

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 4893 of 2016 (O&M)
Date of Decision: 16.03.2018

HDFC Ergo General Insurance Company Ltd.

....Appellant

V/S

Sourabh Rawal and Others

....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr.Ashwani Talwar, Advocate,
for the appellant.

Mr. Saytavir Singh Yadav, Advocate,
for respondent No.1.

Mr. Gaurav Jindal, Advocate,
for respondent No. 2.

Mr. Gopal Sharma, Advocate,
for respondent No.3.

RITU BAHRI, J.(Oral)

CM No. 16697-CII of 2016

For the reasons mentioned in the application, same is allowed
and delay of 10 days in filing the appeal is condoned.

Accordingly, present application stands disposed of.

Main Case

The present appeal has been filed by the appellant against the
Award dated 01.04.2016 whereby claimant (respondent in the present
appeal) has been awarded compensation of Rs.1,73,607/- along with
interest @9% p.a., by the learned Motor Accident Claims Tribunal, Karnal
(for short, 'the Tribunal') on account of injuries suffered by the claimant-

Saurabh in road accident which took place on 05.07.2015.

Brief facts of the dispute are that, on 05.07.2015 at about 1.40 a.m., the claimant was coming from the side of ITI, Karnal towards Sector 9, Karnal for going to his house in car bearing registration No.HR05X-2144 which was being driven by his friend Deepak son of Ajay Pal at a moderate speed on his due left side of the road. When they reached at a distance of about 250 yards from ITI chowk, towards Sector 9, Karnal on bye lane constructed besides the flyover, in the meantime, a tractor bearing registration No. HR05AM 6448 was going ahead on the road. When the car reached just behind the tractor, the tractor driver suddenly without giving any indication, turned his tractor towards right side of the road. Because of the abrupt and sudden diversion of the tractor towards right side of the road, the said tractor came in front of the car, in which claimant was travelling and caused the accident. Claimant suffered multiple serious and grievous injuries including the fracture of left upper arm in the accident. His car also suffered extensive damage in the accident. After the accident, he was taken to Virk Hospital Private Limited, Randhir Lane, Karnal where he remained admitted as an Indoor patient from 05.07.2015 to 07.07.2015 and thereafter, he has been getting treatment as an outdoor patient. The present accident occurred because of sheer rash and negligent driving of tractor bearing registration No. HR-05AM-6448 by respondent No.1. The accident was reported to the police vide DDR No.16 dated 29.07.2015 at Police Post Sector-9 Karnal.

Consequently, claimant-petitioner filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of oral as well as documntary evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of negligent driving of offending vehicle by respondent No.1 and Tribunal assessed the compensation as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Medical Expenses	Rs.53,607/-
(ii)	Pain and Suffering	Rs.20,000/-
(iii)	Attendant charges, special diet, transportation	Rs.30,000/-
(iv)	Permanent disability	Rs.50,000/-
(v)	Loss of income	Rs.20,000/-
	Total compensation	Rs.1,73,607/-

Feeling dissatisfied with the impugned award, appellant/insurance company filed the present appeal.

In the present appeal parties are not in dispute with the findings of issue no. 1 that accident took place due to the sole rash and negligent driving of the offending vehicle.

I have heard learned counsel for the parties and perused the case file.

Leaned Counsel for the insurance company argued that DDR No. 16 was lodged with the police regarding the alleged accident after 24 days of the accident and he further contended that driver owner feigned ignorance regarding the ownership of vehicle No. HR05-AM—3664 and said that they are owner of vehicle No. HR-05AM-6448. He has further submitted that in the DDR, the registration number of the tractor involved in the accident has been mentioned as HR-05A-3664 which is not a tractor as per the record of the registration authority and rather, the vehicle registered against the aforesaid registration number is a scooty/mopid which

is the name of one Ravi Rana, resident of Karnal.

A perusal of the award shows that, written statement filed by respondent Nos. 1 and 2, has clarified that the registration number of the tractor owned by respondent No.2 is HR-05AM -6448 and not HR-5AM -3664. They further stated that mistake occurred in getting recorded the registration number of the tractor involved in the accident may be a clerical mistake or a slip of tongue. Even in the record of the concerned registering authority, tractor Sonalika has been registered against registration No.HR5AM 6448 whereas against registration No. HR-5-AM-3664, vehicle scooty/Moped has been registered. It is further observed that, at the stage of rebuttal that the claimant moved an application for amendment of the claim petition and the registration number of the Tractor involved in the accident was changed from HR-5-AM-3664 to HR-05-AM-6448. Once this application allowed, the insurance company preferred a civil revision before this Court, the same was dismissed vide order dated 11.03.2016. As far as, to prove the facts regarding delay of 24 days in filing the DDR, Dr. Balbir Singh Virk, Virak Hospital, Karnal examined as PW3. He has brought the medical record of patient Sourabh Rawal and has deposed that the patient was admitted in his Hospital on 05.07.2015 with the history of road side accident and complaint of fracture of shaft humerus communicated with pain and swelling in the left arm; that the patient was operated upon and steel plate was implanted to fix the fracture with locking screw. The petitioner also examined Dr. Vinod Kumar, Medical Officer, KCGMCH, Karnal as PW2. He deposed that on 09.12.2015, he alongwith two other members of the disability board examined patient Sourabh Rawal son of Shri Ish Pal and found that it was an operated case of left shaft humerus with delayed union

with implant in situ. He has deposed that the board found that the patient was having 10% disability vide disability certificate Ex. PW2/A. Both the doctors clarified that accident occurred due to accident and even respondent No. 1 who was driving the tractor in question, admitted the factum of the accident in question in which the petitioner sustained injuries. Hence, the finding was rightly given on the basis of FIR, and others documentary evidence led by the claimant.

Hence, after going through the findings of the impugned Award, the orders of the learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

16.03.2018

Riya Grover

**(RITU BAHRI)
JUDGE**

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