

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

FAO No. 5321 of 2016 (O&M)

Date of Decision: 29.11.2016

Shriram General Insurance Company Limited

.....Appellant

vs.

Jaikam and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

AMOL RATTAN SINGH, J.

This is an appeal filed by the insurance company that has eventually to bear the liability of payment of compensation to respondent no.3 herein (to be referred to as “the claimant”), on account of the injuries found to have been suffered by him in a motor vehicle accident.

2. The respondent-claimant was shown to be 15 years old at the time of filing of the claim petition, and had consequently filed it through his mother, against respondents no.1 and 2 herein, as also the appellant-insurance company, they being the driver, owner and insurer respectively, of a truck bearing registration No.RJ-05-GA-3338, with which the claimant met with an accident.

The facts, as taken from the impugned Award of the learned Motor Accident Claims Tribunal, Faridabad, are that the claimant in his petition had stated that he and his cousin, Akhlakh, were going on foot to

his house from Kaili Masjid, on 23.07.2014, at about 10.00 p.m. When they

reached the G.T. Road, the aforesaid truck driven by respondent no.1 herein, allegedly in a rash and negligent manner, came and hit the claimant from the front, resulting in multiple and grievous injuries to him.

The respondent (driver) is stated to have fled away, leaving the truck on the spot.

The claimant was taken to the General Hospital, Ballabgarh, from where he was referred to Fortis Escorts Hospital, Faridabad, where he remained admitted initially from 24.07.2014 to 11.08.2014 and thereafter he was again admitted for surgery from 25.09.2014 to 27.09.2014. It was further contended that FIR no.206 dated 24.07.2014 was registered for the alleged commission of offences punishable under Sections 279, 337, 338 IPC, as also under Section 196 of the Motor Vehicles Act, 1988, at Police Station Sadar Ballabgarh, Faridabad, on a statement made by the claimant himself.

It was contended that the claimant had spent about Rs.6 lacs on medical expenses and that the accident had completely ruined his life. He was stated to be studying in school before the accident but could not do so thereafter.

Consequently, compensation of Rs.10 lacs, plus interest @ 12 p.a., was prayed for.

3. Upon notice issued, respondents no.1 and 2, i.e. the driver and owner of the vehicle, filed a written statement taking preliminary objections regarding maintainability, cause of action etc. and on merits denying that the accident was caused by respondent no.1 while driving the aforementioned truck in a rash and negligent manner.

The age of the claimant being 15 years and him being a student

of class 10 was also denied and in fact, even the factum of the accident having taken place on 23.07.2014 at 10 p.m. , at the site in question, was denied, as were the contentions with regard to the amounts spent by the claimant.

4. The present appellant, i.e. the insurance company, with which the truck was insured, filed a separate written statement taking preliminary objections that as the insurer and the driver of the truck had breached the terms and conditions of the policy, no liability could be foisted upon the company.

Locus of the claimant was also denied, with the remaining written statement essentially denying the entire claim on every ground.

On the aforesaid pleadings, the following issues were framed by the learned MACT, Faridabad:-

“1. Whether the petitioner Master Farman Khan sustained injuries in a motor vehicular accident, caused by the respondent no.1 which took place on 23.07.2014 at about 10.00 p.m. in the area of P.S. Sadar Ballabgarh, District Faridabad by rash and negligent driving of the vehicle No.RJ-05-GA-3338 by the respondent no.1 ?OPP

2. Whether the petitioner is entitled to compensation, if so, how much and from whom ?OPP

3. Whether petitioner has no locus standi and cause of action to file the present petition?OPP

4. Whether the petition is not maintainable in the present form?OPR

5. Whether the respondent no.1 was not possession a valid and effective driving licence on the date of accident, if so, its effect?OPR-2

6. Whether the respondent no.2 has violated and infringed the terms and conditions of the insurance policy, if so, its effect?OPR-3

7. Whether the respondent no.2 has violated and infringed the terms and conditions of the insurance policy, if so, its effect ?OPR-3

8. Relief.”

5. The claimant examined himself, the record keeper from the

Fortis Escorts Hospital, Faridabad, the aforementioned Akhlakh, one Anuj Kumar, Ahlmad in the Court of the learned JMIC, another person, Sachin Adhlakha, the claimants' mother Nasheem Begum, Dr. Ritesh Mangla from the Fortis Escorts Hospital and one Ramavtar, Record Keeper in the said hospital, as PWs 1 to 8 respectively.

