Sr. No. 111

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

**FAO No. 7279 of 2017(O&M)
Date of decision: 09.11.2017**

**National Insurance Company Limited, Divisional Office, Karnal
...........Appellant**

versus

**Krishna Devi and another
...........Respondents**

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Om Pal Sharma, Advocate
for the appellant.

<u>Rajbir Sehrawat, J.(Oral)</u>

The present appeal has been filed by the Insurance Company challenging the Award passed by the Motor Accidents claim Tribunal, Karnal (for short, 'the Tribunal'), whereby an amount of ₹ 8,44,520/- has been awarded to the claimant/respondent on account of the injuries suffered by the claimant/Krishna Devi in the accident.

Brief facts of the case are that the claimant/Krishna Devi along with her husband was going to their village Kunjpura, District Karnal, from Shahabad, on a motor cycle bearing Registration No. HR05AP-4375 at a moderate speed and on the left side of the road. When they reached near fly-over of Nilokheri, G.T.Road, then one car; which was being driven in negligent manner struck against the motor cycle. As a result the claimant/Krishna Devi and her husband; both fell on the road and the claimant sustained grievous injuries on the vital parts of her body; including fracture in her right shoulder and injuries on her head. She was admitted to C.H.C. Nilokheri; in a critical condition, and was later shifted to Arvind Hospital, Karnal. However, she went in coma and she was still in coma on the date the petition was filed. It was further pleaded that the claimant was 45 years of age. Besides doing household work, she was earning ₹ 3300/- per month from stitching work. Therefore, the claimant claimed ₹ 20 lakhs along with interest @ 24% per annum.

Upon notice, respondents appeared through their counsel.

However, respondent No. 1 did not file written statement and thereafter, also, did not appear. Hence he was proceeded against ex parte. However, respondent No. 2/Insurance Company; contested the petition by filing the written statement. Insurance Company, the appellant, herein denied the accident in question in its entirety and it was claimed that the vehicle was falsely involved in the case.

Parties led their evidence.

After hearing the parties and appreciating the record, the Tribunal held that the claimant has been proved to be 100% disable and she is in coma even now. Therefore, the Tribunal awarded the above said amount. While awarding the amount, the Tribunal held the notional income of the injured to be ₹ 4,000/- per month. After deducting 1/3rd, the loss of income on account of disability was held to be ₹32,000/- per year. Multiplier of 13 was applied by the Tribunal. Hence on account of loss of future income due to the disability, the Tribunal awarded ₹4,16,000/-. On account of actual medical expenses; the Tribunal awarded an amount of ₹ 3,52,520/-. Besides; ₹64,000/- were awarded on account of miscellaneous expenses by the Tribunal; in view of the fact that the total hospitalization of the claimant had been 64 days and she would have spent ₹1,000/- per day. Besides this, the attendant charges were awarded as ₹5,000/-

and another amount of ₹7,000/- was awarded on account of special diet. By rounding off the figure; the total compensation awarded was assessed at ₹8,44,520/- as mentioned above.

While arguing the case, learned counsel for the appellant has submitted that the medical expenses amounting to ₹. 3,52,521/- has wrongly been awarded by the Tribunal; because the claim petition was filed under Section 163-A of the Motor Vehicles Act (for short, 'the Act') and as per the Act only ₹ 15,000/- could have been awarded on this account.

Second argument of learned counsel for the appellant is that the claimant is not a third party as she was travelling on the same motor cycle against which the award has been passed. Still further learned counsel submits that driver of the vehicle has not been arrayed as party in this case, therefore, no petition was maintainable against the owner only.

Third argument of learned counsel for the appellant is that FIR in fact is a blind FIR; suggesting that in fact no accident would have happened as stated by the claimant.

Having heard learned counsel for the appellant, this Court is of the considered opinion that the submissions made by learned counsel for the appellant are not sustainable in law. So far as the medical expenses are concerned, this Court has already held in the judgment rendered in ***FAO No. 3874 of 2013*** decided on 26.07.2013 titled as ***Oriental Insurance Company Limited versus Smt. Kulwinder Kaur and another*** that in case of hospitalization; the amount to be awarded to the claimant can not be restricted to ₹15,000/-. Therefore, she would be entitled to the actual expenses incurred and proved on record. The Tribunal has relied upon this judgment only to award the actual expenses on account of medical expenses.

So far as the argument of learned counsel for the appellant that the claimant is not a third party is concerned, the same is to be noticed only to be rejected. The insurance policy Ex:R1 placed on record shows that it is a comprehensive policy. Therefore, any person suffering any injury involving the vehicle in question would be a third party except the actual owner and his employee in terms of Section 149 of Act. Therefore, the Tribunal has rightly held the claimant to be a third party. Otherwise, also it is on record that the claimant is not the owner or employee of the owner. Mere fact that she happens to be the mother of the owner; does not exclude her from the definition of the third party. Still further, the Tribunal has rightly relied upon the judgment of this Court rendered in ***2017(1) R.C.R. (Civil) 640*** titled as ***National Insurance Company Limited vs. Surjit Kaur and others*** to arrive at a conclusion that a pillion rider is a third party and entitled to compensation.

The next argument of learned counsel for the appellant that the driver of the motor cycle has not been impleaded as a party and the FIR is a blind FIR, therefore, the petition was not maintainable; is not to be countenanced by this Court. The owner of the vehicle, who is primarily responsible to make the payment of compensation, if any, is very much a party in the present proceedings. Not only this, even the Insurance Company has been impleaded in the present case and it is respondent in its own capacity. Therefore, even without seeking special permission from the Tribunal, the Insurance Company is fully authorised to defend petition on the grounds which are available to the driver and owner of the vehicle. Therefore, the Insurance Company is not entitled to take this objection that petition is not maintainable because the driver is not made a party in the petition. So far as FIR is concerned, any defect or laxity in lodging or recital in the FIR is not sufficient to defeat the claim petition, *per se.* Registration of the FIR is not even mandatory for maintaining the claim petition. Therefore, the Tribunal has not committed any illegality or infirmity in entertaining the claim petition or in allowing the same.

No other argument was raised by learned counsel for the appellant.

In view of the above, the present appeal is dismissed being devoid of any merits.

9th November, 2017 **[Rajbir Sehrawat]**
Shivani Kaushik **Judge**

Whether speaking/reasoned: Yes

Whether reportable: Yes