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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-39-CII-2006 IN/AND
FAO-2365-2006 (O&M)
Date of decision : 20.12.2017

National Insurance Company Ltd.

... Appellant(s)

Versus

Munish Kumar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V. Ramswaroop, Advocate
for the appellant/Insurance Company.

Mr. Akshit Aggarwal, Advocate for
Mr. Sherry K. Singla, Advocate
for the cross-objector.

Mr. Surender Garg, Advocate
for the respondent(s).

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of the appeal bearing No.2365 of 2006 filed by the appellant-Insurance Company as well as cross-objections bearing XOBJC No.39-CII of 2006 filed by the claimants against the award dated 27.03.2006 passed by the Tribunal, whereby a compensation of ₹1,82,000/- (₹1,15,000/- towards medical expenses and ₹67,000/- towards permanent disability) along with interest @ 8% per annum from the date of filing of the claim petition under Section 163-A of the Motor Vehicle Act till its realization had been awarded on account of injured Munish Kumar, who sustained injuries in a motor accident occurred on 06.02.2004.

Learned counsel for the appellant-Insurance Company submits that the Tribunal has committed illegality and perversity in awarding the compensation to the tune of ₹ 1,82,000/- along with interest by fastening the liability upon the appellant-Insurance Company, even the permanent disability of the claimant to the extent of 40% has not been proved in accordance with law, thus, urges this Court for setting aside the award, under challenge by allowing the appeal.

As regards the cross-objections, learned counsel for the appellant-Insurance Company submits that the reasoning given by the Tribunal given in paras 13 and 14 is justified and does not call for interference as the same is in accordance with Schedule IV of the Workmen Compensation Act and as well as Schedule II of Section 163-A of the Motor Vehicle Act, wherein, specific period of loss of income not exceeding fifty-two weeks has been prescribed and taken care of the amount of compensation, therefore, there is no likelihood of increase of the compensation.

Learned counsel appearing on behalf of the cross-objector submits that the injured-Munish Kumar, at the time of accident, which occurred on 06.02.2004, had received the injuries on the person in a motor accident involving the tractor bearing Registration No.PB-30-A-5517 and as per the Medical Certificate (Ex.P-1) issued by the Medical Board, the permanent disability of right leg and knee was assessed as 40%. He was an agriculturist and 21 years of age. The Tribunal has awarded the compensation of ₹1,82,000/- (₹1,15,000/- towards medical expenses and ₹67,000/- towards permanent disability), which is too meagre as Munish

Kumar, being agriculturist, could not perform his job owing to the permanent disability, thus, there is a scope of enhancement.

I have heard the learned counsel for the parties and appraised the paper book and of the view that permanent disability of 40% as per Medical Certificate (Ex.P-1) issued by the Medical Board, is not in dispute. The Medical Bills of ₹1,15,000/- have also not been controverted. The question which arises is whether an amount of ₹67,000/- as awarded by the Tribunal towards permanent disability received by the claimant is justified or not. The Tribunal in paragraph 13 and 14 has assigned the following reasoning, while calculating the compensation, which reads as under:-

> *"13. Now, in order to calculate the compensation, first of all, we have to take the total permanent disability of the claimant which is to be computed as an amount equal to 60% of the monthly wages of the injured to be multiplied by the relevant factor as given in Schedule IV of Workmen Compensation Act. It comes to ₹1,68,000/-. 40% of the said compensation comes to ₹67,200/-. Thus, ₹67200/- is hereby assessed as the compensation to be granted to the claimant on account of his permanent disability suffered in the accident in question. On rounding off, it is taken as ₹ 67,000/- only.*
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> *14. Now, we are to calculate the expenses incurred on the treatment of the claimant/petitioner. Note-4 annexed to the Schedule II of the Motor Vehicle Act, 1988 provides that while calculating medical expenses, the court is to count and calculate the actual expenses incurred supported by bills/vouchers but not exceeding ₹15,000/- as one time payment. Although, the claimant has placed on record bills for making payments in Satluj Hospital, Ludhiana as mark-A3 to mark A100, the mark A-1001 is the detail of all these bills. The perusal of all the bills shows that the payments made by the*

claimant vide bill mark A-7 and mark A-8 exceed the amount of ₹15,000/-. Thus, for the purpose of calculation only ₹15,000/- separately from both the bills are to be taken while calculating the total medical expenses. All the other bills do not exceed the stipulated amount of ₹15,000/- as given in Schedule-II of the Act. The treatment given to the claimant has been proved by PW-4 Dr. S. Mdhur vide treatment and discharge card Ex.P-2. He has stated that multiple operations were done to fix the bones of the patient and as such the patient had to remain in the hospital with effect from 07.02.2000 to 23.3.2000. All this shows that the claimant must have made the payments shown in the bills mark A1 to mark-A100. By not calculating the amount exceed ₹15,000/- as one time payment the total expenses incurred by the claimant/petitioner comes to ₹1,15,000/-. In this way, the claimant is entitled to ₹1,82,000/- on account of compensation for the permanent disability and on account of medical expenses incurred by him."

In my view, the reasoning assigned by the Tribunal is as per Schedule IV of the Workmen Compensation Act, thus, there is no scope of enhancement, even for medical expenses as no other bills claiming the compensation of ₹5,00,000/- instead of ₹1,15,000/- as awarded by the Tribunal, have been brought on record, accordingly, cross-objections bearing No.39-CII of 2006 seeking enhancement of compensation are hereby dismissed.

As regards the appeal bearing ***FAO No.2365 of 2006*** qua fastening of the liability upon the Insurance Company, there is no force and merit in the submissions of Mr. V. Ramswaroop, for, the claim petition was filed under Section 163-A of the Motor Vehicles Act and as per the provisions of Section 163-A of the Act, the claimants were not required to plead or establish the negligence or default of the Driver. This is what has been observed by the Tribunal while deciding the issue No.3 in para No.10. At the time of insurance, the Insurance Company always take the licence of the Driver, but it has not been brought on record any documentary evidence whether the Insurance Company had taken the licence of the driver or some other person. Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

20.12.2017
Yogesh Sharma

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