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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2562-2002
Date of decision : 18.08.2017

Deepak Sharma

... Appellant(s)

Versus

Richhpal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. Vishal Munjal, Advocate
for respondent No.2.

Mr. Aseem Aggarwal, Advocate
for respondent No.3/Insurance Company.

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AMIT RAWAL, J. (ORAL)

The appellant-claimant is aggrieved of the award dated 07.12.2001 passed by the Motor Accident Claims Tribunal, Karnal (in short 'the Tribunal'), whereby the compensation of ₹ 10,000/- has been awarded along with interest @ 9%.

The facts which emanate from the award passed by the Tribunal are that the appellant-claimant had sustained multiple injuries, while travelling in a jeep bearing Registration No.DL-3CF-1823, in an accident, alleged to have been caused with a Truck bearing Registration No.PB-06-2272, which came in a rash and negligent manner. The accident had taken place on 18.12.1997 and in this regard, an FIR bearing No.1106 dated

18.12.1997 under Sections 279, 337, 427, 304-A IPC was registered at the police station Ambala Cantt. The claimant(s) had impleaded Richpal Singh and Ashwani Kumar as driver and the owner of the truck. However, they were proceeded *ex parte*. The aforementioned truck was insured with the New India Insurance Company. The Tribunal in the absence of driving licence of the driver of the truck exonerated the Insurance Company, while awarding the compensation of ₹ 10,000/-.

Mr. Govind Rana, learned counsel for the appellant/claimant submits that the presumption of having a licence at the instance of the driver, particularly when the vehicle was insured, cannot be ruled out, therefore, the Insurance Company ought not to have been absolved. The compensation of ₹ 10,000/- is too meagre and urges this Court for enhancement.

Mr. Aseem Aggarwal, learned counsel appearing on behalf of respondent No.3/Insurance Company submits that the Insurance Company was prevented from ascertaining the authenticity and validity of the driving licence, in the absence of the availability of the particulars of the Driver, having proceeded *ex parte* and rightly so, the Insurance Company has been exonerated from indemnifier on account of fact that the negligence of the owner and the driver has not been proved.

Mr. Vishal Munjal, learned counsel appearing on behalf of respondent No.2, submits that the findings of the Tribunal fastening the liability upon the owner is not correct, owing to the registration of the FIR against the Driver, much less, it has also come on record that a challan under Section 173 Cr.P.C. had been filed.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the nature of the injures, as per the award of the Tribunal, has not come forward, but the fact remains that the FIR, as noticed above, had been registered against the Driver of the truck. The Insurance Company could have done the investigation to ascertain the particulars of the licence by asking the owner of the particulars of the driver and in this manner, the Insurance Company cannot take a plea of absolvement. Equally so, the claimant has not been able to place on record the extent of injuries. The finding of the Tribunal, in my view, with regard to the fact that the claimant had not been able to prove the negligence of the driver, is not correct appreciation of law, therefore, the aforementioned finding is not sustainable in the eyes of law and the same is hereby set aside. The award of the Tribunal is modified by fastening the liability upon the Insurance Company.

Assuming for an argument sake. though not admitting that the Driver had no driving licence, particularly, when the Insurance Company did not make any effort, the appellant-claimant is entitled to the compensation at least ₹ 25,000/- under the head of "No Fault Liability" under Section 140 of the Motor Vehicles Act. Resultantly, the award to this extent is also modified and the compensation of ₹ 25,000/- is awarded under the head of "No Fault Liability".

The total compensation payable shall be ₹ 25,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing of the appeal till the date of realization.

The Insurance Company is directed to deposited the amount within a period of two months from the date of the receipt of the certified copy of this order, failing which, it shall entail the interest @ 9%.

With the aforesaid observations, the appeal stands allowed and the award is modified to the aforementioned extent.

(AMIT RAWAL)
JUDGE

18.08.2017
Yogesh Sharma

Whether speaking/reasoned	**Yes/** ✓	**No**
Whether Reportable	**Yes/**	**No** ✓