

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1651 of 2014 (O&M)
Date of Decision : 28.09.2016

Reliance General Insurance Company Ltd.Appellant

Versus

Sunil Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjeev Kodan, Advocate
for the appellant-Insurance Company.

Mr. Chander Shekhar Singal, Advocate
for Mr. Vikrant Hooda, Advocate
for respondent no. 1.

Surinder Gupta, J.

This is appeal by Reliance General Insurance Co. Ltd. insurer of the motor vehicle bearing registration no. HR-46-B-5647 (later referred to as 'the offending vehicle') which was found involved in the accident that took place on 25.08.2011 wherein respondent no. 1-Sunil Kumar suffered injuries and was awarded compensation of ₹10 lacs for the injuries sustained by him.

2. Case of claimant, in brief, is that on 25.08.2011 at about 09.00 a.m., he alongwith his uncle Vidya Nand was standing near road in front of gate of N.T.P.C. Jharli and was waiting for the vehicle. The offending vehicle came from Sasroli side and was being driven by respondent no. 2-Manbir in a rash and negligent manner, which dashed into claimant, who sustained grievous injuries on his right hand, right hip and chest. The matter was reported to police at Police Station, Sahlawas

vide FIR No. 174 dated 29.08.2011.

3. Claimant was taken to Government Hospital, Jhajjar from where he was referred to PGIMS, Rohtak, where he remained admitted from 25.08.2011 to 05.09.2011. Right hand of claimant was amputated by doctors due to injuries sustained by him. He spent ₹2,50,000/- on his treatment, medicines, transportation, attendant and special diet etc. He also suffered 100% permanent disability due to injuries sustained by him.

4. Claimant was working as clerk and was also an agriculturist by profession. After the accident, he has not been able to earn his livelihood and do other daily routine work.

5. The appellant and respondents no. 2 and 3 denied averments of claimants and the accident by the offending vehicle.

6. The Tribunal allowed compensation of ₹10 lacs to claimant, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Medical expenses	₹8000
(ii)	Transportation expenses	₹8400
(iii)	Special diet	₹4000
(iv)	Attendant expenses	₹15000
(v)	Loss of income due to permanent disability	₹960000
(vi)	Pain and agony	₹4600
<i>Total</i>		₹1000000

7. Learned counsel for the appellant has assailed the award on two counts. Firstly, that driver of the offending vehicle, namely, Manbir was acquitted by the trial Court in criminal case pertaining to FIR No. 174 dated 29.08.2011, registered for the accident in question. Claimant and other eye-witnesses could not identify the driver in criminal court. It

was also not proved that accident was caused by the offending vehicle. Secondly, the Tribunal assessed income of the deceased as ₹5000/- per month without there being any documentary evidence in this regard, which is on higher side.

8. Firstly, I take the plea raised by learned counsel for the appellant that the offending vehicle was not involved in the accident. While answering this plea, the Tribunal had called file of criminal case and on perusal of the same and on the basis of record observed in para 13 of the award as follows:-

“13. I summoned the said criminal case file from the record room to verify the true facts pertaining to this accident. The trial Court record of criminal case shows 4 photographs in the said case file which reflects that the offending vehicle struck against the tree on its left side and the registration no. HR-46-B-5647, of the offending vehicle Max Pick-Up clearly legible in the said photographs. This vehicle was seized by the police from the spot on 29.08.2011 in accidental condition and its mechanical inspection was also conducted by the I.O. which shows that the left side of vehicle in damaged condition. The photographs attached with the mechanical report clearly shows that the occurrence of accident as alleged in the claim petition and the complaint lodged before the police vide which FIR was registered. The

fact that injured/complainant mentioned the name of driver Ranbir seems to be mentioned by him in his complaint after knowing the same from the police, after seizure of the offending vehicle, as driver/respondent no. 1 fled away from the spot after accident. Police during investigation has left the technical lacuna in the criminal case by not citing the registered owner as one of the prosecution witness, after giving him notice U/s 133 of M.V. Act, regarding the particulars of the driver. This particular lapse on the part of the police does not exonerate the driver or the registered owner from their statutory liability in the present case. The involvement of the offending vehicle in the present case is clearly discernible, in view of the photographs and mechanical inspection report or criminal case file.”

9. No doubt there was delay of four days in reporting the matter to the police but it is not fatal to the case of claimant whose hand got crushed in the accident and had to be amputated. Perusal of FIR shows that the police had received information of accident immediately after the accident on 25.08.2011. The doctor had sent intimation slip to this aspect at Police Station Jhajjar. Thereafter, the police reached PGIMS, Rohtak but respondent no. 1-Sunil Kumar could not get his statement recorded as he was having pain due to injuries suffered by him. The police recorded his statement on 29.08.2011. It is evident from the award that offending

vehicle was taken into possession by police from the spot. It was in damaged condition. From the observations of Tribunal in para 13 referred above, involvement of the offending vehicle in the present case is duly proved. Even if, respondent no. 2 has been acquitted by criminal Court by giving him benefit of doubt, it does not effect claim made by claimant. Once involvement of vehicle in accident is proved, onus is on its owner to disclose name of the driver. Claimant-Sunil Kumar while appearing as PW-1 has categorically stated that accident had taken place due to rash and negligent driving of the offending vehicle by its driver. He has named respondent no. 2 as driver of the offending vehicle. He was given a suggestion in cross-examination that it was a hit and run case and the offending vehicle was falsely involved. The offending vehicle was recovered by police from the spot in damaged condition, which leaves no iota of doubt that it was not involved in the accident. Owner of the vehicle or even insurer have not come up with any plea that the offending vehicle was involved in some other accident.

10. On perusal of the award, I find no legal or factual infirmity in the observation of Tribunal that accident was caused due to rash and negligent driving of the offending vehicle by its driver. Arguments of learned counsel for the appellant to this effect are discarded.

11. Claimant was 33 years of age. The Tribunal assessed his income as ₹5000/- per month. In the year 2011, even a daily wager could earn ₹200/- per day, as such, income of claimant assessed by the Tribunal is not on higher side. Arguments of learned counsel for the appellant to this effect are also discarded.

12. No other argument has been advanced by learned counsel for the appellant.
13. As a sequel of my above discussion, this appeal has no merit and the same is dismissed.

September 28, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No