

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-5291-2017

Date of Decision:08.08.2017

The New India Assurance Company Limited

.....Appellant

Versus

Sukhwinder Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Vinod Gupta, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned award dated 17.03.2017 passed by the learned Motor Accident Claims Tribunal (for short “the Tribunal”), Insurance Company has approached this Court by way of instant appeal.

Heard learned counsel for the appellant.

A bare perusal of the impugned award passed by the learned MACT would make it crystal clear that each and every relevant aspect of the matter was minutely discussed and rightly appreciated by the learned Tribunal, before passing the impugned award and the same deserves to be upheld. The argument raised by learned counsel for the appellant-Insurance Company that the learned Tribunal should not have granted any compensation to the injured-claimant for his spinal injury, under the head of loss of earning capacity, in para 21 of the impugned award, has been duly

considered but the same has been found wholly misconceived, for the reason that loss of earning capacity cannot be conjuncted with permanent disability, as sought to be done on behalf of the appellant. In this view of the matter, no fault can be found with the cogent and convincing findings recorded by the learned Tribunal and the impugned award deserves to be upheld, for this reason also.

Before arriving at its judicious conclusion, learned Tribunal rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. Cogent and convincing findings recorded by the learned Tribunal in para 19 to 22 dealing with the abovesaid argument raised by learned counsel for the appellant, read as under:-

*“So far as disability of the claimant is concerned, the same is assessed at 75% and this has further been fortified vide EX.C 416 wherein Board of Doctors from GGS Medical College, Faridkot have opined that the patient is having permanent disability of 75%. In such view of the matter and in view of the law laid down in **2013(4) RCR (Civil) page 295 (SC)**, since disability comes in the bracket up to 90% as such a lump sum amount of ₹5,00,000/- is liable to be awarded to the claimant. Further, it is also proved on record that the claimant was around 29 years at the time of his accident. Due to the accident the claimant has suffered physical incapacity of 75% and his loss of prospectus of marriage have considerably reduced which are assessed at ₹75,000/- in view of the law laid down in case titled as **Sanjay Kumar Versus Ashok Kumar, 2014(1) RCR (Civil) page 875**. Apart from this he is also entitled to medical bills amounting to ₹10,51,891/- proved on record as Ex.C63 to Ex.C413.*

It was contended by the learned counsel for the

*insurance company that the medical bills have not been proved on record. However, such contention of the learned counsel does not survive in view of the law laid down by Hon'ble High Court of Punjab and Haryana in **1991 (1) PLR page 410 in case titled as Rajinder Kumar Versus Haryana State as well as Varinderjit Singh Versus Rajinder Singh, 2008(1) RCR page 67.** Accordingly the bills amount of ₹10,51,900/- is also awarded to claimant.*

*So far as the earning capacity of the claimant is concerned, there is no proof regarding his salary or income. Therefore his income is liable to be assessed at ₹3,300/- per month being cleaner of the truck. Since the claimant has suffered 75% disability, as such he is not expected to do any work of physical exertion. As such his working disability is taken as 100%. Accordingly keeping in view the age of the claimant a multiplier of 17 is applied, as such the amount of ₹6,73,200/- towards his future loss of income is awarded to him. Apart from this the claimant is also held entitled to an amount of ₹2,000/- per month for 20 years towards attendants charges and said amount will come to ₹4,80,000/-. These assessments are made in view of the law laid down by Hon'ble Apex Court in **Kavita Versus Deepak reported at 2012(4) RCR(Civil) page 273 (SC).** Accordingly in view of the aforesaid findings, the claimant is held entitled to receive an amount of ₹27,80,100/- from the respondents.*

So far as respondent No.1 is concerned. He has not proved on record any insurance, driving license etc., whereas driving license of Tirath Singh and documents regarding his vehicle are duly proved on record. In addition to this claimant also took pains to examine CWI Rishi Raj, Officer of New India Assurance Company, who has proved on record Ex.C1 which is claim filed by driver of Truck bearing No.PB-03AJ-3356 and has stated that all the documents pertaining to the said vehicle were found to

be in order and the OD claim of the said vehicle was paid by the insurance company. In view of the said evidence coming on record to which there is no rebuttal led by the respondent insurance company, the award amount to the extent of 50% which is payable by Tirath Singh is ordered to be paid by respondent No.3 New India Assurance Company Limited. Since Balwinder Singh respondent No.1 did not led any evidence regarding his license. However the insurance policy Ex.R4 shows that his truck was duly insured with New India Assurance Company Limited, as such it is ordered that at the first place the insurance company shall pay 50% share as liable to be paid by Balwinder Singh and it shall be entitled to recovery of the same from Balwinder Singh.”

Facts of the case, including the particulars of accident, have gone undisputed before this Court. Claimant/injured produced on record voluminous documentary as well as oral evidence so as to prove his pleaded case. The learned Tribunal rightly followed the law laid down by the Hon'ble Supreme Court, while awarding reasonable amount of compensation to the injured, on account of loss of his earning capacity. Similarly, the learned Tribunal was well justified in placing reliance on the law laid down by the Hon'ble Supreme Court, for granting the compensation on account of permanent disability. Having said that, this Court feels no hesitation to conclude that the learned Tribunal was well within its jurisdiction to pass the impugned award and the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned award passed by the learned Tribunal, which may warrant any interference

at the hands of this Court, while exercising its appellate jurisdiction.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present appeal stands dismissed, however, with no order as to costs.

August 08, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No