

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2877 of 2013 (O&M)

Date of Decision: 16.11.2017

Shri Ram General Insurance Company Ltd.Appellant

Vs.

Sewa Ram and others

.....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Rajat Garg, Advocate, for the appellant.

Mr.Ashit Malik, Advocate, for respondent No.1.

Mr.Pankaj Midha, Advocate, for respondents No.2 and 3.

RITU BAHRI, J. (ORAL)

CM No.12924-CII of 2013

For the reasons stated in the application, delay of 100 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

Present appeal has been preferred by the appellant-Insurance Company (for short 'the appellants'), against award dated 16. 11.2012 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') vide which compensation to the tune of Rs.2,85,419/- was awarded to the claimant-Sewa Ram on account of injuries suffered by him.

The appellant/Insurance Company is not challenging the findings on issue No.1 that the accident took place on account of rash and negligent driving of respondent No.1-Dharambir, driver of the offending vehicle. To prove the same, FIR was lodged by claimant-Sewa Ram (PW-1) against the driver-Dharmbir that he was driving the offending vehicle in a rash and negligent manner. The challan Ex.P7 was prepared after due investigation and both the vehicles were taken into possession of the police vide seizure memo Ex.P10 and charges were also framed against him vide

Ex.P11.

The insurance company is challenging the Award firstly on the ground that as per disability certificate of the claimant, the disability was assessed as 15 % whereas, it should have been on the lower side. A perusal of the Award shows that PW-2 Dr.R.L.Arya had deposed that total physical disability was assessed to be 15 % and it was attributed to post traumatic restricted movements of right knee and the disability was not permanent in nature and may be reduced with the passage of time and physiotherapy.

Learned counsel for the respondent has referred to the judgment of Supreme Court in the case of **Syed Sadiq etc vs. Divisional Manager, United India Insurance Company 2014 AIR(SCW) 724**, whereby, disability assessed as 22% on the right hand of the claimant, the High Court had calculated the functional disability to 13%. The Supreme Court modified the order of the High Court and took the disability 85% keeping in view that he had to do his daily work from his right hand and it cannot be restricted to 13% as functional disability qua the whole body was 85%.

In the present case, since the disability was 15% has been taken for the purpose of being restricted movements of right knee, the Award does not require to be modified in view of the above referred case.

Secondly, appellant/Insurance Company is challenging the Award with regard to income of the deceased i.e. Rs.5400 per month is on the higher side. A perusal of the Award shows that both the counsel before the learned Tribunal had accepted this income of the deceased as correct and therefore, this income has been rightly assessed keeping in view the above.

So in the light of the reference and after going through the impugned Award, the orders of the learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

16.11.2017
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No