

121.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-1410-2017 (O&M)

Date of decision:02.03.2017

United India Insurance Company Limited Appellant

versus

Smt.Kailash Sharma and others Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Lalit Garg, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-Insurance Company has filed the present appeal against the award dated 07.12.2016 passed by Motor Accident Claims Tribunal, Jalandhar (for short, the Tribunal), whereby the claim petition filed under Section 166 of the Motor Vehicles Act by the claimant-injured, namely, Kailash Sharma (respondent No.1 herein), was accepted and she was held entitled to compensation of ₹1,79,766/- along with interest @ 9% per annum from the date of filing the petition till the date of its realization.

As per claim petition, on 10.02.2015 at about 6.30 PM, when the claimant was returning to her home on foot after offering prayer in the temple and had reached near a shop on the left side on kacha path, GT Road Goraya, Sandeep Kumar (respondent No.2 herein) came from the side of Rurka on a motorcycle bearing

registration No.PB-08-CF-6094, being driven by him in a rash and negligent manner, without blowing horn, struck against the claimant-respondent No.1. As a result thereof, she (claimant) fell down on the kacha path and received multiple injuries. In the meantime, her son, namely, Vikas Sharma, who was near the place of accident, came and got her admitted in NASA Hospital, Kapurthala Chowk, Jalandhar, from where she was referred to D.M.C. Hospital, Ludhiana, where she remained admitted till 23.02.2015.

The Tribunal held that the accident was caused due to rash and negligent driving of Sandeep Kumar (respondent No.2 herein). Since the claimant has proved on record that she remained admitted initially in NASA Hospital, Kapurthala Road, Jalandhar w.e.f. 10.02.2015 to 11.02.2015 and thereafter, in Dayanand Medical College & Hospital, Ludhiana w.e.f. 11.02.2015 to 23.02.2015, the Tribunal awarded ₹1,79,766/- as compensation on account of injuries suffered by her.

Learned counsel for the appellant-Insurance Company has argued that there was no negligence on the part of the driver as the claimant, while reporting the matter to the police by way of DDR, has stated that the accident was caused accidentally. There was heavy rush on the road and the motorcycle hit the injured coincidentally/per-chance and she does not want to take any legal action in this respect. Therefore, in view of the statement of the injured-claimant, the Tribunal was not required to pass the impugned award against the

appellant. To substantiate his contention, he has relied upon judgment of this Court rendered in **Jaswinder Singh Versus Balwant Singh and others-2014(4) RCR (Civil) 55.**

I have heard learned counsel for the appellant.

The Tribunal has considered the available evidence while passing the impugned award and has come to the conclusion that the accident has occurred due to rash and negligent driving of the motorcycle by Sandeep Kumar-respondent No.2. So far as the injury and her stay initially in NASA Hospital and thereafter in Dayanand Medical College & Hospital, Ludhiana, have duly been proved by the claimant wherein it has been established that she remained admitted in hospital w.e.f. 10.02.2015 to 23.02.2015 which is evident from the record of discharge certificate Ex.PW3/A. It has also been proved that she has spent ₹1,39,766/- on her treatment.

Taking into consideration the nature of injuries wherein she had to stay in hospitals w.e.f. 10.02.2015 to 23.02.2015, the Tribunal has rightly awarded compensation of ₹25,000/-on account of pain and suffering. ₹10,000/- for loss of amenities, and ₹5,000/- for attendant and nourishing food.

The judgment cited by the learned counsel for the appellant in **Jaswinder Singh's case** (supra) is not applicable to the present case as in that case, the injured himself had stated that he had fallen down from the scooter himself and no other person was responsible for it, whereas in the present case, the injured has stated that the accident has

been caused coincidentally, but it does not mean that the accident has not been caused. The only mileage which the appellant can draw from this citation is that there was no evidence on the part of the driver to show that he caused the accident. Therefore, in the case in hand, since the accident has been caused because of rash and negligent driving of the motorcyclist-Sandeep Kumar-respondent No.2, the Tribunal has rightly awarded compensation.

In view of above, I find no cause for interference in the present appeal filed by the Insurance Company and the same is accordingly dismissed.

(HARI PAL VERMA)
JUDGE

02.03.2017
sanjeev

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