

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1176 of 1999 (O&M)
Date of Decision : 20.02.2018

United India Insurance Co. Ltd.

.....Appellant

Versus

Sanjay Solanki and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V. Ramswaroop, Advocate
for the appellant.

Mr. Jagdish Manchanda, Advocate
for respondent no. 1.

Surinder Gupta, J.

This is appeal by United India Insurance Co. Ltd against award dated 24.11.1998 passed by Motor Accident Claims Tribunal, Faridabad (later referred to as 'the Tribunal') in MACT Case No. 177 of 26.02.1993, awarding compensation of ₹3,19,000/- in respect of injuries suffered by respondent no. 1-claimant Sanjay Solanki in a motor vehicle accident with truck bearing registration no. HRC-4107 (later referred to as 'the offending vehicle').

2. Learned counsel for the appellant has assailed the award on two counts, firstly, that the accident was caused due to contributory negligence of claimant; and secondly, the compensation awarded by Tribunal is on higher side.

3. Claimant has given brief description of accident in para 24 of claim petition, which reads as follows:-

“24. That the petitioner was coming from Badkhal Road, and going to B.K. (sic hospital) side and when he reached at 4/5 Chowk, NIT Faridabad, on his Yamaha Motorcycle

No. HR-29-2939, and he crossed the said chowk, in the meantime, a truck bearing no. HRC-4107 came from the backside i.e. from Railway Road, NIT Faridabad without giving any horn, being driven by the respondent no. 1 rashly and negligently, at a very high speed, and hit the motorcycle of the petitioner, resulting which the petitioner fell down on the road and received injuries. The said accident was witnessed by Dev Parkash Aggarwal. The detailed description of the said accident has been mentioned in the FIR No. 672 dated 23.10.1992, which may be read as part of this petition.”

4. Respondent no. 2-Ram Sharan, who was allegedly driving the offending vehicle at the time of accident, filed written statement, wherein he denied the accident. Appellant-Insurance Company in its reply took the plea that claimant was driving his Yamaha Scooter carelessly, negligently and recklessly at the time of accident, which was caused due to contributory negligence of claimant himself. Respondent no. 2-Ghansham Dass (since deceased) before the Tribunal in his separate written statement also denied the accident. Dev Parkash, who lodged FIR No. 672 dated 23.10.1992 regarding this accident, stated in his statement to police that the offending vehicle came from the railway road side in a very rash and negligent manner and hit the vehicle of claimant as a result of which he (claimant) fell down and suffered injuries.

5. PW-1 Man Singh was examined as eye-witness of the accident, who described the accident in following words:-

“On 23.10.1992, I was going on foot from my home situated in Sanjay colony towards NH Market No. 5, Faridabad.

When I reached on the crossing of No. 4 and 5, I saw that Sanjay Solanky was going from the side of B.K. Hospital on his motorcycle and was taking a turn towards Badkhal side, in the meanwhile, a truck No. HRC-4107 came from the other side and hit the motorcycle from the back side. As a result of this accident, Sanjay Solanky came under the truck. In fact, the truck crushed Sanjay Solanky. The truck was being driven rashly or negligently by Ram Saran respondent and without blowing any horn. The petitioner Sanjay sustained multiple injuries on the hip, stomach, and both the legs including fractures. This accident took place at about 1.00 p.m. The truck driver after causing the accident had fled away after leaving the truck there. I saw this accident with my own eyes. I knew Sanjay Solanky from the very beginning. I removed Sanjay Solanky to the B.K. Hospital and admitted him there. Police had enquired me about this accident?

6. Claimant while appearing as PW-2 has stated that on the fateful day, he was coming from *chowk* of Sectors 4 and 5, NIT, Faridabad, when the offending vehicle came from behind and hit against his motorcycle. Statement of claimant and eye-witness is un-rebutted. Driver of the offending vehicle has not been examined to give his own version of the accident. Relying on un-rebutted statements of claimant and eye-witness, the Tribunal has committed no error while observing that the accident was caused due to rash and negligent driving of the offending vehicle by its driver. Findings of the Tribunal on issue no. 1, as such, are affirmed.

7. On the issue of quantum, learned counsel for the appellant has

argued that medical bills produced by claimant were not duly approved by

calling the concerned doctor, who prescribed the medicines or by examining the chemist, who had issued those bills. He has further argued that disability certificate of claimant was also not duly proved and the Tribunal has committed error while allowing compensation on this score. The Tribunal has computed compensation awarded to claimant as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Medical expenses actually incurred by petitioner and to make it round figure as	₹169000
(ii)	Past and future mental agony pain and sufferings and on account of permanent disability/injuries to the extent of 55%	₹100000
(iii)	Loss of career, special diet and transportation etc.	₹50000
<i>Total</i>		₹319000

8. Though, doctor who issued the disability certificate has not been examined but no objection was raised by learned counsel for appellant-Insurance Company, when this document was tendered in evidence. Disability certificate of claimant has been issued by doctors of Safdarjung Hosptial, New Delhi. 50% disability was relating to his right lower limb and the amount of compensation on this score is not on higher side. Even otherwise, there is no rebuttal to statement of claimant that after the accident on 23.10.1992, he lost his consciousness and was taken to B.K. Hospital from where he was referred to Safdarjung Hospital, New Delhi on 24.10.1992, where he remained admitted for about three months and again for 4 ½ months. Third time he was again admitted in Sardarjung Hospital, New Delhi for treatment of his injuries and he remained admitted for about seven months. The claimant has though placed on record bills of more amount than as allowed by the Tribunal, proforma invoice of Femoral Stem

(within 5 spikes) of ₹77,000/- was also placed on record. However, the Tribunal has considered the bills issued by hospital and medical agencies only. The Tribunal allowed compensation of ₹50,000/- towards loss of career, special diet and transportation etc. but has not allowed any compensation towards loss of income, loss of future prospects, loss of amenities of life, loss of marriage prospects, expenses of attendant, future medical expenses etc. When the loss suffered by claimant on these scores is looked into, compensation of 3,19,000/- as allowed by the Tribunal seems to be not on higher side.

9. Here learned counsel for respondent no. 1 has argued that if this Court feels that compensation awarded to claimant is on lower side, the same can be enhanced without any appeal filed by claimant.

10. Respondent no. 1-claimant appears to be satisfied with the compensation awarded to him and has not filed any appeal seeking enhancement of compensation, as such, I find no reason to enhance the compensation in the appeal filed by Insurance Company.

11. As a sequel of my above discussion, I find no merit in this appeal and the same is dismissed.

February 20, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No