

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.905 of 2016 (O&M)

Date of Decision: 21.07.2017

Iffco Tokio General Ins. Co.Ltd.

.....Petitioner

Vs.

Meenakshi and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ravinder Arora, Advocate, for the appellant.

Mr.Ashwani Arora, Advocate, for respondent No.1.

Mr.G.S.Chahal, Advocate, for respondent No.2.

RITU BAHRI, J. (ORAL)

CM No.2614-CII of 2016

For the reasons stated in the application, delay of 22 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

The Insurance Company has come up in appeal against the Award dated 03.08.2015 whereby, claimant has been awarded compensation of Rs.3,31,197/- on account of injury suffered by the claimant-Meenakshi in the road accident which took place on 02.02.2013.

It is alleged that on 02.02.2013, at about 8.30 am, the claimant was going from her house in Sector 38 to her college at Sohana while driving her Honda Activa scooter at slow speed and on left side of the road. When she reached on the Kumbra light points, Phase-8, Mohali and was crossing the road as there was a green light for her, at the time a car bearing No.HR-41-B-9780 came at fast speed from the side of Phase-8 Mohali and after jumping the read light it struck against the rear wheel of her scooter. After the impact, she fell on the road and sustained injuries, she was taken to Shivalik Hospital, Sector 69 in the same car driven by respondent No.1. Thereafter, she was taken to GMSH Sector 16, Chandigarh. The accident

took place due to rash and negligent driving of Car No.HR41-B-9780 by respondent No.1.

Upon notice, respondent No.1 filed written statement taking preliminary objection that neither the respondent nor his vehicle was involved in the alleged accident. The claimant herself feel from the scooter and sustained injuries and the claimant was making false statement as to material and the petitioner therefore, is liable to be dismissed. He further submitted in his application that he had also given a sum of Rs.5,000/- to the parents of the girl on their demand, who promised to return the same. The claimant and her brother filed false complaints against the respondent and his father, but the same were filed after due inquiry and no criminal case was registered. In the end, a prayer for dismissal of petition was made.

Respondent No.2 filed separate written statement but on the same lines as was filed by respondent No.1 and he also prayed for dismissal of the petition.

Respondent No.3 filed separate written statement stating that material allegations made in the petitioner is false and petition is not maintainable, the driver of the offending car was not holding valid driving licence and thus, respondents No.1 and 2 have committed breach of terms and conditions of policy and in the end a prayer for dismissal of the petition was made.

On the pleadings of the parties following issues were framed:-

1. Whether the claimant sustained injuries in a road accident which took place on 02.02.2013 due to rash and negligent driving of vehicle No.HR41-B-9780 by its driver-respondent No.1? OPP.
2. Whether the claimant is entitled to any amount as compensation if so, how much and from whom? OPP.
3. Whether respondent No.1 was not holding a valid driving licence at the time of accident, if so its effect? OPR-3

In support of her version, claimant Meenakshi herself stepped into witness box as PW-1 and had also examined Dr.N.K.Aggarwal as PW2 and thereafter claimant closed her evidence after tendering some documents. On the other hand, respondent No.1 himself stepped into witness as RW1 and has also examined his father Balraj Kumar as RW2 and thereafter, closed his evidence after tendering documents. Counsel for respondent No.2 as well closed his evidence after tendering documents.

The learned Tribunal has returned to the finding on issue No.1 that accident took place on the negligent driving by respondent No.1. It has been observed in the present case no FIR or DDR has been recorded. However, claimant has placed on record the document, which show that in fact applications had been moved by the claimant to the police for registration of case against the respondent No.1 but the police had not recorded the FIR. On the said application, inquiry was conducted and as per inquiry report Ex.R5 conducted by DSP City, District SAS Nagar Mohali, it was not a case of accident. However, the learned Tribunal while taking into account the deposition of the claimant as PW-1 as well as the statement of Balraj Kumar RW2-father of the respondent No.1 that an amount of Rs.5,000/- was paid to the victim for treatment by respondent No.1 and this fact was admitted by RW-2 Balraj Kumar and he had taken the complainant to the hospital in the offending car and there was no occasion for him to pay such a huge amount to the parents of claimant. In this backdrop inquiry report Ex.P5 loses significance and the same was discarded.

Learned counsel for the appellant has not been able to show any other evidence. This finding rightly recorded by the learned Tribunal in the facts of the given case no interference is required by this Court on issue No.1.

As regard the compensation, the claimant had suffered permanent disability to the extent of 8% in the right knee as per Ex.P29 and there was deformity in right knee. The compensation has been awarded is not on the higher side as no appeal was filed. PW-2 Dr.N.K.Aggarwal stated in his statement that on account of abovesaid disability in right knee, the claimant was not able to perform her daily routine and keeping in view of this fact, her notional income was taken as Rs.12,000/- per months. The

monthly loss in view of the assessed disability of 8% comes to Rs.960/- per month and the yearly loss comes to Rs.11520/-. Keeping in view the age of the injured, multiplier of 18 was applied to the assessed loss and as such, the total future loss of income comes to Rs.2,07,360/-. Thus the learned tribunal has assessed the amount of compensation as under:

Sr.No.	Particulars	Amount
1.	Hospitalization charges, treatment expenses and expenses incurred on medicines	Rs.1837/-
2.	Special Diet & attendant charges	Rs.57,000/-
3.	Transportation charges	Rs.5,000/-
4.	Pain and sufferings	Rs.20,000/-
5.	Loss of future earnings	Rs.2,07,360/-
6.	Loss of amenities and marriage prospect	Rs.40,000/-

This case is covered by the judgement of Supreme Court in the case of Raj kumar vs. Ajay Kumar and another 2011 ACJ 1,where, the disability was got assessed through the doctor by the learned Tribunal during the course of payment of compensation.

So in the light of the discussion, the orders of the learned Tribunal, the compensation assessed by the learned Tribunal is reasonable, not on the higher side and do not reflect any material irregularity or perversity which warrant interference. Hence the present appeal is dismissed.

(RITU BAHRI)
JUDGE

21.07.2017
anil

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