Documentary evidence in the form of affidavits, a copy of the FIR, medical bills, registration certificate of the truck, discharge summary from the hospital, were also tendered by the claimant.

No witness was examined on behalf of the respondents before the Tribunal, though the route permit and fitness certificate of the truck, as also a copy of the insurance policy, were tendered by way of documentary evidence.

6. The learned Tribunal, having appraised the aforesaid evidence on the strength of the testimonies of the claimant, as also his cousin Akhlakh (PW-3) and the Ahlmad of the learned JMIC, read with FIR and the medical bills, eventually held respondent no.1 herein negligent in driving the truck in question, leading to the accident, with no evidence to disprove such negligence having been led at all by the respondents.

As regards the quantum of compensation, it was found from the oral as well as documentary evidence, that the claimant first remained admitted in hospital for a period of 18 days from 24.07.2014 to 11.08.2014 and then thereafter again for 2 to 3 days, i.e. 25.09.2014 to 27.09.2014 and that he had sustained multiple fractures, as also various other serious injuries, for which he had undergone operations at the Fortis Hospital.

During the period of his first confinement to the hospital, medical expenses to the tune of Rs.3,86,533/- had been incurred and for the

subsequent three days, another Rs.61,763/- had been spent. These amounts were found to have been proved on the basis of the bills actually tendered as evidence, supported by the testimony of the record keeper from the hospital, i.e. PW2.

Further, on the basis of the testimony of PW-7, Dr. Ritesh Mangla, as also from a perusal of the discharge summary, Ex.P-38, the traumatic nature of the serious injuries suffered was found to have been proved as was the treatment administered for the same.

Accordingly, on account of the pain and suffering obviously experienced by the claimant, and the money that would have been spent by him, even on his transportation, special diet etc., a lumpsum of Rs.5 lacs was awarded. Thus, the total compensation awarded by the Tribunal, vide the impugned Award, was Rs.9,84,296/-.

7. Despite the contentions raised by the appellant-insurance company to the effect that there was a violation of the insurance policy, it was found that the licence possessed by respondent no.1 was valid for driving a transport vehicle on the date of the accident, as were the route permit and fitness certificate in respect of the vehicle. Hence, holding all three respondents jointly and severally liable to pay the compensation, the burden for paying the same obviously fell upon the present appellant, though not specifically stated in the Award.

8. In this appeal, learned counsel for the appellant-insurance company submits that the impugned Award is highly excessive as regards the medical expenses, as also the non-pecuniary damages of Rs. 5,00,000/- awarded to the claimant on account of the injuries he suffered in the accident in question.

9. Having considered the argument, it is seen that as regards the medical expenditure incurred, the Tribunal discarded the bills which had been left blank and it was only on the basis of actual bills shown, that a sum of Rs. 3,86,533/- plus Rs. 61,763/- was awarded, thereby totaling Rs. 4,48,296/-.

The lumpsum of Rs. 5,00,000/- was obviously awarded on account of the following injuries seen to have been suffered, for which treatment was undergone, as per what is recorded on the basis of evidence led before the learned Tribunal. That part of the Award is being reproduced in extenso, so as to bring out the nature of injuries suffered by the claimant, and the suffering he must have gone through on account of the same:-

“Dr. Ritesh Monga of Fortis Escorts Hospital, Faridaband has been examined as PW-7. He has deposed that the petitioner was admitted in their hospital in department of Urology with traumatic urethral disruption. He underwent progressive perennial orthoplasty on 25.09.2014 and was discharged on 27.09.2014 in stable condition. He proved discharge summary Ex. PW/7/A. In cross-examination, he deposed that initially the petitioner had come to their hospital in July, 2014 and at that time, he was not under his treatment. Gagandeep, Record-keeper of Fortis Escorts Hospital was examined as PW-2 who had brought the summoned record of treatment of the petitioner. He has deposed that the petitioner remained admitted in their hospital from 24.07.2014 to 11.08.2014 and again from 25.09.2014 to 27.09.2014. He proved that final bills as Ex. P-3 and Ex. P-4 issued by their hospital. Ex. P-3 is the hospital bill of first admission of the petitioner from 24.07.2014 to 11.08.2014 which is for an amount of Rs. 3,86,533/- Similarly, Ex. P-4 is the bill of second admission of the petitioner from 25.09.2014 to 27.09.2014, which is for an amount of Rs. 61,763/- The

petitioner is entitled to get the amounts of the above said bills.

