

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

FAO No.623 of 2012

Date of Decision.27.10.2017

Raj Kumar

.....Appellant

Vs

Dinesh and others

.....Respondents

Present: Mr. G.C. Shahpuri, Advocate
for the appellant.

Mr. Rajbir Singh, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The claimant is in appeal against the award passed by the Tribunal whereby the claim qua third party damage has in part been allowed.

Mr. Shahpuri, learned counsel appearing on behalf of the appellant submits that in the accident caused by truck bearing registration No.HR-67-7226 insured with the ICICI Lombard General Insurance Company Ltd., the shop of the appellant was not only damaged but the goods lying therein were also damaged. On the basis of the preponderance of evidence, the Tribunal has awarded a compensation of ₹82,168/- along with interest @7.5% per annum from the date of filing of the claim petition till actual realization for the purpose of repairing of the shop but not for the goods. It is in this backdrop of the matter, the present appeal has been filed.

The self-serving statement of the appellant has not been rebutted by the respondents and therefore, the same is liable to be admitted in the absence of any cross-examination. The appellant was doing the

business of junk dealer and sale of crockery items, therefore, loss of goods

occurred to the tune of ₹50,000/- on account of aforementioned accident. In the absence of any rebuttal evidence, the Tribunal ought to have believed the statement as a sermon and awarded the compensation. The photographs Ex.P1 to P7 are the testimony of damage caused to the shop. Furthermore, the appellant remained unemployed for quite a long time and therefore, is entitled to compensation of ₹2,50,000/-.

Mr. Rajbir Singh, learned counsel appearing on behalf of the insurance company submits that the appellant had failed to produce direct and cogent evidence with regard to stock lying in the shop, which had allegedly been damaged in the accident. PW-5, Vaibhav Garg, Engineer examined on behalf of the appellant had prepared the estimate of damage to the shop and not to the goods, thus, adverse inference had been drawn with regard to existence of goods being kept in the shop. There is no falsity or illegality in the award under challenge, thus, urges this Court for maintaining the award under challenge.

I have heard learned counsel for the parties and appraised the paper book. Had the goods been lying in the shop or some material had been placed on record to prove the same by the claimant, there would have definitely been a discussion/reference in the award passed by the Tribunal. In the absence of any material or evidence placed on record with regard to goods i.e. the stock register, income tax return etc. *viz-a-viz* the unsold stock, there was no occasion for the Tribunal to grant compensation under the aforementioned head. No additional evidence has also been placed on record for enabling this Court to disagree with the finding *viz-a-viz* the non-awarding of compensation towards the goods.

In view of the aforementioned fact, I do not find any reason to

differ with the finding arrived by the Tribunal. The award passed by the Tribunal is upheld and the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 27, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No