IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 21.04.2016.

FAO No.1073 of 2015

United India Insurance Company Ltd. ....Appellant.

VERSUS

Jaspal Singh Rana and another ....Respondents.

WITH

FAO No.2844 of 2015

Jaspal Singh Rana ....Appellant.

VERSUS

Rakesh Kumar and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vipul Sharma, Advocate
for the appellant (in FAO No.1073 of 2015) and
for respondent No.2 (in FAO No.2844 of 2015).

Mr. Ashwani Arora, Advocate
for the appellant (in FAO No.2844 of 2015) and
for respondent No.1 (in FAO No.1073 of 2015).

Mr. Amit Shukla, Advocate
for respondent No.2 (in FAO No.1073 of 2015) and
for respondent No.1 (in FAO No.2844 of 2015).

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SNEH PRASHAR, J.

The award dated 15.10.2014 passed by Motor Accident Claims Tribunal, Chandigarh (for short, “the Tribunal”), by virtue of which MACT

Case No.837 of 2013 i.e. the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") filed by Jaspal Singh Rana (claimant-appellant) was allowed, has given rise to the two appeals captioned above, one filed by the insurance company with whom car bearing registration No.PB-12L-9000 (hereinafter referred to as the "offending car") was insured and the other by Jaspal Singh Rana, the claimant himself.

Precisely, the facts are that on 09.02.2012 at about 4:30 p.m., Jaspal Singh Rana (claimant) while going from the market of Sector 16 to the market of Sector 15, Chandigarh by means of his motorcycle, was hit by the offending car when he was on the traffic light points of Sector 15-16 and was crossing the road as there was green signal for him. His allegation was that the offending car was being driven rashly, negligently and in a fast speed and jumping the red light had struck against his motorcycle.

During the accident, the claimant had fell on the road and sustained multiple serious injuries. On his statement, a First Information Report No.40 dated 10.02.2012 was registered at Police Station Sector-11, Chandigarh, against the driver of the offending car. A petition under Section 166 of the Act of 1988 was filed by the claimant against the driver/ owner and insurer of the offending car who were impleaded as respondents for claiming compensation for the injuries sustained by him.

The petition was contested by the respondents by filing separate written statements. Respondent No.1 denied the occurrence of accident involving his car. Respondent No.2-insurance company besides raising all preliminary objections available to the insured under the Act of 1988 alleged that the petition had been filed in collusion with respondent No.1 by concealing material facts and also that respondent No.1-driver of the offending car was not holding a valid and effective driving licence at the time of accident and the offending car was being driven in violation of terms and conditions of the insurance policy.

On the rival contentions of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal allowed the petition and awarded compensation to the tune of Rs.1,65,561/- to the claimant alongwith interest at the rate of 6% per annum from the date of filing the petition till realization.

Feeling aggrieved of the compensation awarded by learned Tribunal, the insurance company preferred appeal i.e. FAO No.1073 of 2015. Also feeling dissatisfied with the compensation awarded, claimant-Jaspal Singh Rana filed appeal i.e. FAO No.2844 of 2015.

The submissions made by learned counsel for the parties have been heard and record perused.

FAO-1073-2015

At the very outset, learned counsel for the appellant-insurance company argued that the onus to prove identity of the offending vehicle involved in the accident was on the claimant, however, he completely failed to discharge the same. There is apparent variation in the documentary and ocular evidence led by him which proves that the offending car was not the vehicle involved in the accident and it was subsequently introduced with the sole motive to extract compensation. At the time of lodging the First Information Report Ex.P3, the claimant did not mention the make, type or colour of the vehicle, which had caused the accident. The driver-owner of the offending car, Rakesh Kumar, besides himself appearing in the witness box as RW2, examined RW1 Rakesh Rasila, ASI, the Investigation Officer of the case, who testified that his investigation revealed that the offending car, which was Maruti Swift, was not involved in the accident as on inspection of the said car he found no scratches or accidental damage to the said car. In fact, the offending vehicle involved in the accident was a Tata Safari which could not be traced and, as such, an untraced report Ex.R2 was filed in the Court. From the statement of RW2, it is clear that no criminal case was registered against the driver-owner of the offending car as it was not the vehicle involved in the accident. The identity of the vehicle, which caused the accident, being not established, the claimant was not entitled to claim compensation from the owner or insurer of the offending car.

There appears no merit in the argument of learned counsel for the appellant-insurance company. A perusal of the First Information Report Ex.P3 shows that in his complaint to the police, the claimant had very clearly mentioned the registration number of the vehicle, which had caused the accident. He was not expected to mention the name and address of the person, who was driving the offending vehicle but he categorically stated that he was in a position to identify the driver if brought before him. When the claimant stepped into the witness box, he denied that in his statement to the police, he had disclosed the make of the offending vehicle as 'Tata Safari'. It is the investigation officer RW1 Rakesh Rasila, ASI who stated that he found that the accident was caused by a Tata Safari. Not a word was stated by him to disclose his source of information to the said effect. The registration number of the offending vehicle mentioned in the First Information Report was sufficient for identification of the vehicle that had caused the accident. Even if it is accepted for the sake of argument that the claimant had named the type of the vehicle as 'Tata Safari' whereas it was a 'Maruti Swift', that would not discredit his testimony when there was no doubt relating to the registration number of the vehicle. The finding of learned Tribunal that the offending car was the vehicle involved in the accident calls for no intervention and the appeal of the insurance company being devoid of merit is dismissed.

