay amount of compensation by proving that insured has breached terms and conditions of insurance policy. Onus to prove this fact is heavily on the insurer. The Tribunal in this case had framed issue no. 3, which reads as follows:-

> *"3. Whether respondent no. 1 was not holding a valid and effective driving licence on the date of accident, if so to what effect? OPR-3."*

8. Owner and driver of the offending vehicle were proceeded *ex parte*. Insurer summoned the file of criminal case where police had not

taken into possession driving licence of respondent no. 1-Nirmal Singh, driver of the offending vehicle. Question, which arises for consideration, is as to whether a finding can be recorded that driver of the offending vehicle was not possessing a valid driving licence on the date of accident on the mere ground that police had not taken the same into possession. Investigating Officer of criminal case was not examined to prove that he had asked driver to produce his driving licence but he was not possessing the same. In the absence of any evidence that driving licence of respondent no. 1 was not valid, no such finding can be recorded just on presumption or assumption. Section 134 (c) of the Act requires that owner of the offending vehicle while giving intimation regarding accident, supply required documents including driving licence of driver of vehicle to the insurance company. In this case, the insurer has not taken any plea in written statement that insured has not complied with provisions of Section 134 (C) of the Act. In the absence of any plea, it will not be appropriate to discuss the effect of non-compliance of provisions of Section 134 (c) of the Act.

9. In view of discussion above, submissions of learned counsel for respondent no. 3-cross-objector is found devoid of any merit and is discarded.

10. Claimant examined PW-2 Dr. Rohit Jindal, Assistant Professor, Orthopaedic, who was a member of medical board that issued disability certificate to claimant has stated that there was mild restriction of knee movement as claimant was an operated case of fracture right patella and his physical disability was assessed as 5% (permanent). The disability certificate (Ex. P-2) was also signed by him as member of the medical

board.

11. Claimant after the accident remained admitted in hospital for four days. He was operated and a rod was inserted in his leg. Usually a fracture injury takes 6 to 12 weeks to heal. Claimant, who was a driver, could not drive the vehicle at least for a period of three months due to fracture injuries suffered by him. Income of claimant at the time of accident can be very well taken as ₹5000/- per month and loss of income during the period he remained under treatment, is assessed as ₹15,000/-. Claimant has proved his medical bills to the tune of 7996/- (Ex. P-4 to Ex. P-14). He is also allowed compensation of ₹3000/- for attendant charges. Amount of compensation awarded towards transportation is also enhanced from ₹1000/- to ₹3000/- as claimant required transportation while going to hospital for follow up. Compensation awarded by the Tribunal towards special/nutritious diet is enhanced from ₹2000/- to ₹5000/- and towards and towards pain and suffering from ₹3000/- to ₹5000/-. 5% disability suffered by claimant is quite insignificant, which was due to mild restriction of knee movement, as such, compensation on this score allowed by the Tribunal calls for no enhancement. There is no evidence that disability suffered by claimant in any manner has effected his future earning capacity or has resulted in loss of income to him.

12. In view of my above discussion, compensation to which claimant is entitled is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Compensation for 5% permanent disability as assessed by the Tribunal	₹10000

(ii)	Medical expenses (as already awarded by the Tribunal)	₹7996
(iii)	Hospitalization, pain and suffering	₹5000
(iv)	Special/nutritious diet	₹5000
(v)	Loss of earning during treatment @ ₹5000/- per month for three months	₹15000
(vi)	Expenses of attendant	₹3000
(vii)	Transportation charges	₹3000
Total		**₹48996 (rounded off to ₹49000)**

13. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimant is enhanced from ₹23,996/- to ₹49,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the compensation amount in bank account of claimant or pay the same to him through demand drafts.

14. Cross-objections filed by respondent no. 3-Insurance Company are dismissed.

August 23, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*