

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4006-2013 (O&M)

Date of decision: 03.03.2016

The Oriental Insurance Co. Ltd.

...Appellant

Versus

Pardeep and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Abhinandan Pandhi, Advocate,
for Ms. Manjari Nehru Kaul, Advocate,
for the appellant.

Mr. Ashwani Gaur, Advocate,
for respondent No.1.

Mr. Pawan Hooda, Advocate,
for Mr. KDS Hooda, Advocate,
for respondent No.2.

JITENDRA CHAUHAN, J. (ORAL)

The present appeal has been filed by the appellant-Insurance Company, challenging the impugned Award dated 29.05.2013, passed by the learned Motor Accident Claims Tribunal, Sonipat.

The learned counsel for the appellant contends that it is a case of contributory negligence as FIR stands registered against

both the drivers. It is further contended that the compensation awarded is on the higher side and deserves to be decreased.

On the other hand, the learned counsel for the respondent No.1 contends that after the accident, the respondent became unconscious and therefore, the FIR against the offending driver could not be lodged promptly. The respondent-claimant had made representations to the higher authorities against lodging of the FIR against him, vide his complaints Ex.P91 and Ex.P92. It is further submitted that the quantum of compensation has been assessed by the learned Tribunal after appreciating the evidence brought on record. He prays for dismissal of the present appeal.

I have heard learned counsel for the parties and perused the record.

As far as the first arguments raised by learned counsel for the appellant to the extent of contributory negligence is concerned, there is no denial to the fact that FIR No.176 dated 24.7.2011, stood registered against the claimant-respondent at the behest of the respondent No.2, Ashok. However, mere registration of the FIR against the claimant is not sufficient to prove that the accident took place due to the rash and negligent driving of the claimant. The claimant has sufficiently explained the circumstances leading to the registration of the FIR against him as well as the delay in lodging the FIR at his behest against the

offending driver. It has come on record that due to the impact of the accident, the claimant became unconscious and thus, he could not get the FIR registered promptly. He has also proved on record the complaints, Ex.P-91 and P-92 wherein, he has represented to the higher authorities pleading his false implication in the FIR registered against him. It has further come on record that the offending motorcycle, being driven by Ashok, was carrying four passengers, i.e. the driver, two ladies and one child. Therefore, it was difficult for the offending driver to control the vehicle at the time of the accident. Lastly, the offending driver, Ashok, did not step into the witness box to rebut the factum of negligence attributed to him. Under these circumstances, it remains unproved that the accident was caused due to the contributory negligence of both the drivers and hence, the issue of liability, as decided by the learned Tribunal, is upheld.

As regards the quantum of compensation, it has come on record that the claimant-respondent received serious and grievous injuries due to the accident. He remained admitted in Sushruta Trauma Centre, Delhi, from 23.07.2011 to 02.08.2011, 20.09.2011 to 29.09.2011, 5.12.2011 to 08.12.2011 and lastly from 22.05.2012 to 26.06.2012. He was also operated upon his right leg. The extent of disability suffered by him has been assessed as 35%. Thus, keeping in view the nature and seat of injuries, period

of hospitalization and the extent of disability suffered, this Court does not find the compensation awarded on a higher side. No other point has been raised.

Dismissed.

The statutory amount of Rs.25,000/-, deposited by the appellant-Insurance Company be placed at the disposal of the Tribunal for reimbursement.

03.03.2016

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**(JITENDRA CHAUHAN)
JUDGE**

Note : Whether to be referred to Reporter : Yes / No.