FAO-2844-2015

Learned counsel for appellant-claimant Jaspal Singh Rana argued that learned Tribunal noticed in Para No.9 of the award that PW2 Dr. Sudesh Pebam had proved the disability certificate Ex.P4 according to which the claimant had suffered permanent disability to the extent of 45% qua both lower limbs which was not likely to improve. Further, learned Tribunal except for awarding Rs.25,000/- for loss of amenities due to disability did not adequately compensate the appellant-claimant for loss of earning capacity suffered by him due to permanent physical impairment. Learned counsel asserted that the appellant is in a private job and his service is entirely on the mercy of his employer because his working capacity has been seriously effected due to the injuries suffered by him. To support his argument that loss of earning capacity must be assessed considering how the disability would have an impact in the job market if the claimant was to take up a job afresh, learned counsel relied upon the judgments passed by this Court in ***Oriental Insurance Co. Ltd. vs. Ajaib Singh and others, FAO No.410 of 1989 (O&M) decided on 17.01.2014*** and ***Kulwinder Singh vs. Sh. Parkash Chand and others, FAO No.5056 of 2005 (O&M) decided on 23.04.2014.***

It was also urged that learned Tribunal awarded nothing under the head of medical expenditure whereas against the bills amounting to approximately Rs.1,40,000/- submitted by the claimant to his company, only a sum of Rs.52,000/- had been reimbursed to him as he was having medical insurance through his employer for which he was paying a sum of Rs.100/- per month. Even the amount of Rs.52,000/- could not be deducted from the claim since the claimant was paying a premium of Rs.100/- per month from his own pocket. To support his argument, learned counsel relied upon ***Manoj Kumar Yadav vs. Azad and others, 2015(3) P.L.R. 211.*** The amount of Rs.25,000/- awarded under the head of pain and suffering is said to be on the lower side.

Indeed, it is proved from the disability certificate Ex.P4 that the physical disability of the appellant by the Board of Doctors of PGIMER, Chandigarh was assessed as 45%. It was mentioned in the certificate that the condition was not likely to improve.

In ***Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101,*** Hon'ble Supreme Court held as under:-

> *"The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may*

find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."

Elaborating the method of ascertaining effect of the permanent disability on the actual earning capacity, Hon'ble Apex Court in Para No.10 of Raj Kumar's case (supra) held as under:-

"*Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to* *earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand.*

In the case in hand, though the disability suffered by the appellant was assessed as 45% but the fact is that he continues to be in service and there is nothing on the record to indicate that he has suffered either reduction in salary or had been declined financial benefits of increments, promotions etc. For the period during which he remained on leave, learned Tribunal has already allowed him complete salary. In that manner, he has been compensated for loss of earnings during the period of treatment etc.

As far as loss of earning capacity is concerned, there is no doubt that he would have difficulty/discomfort in his day to day chores. The disability will certainly come in his way when he will look for a new job, after he retires from the present job. Considering all facts, the functional disability of the appellant is assessed at 25%. The appellant was getting salary of Rs.19,210/- per month at the time of accident. After retirement from present job, the earning from new avocation may not be more than 50% of the present salary. The income at the age of 58-60 years is assessed as Rs.10,000/- per month. The monthly loss at the rate of 25% would come to Rs.2500/- and the annual loss would come to Rs.30,000/-. At the age of 58-60 years, the multiplier of '9' would be appropriate and the compensation for the disability suffered by the appellant is worked out as Rs.2,70,000/-.

Since no amount was awarded by learned Tribunal for the disability suffered by the appellant, the amount calculated above shall be in addition to the amount awarded under the head of loss of income and under the head of loss of amenities. Learned Tribunal awarded a sum of Rs.25,000/- for the pain and suffering undergone by the appellant and Rs.25,000/- for special diet which is appropriate and that calls for no intervention.

As observed by learned Tribunal, no document was brought on record by the claimant to prove that he has to pay Rs.100/- as premium towards some medical insurance policy through the employer. His oral statement to that effect could not be relied upon. The admission of the appellant that he had received Rs.52,000/- towards reimbursement of the medical expenses incurred by him shows that he had received the amount spent on treatment-medicine etc. from his company. His contention that he had been paid Rs.52,000/- against the bills amounting to Rs.1,40,000/- could not be substantiated by him by producing bills etc. As such, the finding of learned Tribunal that he had been reimbursed all medical expenses incurred by him is affirmed.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 15.10.2014 passed by learned Tribunal is modified. The enhanced compensation of Rs.2,70,000/- shall be deposited by the respondent-insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

21.04.2016.
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