

116.

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

FAO-2941-2017 (O&M)

Date of decision:05.05.2017

NEW INDIA ASSURANCE CO LTD

... Appellant

versus

JODH SINGH AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. S.P. Arora, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-New India Assurance Company Limited has filed the present appeal against the award dated 14.02.2017 passed by Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'), whereby the claim petition filed by the claimant (respondent No.1 herein), under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of injuries suffered by him in a motor vehicular accident which took place on 01.07.2013, was allowed and the claimant was held entitled for compensation of ₹ 2,67,052/-.

Briefly stated, as per the claim petition, on 01.07.2013 at about 5.30/6.00 am, the claimant-respondent No.1 was going from Manimajra Town towards Sector 26, Chandigarh, while sitting in a three-wheeler along with other occupants, which was being driven by one Asgar Mohammad on its left side. When it reached Shashtri Nagar,

traffic light point, Manimajra, one Tavera Car bearing registration No.CH02-T-3070 came at a fast speed from the side of railway traffic light point, which was being driven by one Sukhdev Singh (respondent No.2 herein) in a rash and negligent manner. The car struck against the three wheeler. As a result thereof, all the occupants of the three wheeler received injuries and the claimant also received serious injuries. He was taken to GMSH-16, Chandigarh. On the statement of the driver of three wheeler, namely, Asgar Mohammad, a criminal case was registered against the driver of the Tavera Car i.e. respondent No.2. Hence, the claimant filed a claim petition for compensation.

Upon notice, before the Tribunal, the driver and owner (i.e. respondents No.2 and 3 herein) did not appear in Court despite service through publication. Hence, they were proceeded ex parte.

The appellant-Insurance Company contested the claim petition and pleaded that no accident had taken place due to the rash and negligent driving of its insured vehicle i.e. Tavera car as alleged, but it was caused due to the rash and negligent driving of the driver of three-wheeler himself.

To substantiate his case, the claimant/injured himself stepped into the witness box as PW-1 and reiterated the entire facts narrated in his claim petition. He stated that in the accident, he had suffered serious injuries i.e. fracture of left clavicle, fracture on spine (D7) and other multiple injuries. He was admitted in the GMSH-16, Chandigarh on 01.07.2013 and discharged on 03.07.2013. Thereafter,

he remained under follow-up treatment for a period of about six months in the said hospital. He was advised rest, so he remained on medical leave for a period of three months and earned leave for a period of one month. As per the claimant, at the time of accident, he was 54 years of age and was employed as Mining Guard with the Department of Mines and Geology, Haryana and getting salary of ₹26,000/- per month approximately. The claimant examined PW2-Wazir Singh, who produced on record Exs.P-13 to P-16 i.e. salary certificate, annual statement, leave record and medical reimbursement record respectively of the claimant-Jodh Singh. The claimant also examined PW3-Dr. Love Kapoor, Senior Resident, Department of Orthopedics, GMCH-32, Chandigarh, who stated that the claimant was examined on the direction of the Court by a Medical Board and it was found a case of fracture D-7, D-11 and D-12 of vertebra along with fracture of left clavicle. His disability was assessed as 19% in relation to whole body and issued a disability certificate Ex.P-17. Physiotherapy was also recommended.

After hearing the parties, the Tribunal held the driver of Tavera car i.e. respondent No.2-Sukhdev Singh responsible for the accident. Though as per Ex.P17, the permanent disability was assessed as 19%, but it was not found qua his whole body but in relation to left upper limb only, so the disability was reduced to the extent of 10% keeping in view the nature of injury and all the factors effecting his earnings. The claimant, as per PW2 was getting salary of ₹18,192/-

(Ex.P13) in the month of June, 2013. Accordingly, after making loss of income @ 10%, it comes to ₹1,819/- per month and yearly loss comes to ₹21,828/-. After applying a multiplier 11, the future loss of earnings was assessed as ₹2,40,108/-. However, for the remainder years of service i.e. five years, there would be no loss of income, as no evidence had come on record that the claimant would suffer income loss or reduction in salary and as such, the future loss of income was calculated while applying multiplier 9 only i.e. after deducting five years, the total loss of future income for which the claimant was held entitled, was assessed as ₹1,96,452/-. As per Ex.P15, the claimant availed 100 days leave and after calculating per day leave @ ₹606/-, loss for 100 days leave was assessed as ₹60,600/-. Besides this, the Tribunal also held, the claimant entitled to recover ₹10,000/- on account of pain and suffering and loss of amenities. Thus, a total compensation of ₹2,67,052/- was awarded by the Tribunal in favour of the claimant.

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

Learned counsel for the appellant-Insurance Company has argued that the Tribunal has awarded compensation in excess of the settled formula without appreciating the evidence. There was no cogent evidence on record enabling the Tribunal to award this much of compensation. The injured-claimant has given contrary statements, one recorded before the criminal court and the other recorded before the

MACT. Even, when the injured appeared as a witness, he was not in a position to identify the driver of the offending vehicle who was facing trial in the criminal case. He stated to the extent that he never met with any accident nor received any injuries. The Tribunal has erred in taking the view merely on the ground that the driver was being tried on account of rash and negligent driving. The injured-claimant was about 53 years of age and the Tribunal has awarded compensation by applying the multiplier of 11, whereas the compensation should have been calculated keeping in view the nature of injury and its effect vis-a-vis the disability. In this manner, the multiplier has wrongly been applied and there was only 10% disability.

I have heard learned counsel for the appellant.

PW3-Dr. Love Kapoor, Senior Resident, Department of Orthopedics, GMCH-32, Chandigarh, stated that on the direction of the court, a Medical Board was constituted to examine the claimant and it was found a case of fracture D-7, D-11 and D-12 of vertebra along with fracture of left clavicle. His disability was assessed as 19% in relation to whole body and a disability certificate (Ex.P-17) was issued to that effect. Considering the nature of injury so suffered by the claimant, physiotherapy was also recommended. However, while computing the loss, his disability was found qua his left upper limb and spine only, which was assessed at 10% instead of 19% and accordingly, the loss of income was calculated. The very fact that the injury was so serious in nature, the claimant had to avail 100 days leave and even otherwise, he

was advised regular physiotherapy. Even if the argument that the multiplier has wrongly been applied by the Tribunal is accepted, the fact remains that the injury suffered by the claimant is so serious that he had to avail 100 days leave from his office. Therefore, this Court cannot ignore the nature of injury as well as pain and suffering which the claimant-injured must have undergone during that period. There is no such evidence which suggests that even after a period of 100 days leave, the claimant is fit to perform his usual duties as was being performed before accident, as the doctor has still recommended regular physiotherapy.

Therefore, once it is established that the claimant-injured remained in hospital for such a long time and had to remain on 100 days leave, this Court does not find any material which may warrant interference in the well reasoned award.

Accordingly, the appeal filed by the appellant-Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

05.05.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No