IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3474 of 2016 &
XOBJ No.165-CII of 2017 (O&M)
Date of Decision: 19.03.2018

Reliance General Insurance Company Limited ....Appellant

Vs.

Balwinder Singh and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Sanjiv Kodan, Advocate, for the appellant.

Mr.Arvind Rajotia, Advocate, for
Mr.Ajit Sihag, Advocate, for respondent No.1.

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RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellant'), against award dated 14.03.2016, passed by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') vide which compensation to the tune of Rs.20,53,292/- was awarded to the claimant on account of injuries suffered by him in a motor vehicular accident.

FACTS NOT IN DISPUTE

On 11.05.2015, the claimant Balwinder Singh along with Shambhu Khan i.e. the respondent No.1 was going from Khanna to Malerkotla on a motor cycle bearing registration No.PB-65-S-8676 driven by Shambhu Khan. At about 2:30 p.m., when they reached little ahead of New Benipal Dhaba at village Rauni, in the meantime, a truck came from behind and after crossing the above said motor cycle on which the claimant was the pillion rider, the said truck suddenly applied brakes. Singh, the motor cycle was being driven by the respondent No.1 Shambhu Khan in a rash and negligent manner and at high speed, as such, he could not control the motor cycle, as a result of which the motor cycle struck against the rear side of the above said truck. Due to the accident, respondent No.1 fell down on the kacha portion of the road, whereas, the claimant fell down on the pucca portion of the road. The right leg of the claimant was crushed by one unknown Canter which was coming from behind. A case bearing FIR No.55 dated 15.05.2015 for the offence under Sections 279, 338 and 427 IPC has been registered at P.S.Payal District Ludhiana on the statement of claimant.

On notice, reply has been filed by respondent No.1 who is the driver as well as owner of the offending vehicle, in his written statement has denied that the accident in question took place due to his rash and negligent driving of the motor cycle. He further submitted that vehicle was insured with respondent No.2. Respondent No.2 i.e. the Insurance Company has filed written statement took the plea that claim petition is not maintainable in the present from and the driver of the offending motor cycle was not holding a valid and effective driving license and registration certificate at the time of alleged accident. As such, the Insurance Company is not able to pay the compensation to the claimants. On the pleadings of the parties, the follwing issues were framed by the learned Tribunal:

1. Whether on 11.05.2015 at about 2:30 p.m. in the area of village Rauni, the respondent No.1 drove the offending motor cycle bearing registration No.PB-65-S-8676 in rash and negligent manner and caused multiple grievous injuries on the person of the claimant by his aforesaid act? OPP

2. Whether the claimant is entitled to compensation from the respondents, if so, to what extent and interest thereon, if any ? OPP.
3. Whether the claim petition is not maintainable in the present form ? OPR.
4. Whether the driver of the motor cycle bearing registration No.PB-65-S-8676 was not having a valid and effective driving licence, RC and fitness certificate at the time of alleged accident ? OPR.
5. Relief.

Learned tribunal on issued No.1 claimant has tendered into evidence copy of the FIR No.Ex.C1, copy of the Discharge and Follow-up Care of PGI as Ex.C2, Disability Certificate as Ex.C3. The respondent rebutted the evidence of the claimant by examining HC Parminder Kumar of P.S.Payal, District Ludhiana as RW1 who has deposed that FIR No.44 dated 15.05.2015, PS.Payal was closed as untraced and vide RC No.158-A dated 25.06.2015, the case was sent to DSP with the recommendation of closing the case as untraced. vide RC No.290 dated 07.12.2015, the said report was sent for acceptance at DR Branch, SSP Office, Khanna (Ex.R1). Respondent No.2 has tendered into evidence the copy of the insurance policy as Ex.R1. The respondent No.1 Shambhu Khan who was the driver/owner of the offending motor cycle has stepped into the witness box to deny the allegations of rashness and negligence driving of the offending vehicle on his part in causing the accident. The FIR regarding the present accident was registered on the basis of statement of the claimant-injures at P.S.Payal. The testimony of CW1 Balwinder Singh who was the injured as well as eye-witness of the accident and also from the documents placed on the file proved that accident was result of rash and negligent act of respondent No.1-Shambhu Khan.

