IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2906 of 2013 (O & M)
Date of Decision:-01.02.2017

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Hasan Mohd. and others

...Respondents

<u>CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA</u>

Present:- Mr. Tejender K. Joshi, Advocate
for the appellant.

Mr. Pulkit Dogra, Advocate for
Mr. Rajesh Lamba, Advocate
for respondent No.1.

Mr. Barjinder Singh, Advocate for
Mr. Ashish Gupta, Advocate
for respondents No.2 and 3.

<u>HARI PAL VERMA J.</u>

Shri Ram General Insurance Company Limited has filed the present appeal against the award dated 28.9.2012 passed by learned Motor Accident Claims Tribunal, Nuh, whereby the claim petition filed by the claimant under Section 166 of the Motor Vehicle Act, 1988 was accepted. The respondent/claimant was awarded compensation of Rs.8,95,000/- along with interest @ 6% per annum from the date of filing of the petition till payment is made by all the respondents jointly and severally.

As per claim petition, on 29.11.2010 the respondent/claimant along with Asin was coming to Nuh from Village Ghasera on his motor-cycle. Asin was pillion rider. However, when they reached near Baba Peer, then the offending vehicle bearing Registration No.HR55D-1368 came from the opposite side, which was being driven by respondent No.2 Imtiyaz son of Liyakat in a rash and negligent manner. The offending vehicle hit the motor-cycle of the claimant, as a result thereof the claimant sustained serious injuries on his person. The Tribunal vide award dated 28.9.2012 has held that respondent/claimant has received serious injuries in the accident and due to the injuries sustained by him, his right lower limb through mid thigh had to be amputated. He has become permanently disabled and has lost all his future prospects due to amputation of right lower limb. On the basis of disability certificate Ex.PW1/A, it was proved that the claimant has become permanently disabled to the extent of 80% and that too at the young age of 32 years. Accordingly, the claimant was held entitled for compensation under the heads, details of which are given as under :-

Medical expenses/ attendant/ transportation charges 10500+10000+10000/-	30,500/-
Loss of future earnings on account of permanent disability. 80% of 48000 x 16	6,14,400/-
Physical and mental pains	50,000/-
Loss of amenities and loss of expectation of life	2,00,000/-
TOTAL	8,94,900/- (rounded of to Rs.8,95,000/-)

Learned counsel for the appellant has argued that the Tribunal has wrongly and illegally directed the Insurance Company to pay the aforesaid amount of compensation in a very mechanical manner. The Hon'ble Supreme Court in **Raj Kumar vs. Ajay Kumar and another IV (2010) ACC 815 (SC)** laid down certain principles which shall be considered while deciding the loss of earning capacity on the basis of disability certificate, but the same have not been taken into consideration. The functional disability of the injured has not been assessed. The Medical Board issued the disability certificate of 80% on account of amputation of right lower limb through mid thigh, but the functional disability against the whole body had to be seen while determining the amount of compensation. The awarded compensation is on higher side. Rs.6,14,400/- has been granted on account of permanent disability. The Tribunal has also awarded Rs.2,00,000/- for loss of amenities and loss of expectation of life. The Tribunal has categorically held that respondents No.2 and 3 i.e. driver and owner have failed to produce the route permit and fitness certificate despite the fact that notice under Order 12 Rule 8 of CPC, 1908 was served upon them.

I have heard learned counsel for the appellant.

The argument raised by learned counsel for the appellant that the compensation awarded is on a higher side cannot be accepted. There is no dispute that there is disability certificate Ex.PW1/A, which has been issued by the doctor, which reveals that the claimant has become permanently disabled to the extent of 80%. He is about 32 years of age.

This aspect cannot be ignored. It was for the insurance company to prove that respondents No.2 and 3 were not having a valid permit to drive the vehicle or have violated the terms and conditions of the insurance policy. No such material has been brought on record by the appellant-Insurance Company. As held in the case **National Insurance Company Ltd. vs. Kamlesh Kaur 2006(3) RCR (Civil) 634**, there is no requirement of acquiring a route permit for a goods vehicle within the State like a transport vehicle. The defences of the insurer are confined to those only referred to in Section 149(2) and still it is to be proved by the insurer that the fault or defect alleged to have contributed to the cause of accident. Therefore, the burden was on the appellant company to prove that the driver of the vehicle was not having a valid permit before or during the time of accident. Having failed to adduce any evidence that there was no valid permit, this Court finds that no illegality can be pointed out in the impugned award.

Accordingly, the present appeal is dismissed.

February 01, 2017 **(HARI PAL VERMA)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No