

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5358 of 2017 (O&M)

Date of Decision:1.9.2017

The Oriental Insurance Company Limited

---Appellant

vs.

Sukhwinder Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.R.C.Gupta, Advocate
for the appellant

Rekha Mittal, J.

CM No. 18148-CII of 2017

Heard.

Allowed as prayed for. Annexures A-1 and A-2 are taken on record subject to just exceptions.

FAO No. 5358 of 2017

The present appeal directs challenge against award dated 26.5.2017 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short “the Tribunal”) whereby compensation has been awarded in regard to injuries sustained by Sukhwinder Singh in a motor vehicular accident on 16.11.2015.

Counsel for the appellant has assailed findings of the Tribunal

both on Issue No. 1 regarding rashness and negligence attributed to Ashish Bhandari, driver of motorcycle No. PB-05-T-0350 as well as quantum of compensation assessed by the Tribunal.

The first submission made by counsel is that Ashish Bhandari, driver of the alleged offending vehicle reported the matter to the police wherein he has accused driver of an unknown car having caused the accident. It is further argued that Sukhwinder Singh, injured did not record his statement with the police for initiating criminal proceedings against Ashish Bhandari nor filed a private complaint in the Court in this regard. As per statement of Sukhwinder Singh PW-3, accident was witnessed by Ajit Singh son of Jaswant Singh resident of Mohali but said Ajit Singh has been withheld from the witness box for the reasons best known to Sukhwinder Singh. It is argued with vehemence that in the light of first version recorded by Ashish Bhandari coupled with failure of Sukhwinder Singh to initiate criminal proceedings against Ashish Bhandari and examination of Ajit Singh to corroborate his version, findings recorded by the Tribunal on Issue No. 1 are liable to be set aside. In the alternative, it has been argued that in view of the facts on record, the present is a case of composite negligence of motorcycle No. PB-05-T-0350 and an unknown car which came from behind, therefore, the appellant-insurance company can not be fastened with entire liability to pay compensation.

To challenge findings of the Tribunal qua assessment of compensation, counsel has fairly informed that he does not dispute assessment of income of the victim at Rs. 8000/- per month but the Tribunal had wrongly allowed increase in income for future prospects to the extent of

50% and computed loss of future income by taking disability to the extent of 50%.

I have heard counsel for the appellant, perused the paper book particularly the award, statements of Sukhwinder Singh PW3 and Ashish Bhandari RW1.

Sukhwinder Singh being the injured victim was surely present on the spot. He reiterated his stand raised in the petition by way of affidavit PW3/A tendered into evidence. In para 1 of the affidavit, he has given a detailed account as to how the occurrence in question took place due to rash and negligent driving of motor cycle bearing No. PB-05-T-0350 by Ashish Bhandari on which Sukhwinder Singh was travelling as pillion rider. A relevant extract from his testimony reads as follows:-

“When they were going from the side of light points of colony No. 5 Chandigarh towards Mohali at that time an unknown car came from their behind and while it was overtaking their motorcycle, the motorcycle struck against the side of the car. As a result of this accident they both fell down on the road and received serious injuries.”

The witness was cross examined at length by both the sets of respondents but nothing tangible and material has been brought forth to discard or disbelieve his testimony or impeach his credibility. He has candidly denied the suggestion that driver of the car was only negligent in causing the accident who struck against the motorcycle from back side. The mere fact that the injured did not lodge criminal proceedings against Ashish Bhandari is not sufficient to reject claim of the injured-victim. As per the

settled position in law, lodging of criminal proceedings by the claimant is not a *sine qua non* for claiming compensation under Section 166 of the Motor Vehicles Act, 1988. The Court has to appreciate the quality of evidence and not the quantity. Failure of the claimant to examine Ajit Singh an eye witness to the occurrence in the circumstances that proceedings before the Tribunal are summary in nature and do not admit provisions of the Evidence Act to be followed strictly, is of no consequence. This apart, findings by the Tribunal are to be recorded on the basis of balance of probabilities and proof beyond shadow of reasonable doubt is not required.

Counsel has not advanced any arguments to find fault in the statement of Sukhwinder Singh on the basis of statement of Ashish Bhandari. Assuming that accident took place due to composite negligence of the motorcyclist and the unknown car, the claimant has the liberty in law to sue one of the tortfeasors for claiming compensation. Examined from any angle, contention raised by counsel to assail findings of the Tribunal on Issue No. 1 are not meritorious and liable to be rejected.

The Tribunal has awarded compensation to the tune of Rs. 9,63,953/- payable with interest. Dr. Ramandeep Singh was examined to prove disability suffered by the injured-victim. In para 16 of the award, the Tribunal has made reference to statement of Dr. Ramandeep Singh who stated that claimant suffered functional disability in relation to both eyes which is 50%. Counsel for the appellant has not disputed assessment of income at Rs. 8000/- per month. As the victim has suffered functional disability to his both eyes to the extent of 50%, the Tribunal has rightly computed loss of future income by taking into consideration the multiplier

method and adding loss of future prospects.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly
dismissed.

(**Rekha Mittal**)
Judge

1.9.2017
paramjit

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