108.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5831-2016 (O&M)
Date of decision:27.04.2017

BHARTI AXA GENERAL INSURANCE CO. LTD .... Appellant

versus

JAG PAL AND ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajbir Singh, Advocate,
for Mr. Sanjeev Goyal, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-20000-CII-2016

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 53 days in filing the present appeal.

It has been contended that the award was passed on 18.03.2016 and certified copy of the same was prepared on 25.03.2016. After receipt of the certified copy of the judgment, the same was sent to the Divisional Office of the Insurance Company and, thereafter, the Divisional Office sent the same to the Regional Office. The Regional Office had taken the decision to file the present appeal and thereafter, demand draft of statutory amount was prepared on 05.07.2016. After completing the relevant documents and demand draft, the case file was

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sent to the counsel through courier and the same was received on 08.08.2016. In this procedure, delay of 53 days has occurred in filing the present appeal.

I have heard learned counsel for the applicant-appellant.

This Court finds that the explanation given by the applicant-appellant seeking condonation of delay of 53 days in filing the appeal is sufficient to condone the delay.

Accordingly, the present application stands allowed.

CM-19999-CII-2016

Prayer in the application filed under Section 151 of CPC is for condonation of delay of 8 days in refiling the appeal.

For the reasons stated in the application, same is allowed and the delay of 8 days in refiling the appeal is condoned.

FAO-5831-2016

The appellant-Insurance Company has filed the present appeal against the award dated 18.03.2016 passed by Motor Accident Claims Tribunal, Sonepat (for short, 'the Tribunal'), whereby the claim petition filed by the claimant-Jag Pal (respondent No.1 herein), under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of injuries sustained by him in a motor vehicular accident which took place on 12.09.2013, was accepted and the claimant was held entitled for compensation of ₹85,000/- by the Tribunal.

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Briefly stated, as per claim petition, on 12.09.2013, the claimant-respondent No.1-Jag Pal along with Vikram and Manjeet were going in a canter bearing registration No.HR-68-5481, being driven by one Subhash. When said Subhash after turning his vehicle from the cut in the area of Village Mundlana (Sonepat) proceeded to get the fuel filled in his vehicle and reached near Sandeep Petrol Pump, the offending vehicle bearing registration No.HR-55G-2105, being driven by Vinvesh (respondent No.2 herein) at a fast speed rashly and negligently and without adhering to the traffic rules, came from the opposite side and struck against the said canter after coming on the wrong side. Due to this impact, the claimant sustained multiple grievous injuries on his person. After the accident, he was shifted to BPS Medical College, Khanpur Kalan, where he was medico-legally examined and got treatment as indoor patient and had to undergo operation for his leg. For the said accident, an FIR No.204 dated 12.09.2013 under Sections 279/337 IPC was registered with Police Station Gohana against the driver of the offending vehicle i.e. Respondent No.2.

On notice, except the owner of the offending vehicle (respondent No.4 herein), all the respondents appeared. Accordingly, respondent No.4-owner was proceeded ex parte. The driver and superdar of the offending vehicle (respondents No.2 and 3 herein respectively) filed their joint written statement denying the averments made in the claim petition and stated that a false case has been got

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registered against the driver only to extract compensation.

The Insurance Company (appellant herein) also filed written statement, taking preliminary objections regarding locus standi, cause of action and maintainability of the petition and the claim petition is bad for misjoinder and non-joinder of necessary parties. It had further stated that the driver-respondent No.2 was not holding a valid and effective driving licence and the offending vehicle was being driven in contravention of insurance policy.

On the basis of unrebutted evidence, the Tribunal held that the accident was caused due to rash and negligent driving of respondent No.2-Vinvesh. Due to the accident, the claimant suffered fracture of both bone right leg, for which, he was operated upon in BPS Medical College, Khanpur Kalan. After considering all the evidence on record, the Tribunal, vide award dated 18.03.2016, awarded a compensation of ₹85,000/- (i.e ₹20,000/- towards 10% disability + ₹15,000/- towards pain and sufferings + ₹40,000/- towards costs of treatment + ₹10,000/- towards healthy diet and transportation).

Aggrieved against the aforesaid award, the appellant-Insurance Company has filed the instant appeal.

Learned counsel for the appellant has argued that the driver of the offending vehicle was not holding a valid and effective driving licence and the offending vehicle was being driven in contravention of insurance policy. The compensation awarded by the Tribunal is on higher side and the same is beyond facts on file as well as contrary to

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the settled law. The Tribunal has wrongly held that the alleged accident took place due to rash and negligent driving of offending vehicle i.e. HR-55G-2105. He has further argued that since the disability was temporary, therefore, the claimant had not suffered any pecuniary loss on account of 10% disability. Therefore, the Tribunal, while passing the impugned award, has wrongly awarded an amount of ₹20,000/- towards 10% temporary disability. Similarly, the claimant had failed to produce on record cogent and convincing evidence to prove the expenses of treatment, but still the Tribunal has awarded the medical expenses in a casual manner without considering the authenticity of those documents. The Tribunal has wrongly held that the driver of the offending vehicle was holding a valid and effective driving licence, whereas no such driving licence was exhibited before the Tribunal and the same was only a marked document. He has further argued that the appellant-Insurance Company could not produce the report on the driving licence as the record was seized with the RTA.

I have heard learned counsel for the appellant.

From the facts available on record, the accident which took place on 12.09.2013, is not disputed. The claimant had succeeded in proving the accident as well as injuries suffered by him in the accident. The claimant appeared as PW-2 and he has also examined Dr.S.P. Sharma as PW-1, Manjeet as PW-3 as well as Sureiner Singh as PW-4. To substantiate his case, he has relied upon certain documents i.e. copy of MLR (Ex.P-1), disability certificate (Ex.P-2), bed head ticket (Ex.P-

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3), follow-up and discharge card (Ex.P-4), copy of FIR (Ex.P-5) and medical bills and receipts Exs.C-A to C-Y. The claimant had taken treatment from BPS Medical College, Khanpur Kalan, where he was medico-legally examined and got treatment as indoor patient. Dr.S.P. Sharma, who appeared as PW1, had proved that the claimant sustained grievous injuries and as per the MLR (Ex.P-1), he had suffered disability to the extent of 10%, as per disability certificate (Ex.P-7) and the claimant had to spend huge amount on treatment, medicines, transportation and healthy diet etc. Therefore, the injuries, treatment and the expenses were duly proved.

So far as the argument of the learned counsel for the appellant-Insurance Company that the driver was not holding a valid driving licence and the offending vehicle was being driven in contravention of the terms & conditions of insurance policy, from the copy of driving licence Mark-B, it has been proved that the same was issued from Licensing Authority, Farrukhabad and was valid w.e.f. 19.12.2011 to 18.12.2014 whereas the accident, in question, took place on 12.09.2013. Thus, on the relevant date, the driver of the offending vehicle was holding a valid driving licence. The said licence was meant for driving Motorcycle with gear, LMV and HTV only and it was incumbent upon the appellant-Insurance Company to get the said driving licence verified from the authority concerned, but no such effort was made by the appellant-Insurance Company. Thus, on the basis of evidence as referred/available on record, it is established that

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the claimant has succeeded in proving his case regarding accident and the injuries.

In view of above, this Court does not find any illegality in the well reasoned award passed by the Tribunal and accordingly, the appeal filed by the appellant-Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No

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