IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7623 of 2017 (O&M)
Date of decision: 19.12.2017

NEW INDIA ASSURANCE COMPANY LTD ...Appellant

Versus

SUBHASH CHANDER AND ORS ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ajay Singla, Advocate for the appellant.

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<u>REKHA MITTAL, J. (Oral)</u>

The present appeal directs challenge against award dated 29.08.2017 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib whereby compensation has been allowed in respect of injuries sustained by Subhash Chander in a motor vehicular accident that took place on 24.03.2015.

The Tribunal has awarded compensation to the tune of Rs.9,61,780/-, detailed hereunder:-

1. Loss of income during treatment and recovery	Rs.75,000/- (Rs.7500 x 10)
2. Loss of future income owing to disability	Rs.7,14,000/- (Rs.3500 x 12 x 17)
3. Expenses on medical treatment	Rs.22,780/-
4. Pain and sufferings	Rs.50,000/-
5. Loss of amenities of life	Rs.50,000/-
6. Price of artificial limb to the amputated leg	Rs.50,000/-

Counsel for the insurance company has challenged correctness of the award primarily on two counts. The first submission made by counsel is that as there was no route permit of the truck in question on the day of occurrence, insured is guilty of violating the terms and conditions of contract of insurance constituting a valid defence in favour of the insurance company. It is argued that the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative may be allowed recovery right against the insured after satisfying the award towards the claimant.

To challenge quantum of compensation assessed by the Tribunal, it is argued that the Tribunal has wrongly allowed compensation to the tune of Rs.7,14,000/- towards loss of future income.

The plea of the appellant with regard to the insured being guilty of violating the terms and conditions of insurance policy constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act') is misconceived and outrightly rejected. Under Section 149(2) of the Act, defence available to the insurance company is with regard to a permit and not a route permit, therefore, non-possessing a route permit or deviation from the route permit does not constitute a defence under Section 149(2) of the Act. In this view of the matter, the insurance company can neither escape its liability to pay compensation nor press for right of recovery against the insured.

So far as the plea with regard to allowing compensation qua loss of future earning, the victim suffered disability to the extent of 75% as one of his legs was amputated. The Tribunal has assessed income of the victim at Rs.7500/- per month. His functional disability has been reduced to 50%. For assessing loss of future income qua disability, Tribunal has taken monthly loss at Rs.3500/- per month. It appears that the Tribunal has wrongly applied multiplier of 17 in place of 16 but taking into consideration the entire amount assessed by the Tribunal, I do not find any reason to interfere in the quantum of compensation allowed to the victim.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, it is clarified that in case the injured files an appeal for enhancement of compensation, any observation made for disposal of appeal preferred by the insurance company would not cause prejudice to his right.

19.12.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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