A perusal of discharge summary Ex. P-38 issued by Fortis Escorts Hospital, Faridabad shows that the patient was diagnosed as polytrauma with crush injury with avulsion injury, skin loss right thigh, fracture pelvis with urethral injury with pneumonia. Debridement and skin grafting under general anesthesia was done on 25.07.2014 and again debridement and skin grafting under general anesthesia was done on 09.08.2014. CT scan of chest of the petitioner was done on 30.07.2014 and findings revealed complete collapse and consolidation with air bronchogram involving the entire right lower lobe segment, posterior segment of right upper lobe, apico-posterior segment of left upper and lower lobes with few parenchymal alveolar lesions in apical and posterior segment of right upper lobe and right middle lobe segment and mild bilateral pleusal effusion, likely infective etiology. In the X-ray chest-examination, haze opacity was seen in right upper and lower zones. In X-ray femur done on 24.07.2014 fracture of right superior and inferior public rami was observed. In the CT of hip joint, fracture of 2nd sacral body and left sacral ala, fracture in right superior and inferior public rami, fracture of inferior ramus was seen. In view of the above injuries and fractures, the petitioner must have suffered a lot of pain. He must have spent some amount of transportation, special diet etc. The petitioner has claimed that he was a student and due to the injuries sustained by him in the accident, he has also suffered loss of his studies. He remained bed ridden for quite a long time. Keeping in view the entirety of facts and circumstances of the case, it would be just and reasonable that the petitioner is awarded of Rs. 5,00,000/- on all these counts.”

10. Thus, with a crushed pelvis, injured urethra, collapsed lungs and a fractured femur, it is very obvious that the respondent-claimant underwent unquantifiable pain and agony, as also general suffering on

account of admission to hospital, operations undergone by him, confinement to bed etc., other than loss of normal body functions for at least the period that he remained admitted in a hospital.

As such, awarding Rs. 5,00,000/- on account of the suffering endured for such multiple injuries, to a young person aged 15 years, and the pain of the treatment that the respondent had to undergo on account of them, is not seen to be excessive in any manner.

11. Similarly, the sum of Rs.4,48,296/- awarded for medical expenses incurred, on the basis of bills duly proved, would not require any interference with, in the opinion of this Court.

Therefore, while dismissing this appeal, it is clarified that no prejudice shall be caused to the respondent-claimant in case any appeal is filed by him for enhancement of compensation, which would be dealt with wholly on its own merits.

It is to be specifically noticed here that no issue at all has been raised in this appeal, either at the time of arguments or even in the grounds of appeal, to the effect that the issue of negligence in driving, i.e. issue no.1 before the learned Tribunal, was erroneously decided against the respondents.

12. However, learned counsel for the appellant-insurance company has pointed out that there is an arithmetical error in awarding Rs. 9,84,296/-, as recorded in paragraph 14 of the impugned Award.

That contention is found to be correct, as the sum of Rs. 3,86,533/- + Rs. 61,763/- + Rs. 5,00,000/- comes to Rs. 9,48,296/- and not Rs. 9,84,296/- as given in the Award of the Tribunal.

For this limited purpose, no notice is felt necessary to be issued

to the respondents, it being a wholly very obvious clerical/arithmetical error and consequently, this appeal is dismissed, but by the Award of the Tribunal, Rs. 9,48,296/-, along with the interest awarded thereupon, shall be deemed to have been awarded, instead of Rs. 9,84,296/-.

The statutory amount of Rs. 25,000/- submitted by the appellant-insurance company for filing of this appeal may now be remitted to the Tribunal, for disbursement to the respondent-claimant as part of the compensation payable.

(AMOL RATTAN SINGH)
JUDGE

November 29, 2016
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Whether speaking/reasoned	Yes
Whether Reportable	Yes