IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4572 of 2005
Date of Decision.03.11.2017

Baljit Singh ....Appellant

Vs

Murari Lal and others ....Respondents

Present: Mr. Umesh Aggarwal, Advocate
for the appellant.

Ms. Bhawna Grewal, Advcoate for
Mr. S.K. Yadav, Advocate
for respondent No.1.

Mr. Shubham Jain, Advocate for
Mr. Suman Jain, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellant-claimant is in appeal against the award rendered by the Tribunal whereby the claim for compensation on account of injuries received in accident occurred on 09.09.2001 with the motor cycle bearing registration No.HR-36D/0676 allegedly driven by Murari Lal had been dismissed.

Learned counsel appearing on behalf of the appellant submits that the Tribunal has committed illegality and perversity in dismissing the claim petition on the ground that there was a delay of almost one month in lodging the FIR. The claimant had suffered a fracture of jaw due to which he was admitted in the hospital on 09.09.2001 and discharged on 29.09.2001 and the accident was not only witnessed by the petitioner but by his brother PW2, Manohar. Since there was fracture of jaw of the claimant, he could not lodge the FIR with promptitude. Even police in the investigation found the involvement of the motor cycle and submitted the challan. The aforementioned fact is evident from the statement of PW3, ASI Shish Ram, Police Station Rohrai. The factum and identification of the vehicle has not been denied by the insurance company from the tenor and mode of the cross-examination of Manohar, thus, there is misreading and misdirection and the award passed by the Tribunal is liable to be set aside.

On the other hand, learned counsel appearing on behalf of the insurance company relied upon paragraph 24 of the award to the effect that no explanation has come forward in not lodging the FIR with promptitude and therefore, the vehicle has been introduced later on, thus, the insurance company cannot be permitted to indemnify the insured on such point. The onus was upon the claimants to prove involvement but they miserably failed to do so, therefore, the award is liable to be upheld.

I have heard learned counsel for the parties, appraised the paper book and of the view that finding of the Tribunal is totally perverse and erroneous, much less, fallacious. From the plain and simple perusal of the testimony of Manohar, there is categoric disclosure of the driver of the motor cycle. The tenor and mode of the cross-examination proved negligence of the insured and the factum of accident was not denied. This fact could not be controverted during the argument by the counsel appearing for the insurance company. In my view, the Tribunal has misread and miconstrued the statement of PW2 and also the factum of discharge of the claimant from hospital on 29.09.2001 whereas the FIR was lodged on 02.10.2001. The factum of fracture of jaw is also not disputed, therefore, in my view the claimant was entitled to compensation since the involvement of the vehicle and filing of challan through the testimony of PW3 have been proved. Thus, the finding of the Tribunal on this issue of negligence is hereby set aside.

Now I take up the aspect of award of compensation. The claimant was aged 22 years and was a Tailor earning ₹3000/- per month. Since there was no permanent disability, therefore, the loss of income for almost three months is taken as ₹9000/- i.e. Rs.3000/- per month for the period of hospitalization and the period of follow up treatment during which the petitioner could not earn. Besides this I will also provide ₹15,000/- for pain and suffering, ₹5000/- for special diet and ₹3,000/- each for transportation and attendant charges. Though the claimant stated to have spent ₹22,000/- on medicines and hospital charges but the same have not been corroborated by bills or any other documentary evidence. Keeping in view the fact that the claimant had suffered fracture of jaw and remained hospitalized almost for a month and required follow up treatment thereafter, I will provide ₹20,000/- for the expenses incurred on medicines and hospital charges.

In total, the compensation payable shall be ₹55,000/-. This amount shall also attract @6% per annum from the date of filing of the claim petition till realization. The liability to satisfy the compensation shall be on the insurance company-respondent No.3.

The award passed by the Tribunal is set aside and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

November 03, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No