This finding has been challenged by appellant/Insurance Company by arguing that as per version of the claimant, the truck came from behind and after crossing the above said motorcycle on which the claimant was the pillion rider , the said truck suddenly applied brakes. Since, the motor cycle was being driven by the respondent No.1 in a rash and negligent manner and at high speed, as such, he could not control the motor cycle, as a result of which the motor cycle struck against the rear side of the above said truck and due to this impact, the driver and claimant fell down and received injuries. Learned counsel for the respondent/Insurance Company has referred to the judgment of Hon'ble Supreme Court in the case of Khenyei Vs. New India Assurance Company Limited (2015) 9 Supreme Court Cases 273 wherein, it is held that it was case of joint tortfeasors and the Tribunal should have determined inter se liability of joint tortfeasors i.e. the owner of the cantor and motorcycle. The ratio of this judgment is not applicable to the facts of the present case as there was an accident of motorcycle and truck are collided with each other. In the present case the driver has not appeared before the learned Tribunal and hence after registration of FIR, untraced report has been filed. Hence, the learned Tribunal has rightly come to the conclusion that accident has taken place on the negligence on the part of the respondent No.1 as a truck came from behind and after crossing the above said motor cycle on which the claimant was the pillion rider, the said truck suddenly applied brakes and in this manner motorcycle against the rear side of the abovesaid truck and driver/respondent No.1 and claimant fell down on the pucca portion of the road and the right leg of the claimant was crushed by one unknown Canter which was coming from behind. Since the driver has not appeared in the witness box, the version of the FIR and the manner in which the accident took place could not be elaborated. The registration number of the aforesaid truck and canter were not noted down and in the absence of any evidence led by the claimant and even driver did not stepped into the witness box, the cancellation report has been accepted by the SSP during investigation as per RC No.290 dated 07.12.2015. Claimant Balwinder Singh while appearing as PW-1 reiterated the cause of accident that accident took place due to rash and negligent driving of driver/respondent No.1, therefore, the finding with regard to issue No.1 does not require any interference and version of the claimant has been accepted which could not be controverted by respondents.

In view of the above, appeal filed by Insurance Company is being dismissed.

Cross Objections

CM No.19916-CII of 2017

For the reasons stated in the application, delay of 404 days in filing the cross-objection is condoned.

Application stands disposed of.

Cross Objections No.165-CII of 2017 (O&M)

The claimant has filed cross-objection for enhancement of compensation.

The Tribunal held that the claimant was 33 years old at the time of accident. The learned Tribunal has assessed compensation keeping in view the permanent disability of applicant to the extent of 80%. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company. The compensation has been assessed by the learned Tribunal as under:

Sr.No.	Heads of compensation	Amount
1	On account of loss of future earnings	Rs.13,44,000/-
2.	Medical treatment/bills	Rs.32,007/-
3.	Pain and suffering	Rs.20,000/-
4.	Attendant charges, hospitalization and recovery and transport expenses	Rs.27,100/-
5.	Special diet/extra nourishment	Rs.15,185/-
6.	Future medical expenses	Rs.6,15,000/-
	Total	Rs.20,53,292/-

Learned counsel for the claimant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced. On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

I have heard learned counsel for the parties and perused the record.

At this stage, a reference has been made to the judgment of Supreme Court in the case of Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited (2014) 2 Supreme Court Cases 735 wherein, functional disability of the injured estimated at 85% for detraining loss of income in case of amputation of leg whereas High court determined disability at 65%. A reference has also been made by the judgment of Hon'ble Supreme Court in the case of Sandeep Khanuja Vs.

Atul Dande and Anr. 2017 (1) RCR (Civil) 1017 wherein, a chartered account suffered 70% permanent disability of legs in motor accident. The High Court in this case disability assessed by the doctor 70% permanent disability. However, Hon'ble Supreme Court enhanced the compensation by taking the disability as 100% and assess the compensation by applying the multiplier method. It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	On account of loss of future earnings by multiplier method (Rs.9000/- X 12X 16)	Rs.17,28,000/-
2.	Medical treatment/bills	Rs.32,000/-
3.	Pain and suffering	Rs.1,00,000/-
4.	Attendant charges, hospitalization and recovery and transport expenses	Rs.2,00,000/-
5.	Special diet/extra nourishment	Rs.50,000/-
6.	Future medical expenses for artificial leg	Rs.6,15,000/-
	Total	Rs.27,25,000/-
	Enhanced amount of compensation	Rs.27,25,000/- ---- Rs.20,53,292/-= Rs.6,71,708/-

Resultantly, the enhanced amount of compensation of Rs.6,71,708/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. And ors. in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

19.03.2018
anil

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