

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

FAO-6859-2016 (O&M)

Date of decision:-31.08.2018

Shri Ram General Insurance Company Limited

.....Appellant

versus

Naseeb Kaur and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Rajbir Singh, Advocate for the appellant.

Ms. Amandeep Kaur, Advocate for respondent No.1.

TEJINDER SINGH DHINDSA, J.

The appellant-Insurance Company has filed the instant appeal assailing the award dated 13.09.2016 passed by the Motor Accident Claims Tribunal, Panchkula and in terms of which a compensation amount of Rs.1,30,296/- has been awarded in favour of Smt.Naseeb Kaur (respondent No.1 herein) on account of the injuries suffered by her in a motor vehicle accident which took place on 16.06.2013.

Counsel for the appellant has argued that the claimant/respondent No.1 had failed to adduce cogent and convincing evidence to prove the factum of the accident. Tribunal is stated to have proceeded merely on the statement of the claimant as also DDR Entry No.14 dated 07.07.2013 while returning findings as regards negligent driving of the offending vehicle. It is urged that the story of the alleged accident has been concocted by the claimant in connivance with the driver-cum-owner of the insured three-wheeler in order to get compensation from the appellant-Insurance Company. In support of such contention, counsel

submits that the alleged accident had taken place on 16.06.2013 whereas the DDR in question was recorded after a gap of almost 21 days i.e. on 07.07.2013. Submission has also been raised with regard to quantum of compensation. Counsel argues that the claimant has placed reliance upon a disability certificate reflecting 25% disability which was only qua the upper limb and the Tribunal has erred in computing compensation amount taking the permanent functional disability of the claimant as 20%. Counsel submits that the functional disability under such circumstances ought to have been taken on the lower side.

Per contra learned counsel representing the claimant/respondent No.1 has supported the award and submits that the same is well-reasoned and does not call for any interference.

Counsel for the parties have been heard at length and the records of the case have been perused.

Briefly, it may be noticed that the claim petition had been filed under Section 166 of the Motor Vehicles Act, 1988, by claimant Naseeb Kaur stating that on 16.6.2013 at about 12.30 P.M., she was proceeding from Barotiwala (H.P.) to her house in Village Karanpur in a three-wheeler bearing registration No.HR68A-6811. The three-wheeler was being driven in a rash and negligent manner and at a fast speed. Upon reaching near Village Madhawala, the three-wheeler went out of control on account of the negligence of the driver and turned turtle. Claimant as also other occupants of the three-wheeler received injuries. Claimant asserted that she sustained fracture in the left forearm and spent rupees one lakh on her medical treatment. DDR No.14 dated 07.07.2013 regarding the accident was lodged with police post Madhawala, Police Station Pinjore, District Panchkula. Claimant asserted that she was a housewife and on account of

the multiple injuries suffered, even after undergoing treatment she remains confined to bed having become permanently disabled. Compensation amount to the tune of rupees twenty five lakhs was claimed.

Claim petition having been contested the following issues were framed by the Trial court:-

1. *“Whether claimant suffered injuries in a road side accident which took place n 16.06.2013 due to rash and negligent driving of respondent No.1?OPP*
2. *Whether claimant is entitled for compensation, if so to what amount and from whom?OPP*
3. *Whether respondent No.1 was not holding valid driving licence and has drove the vehicle in violation of terms and condition of the insurance policy and respondent No.2 is not liable to pay compensation?OPR2*
4. *Relief.”*

On issue No.1, the Tribunal has returned findings in favour of the claimant and has taken a view that Naseeb Kaur had suffered injuries in the accident that took place on 16.06.2013 involving the insured/offending three-wheeler.

In the considered view of this Court, the finding recorded by the Tribunal on issue No.1 is based on due appreciation of evidence adduced on record. Merely for the reason that DDR had been recorded on 07.07.2013 (Exhibit P-4) cannot be made the basis for disbelieving the claimant's version. Records reveal that claimant/respondent No.1 was initially taken to Civil Hospital, Panchkula on 17.06.2013 (Exhibit P-23) and she remained there as an indoor patient, which is reflected from

documents adduced on record as Exhibit P-22 and Exhibit P-24. The medical evidence on record also fortifies the version of the claimant/respondent No.1 as regards injuries having been suffered in a motor vehicle accident. The disability certificate Exhibit P-33 has been duly proved by PW2 Dr. K.K. Bansal, assessing disability element of 25% in relation to her left upper limb. This also corroborates the version of the claimant of being involved in the accident and having suffered injuries/fractures on her left arm. In practical terms it would be accepted for the injured in a motor vehicle accident to immediately seek medical treatment and not to rush to the police station for lodging a complaint. In the fact and circumstances of the case the delay of 21 days in lodging the DDR cannot be construed to be fatal to the claim petition that Naseeb Kaur had filed.

As regards quantum of compensation is concerned, claimant/respondent No.1 had relied upon disability certificate Exhibit P-33 wherein the permanent disability of 25% in relation to her left upper limb was reflected. Such certificate was duly proved by PW2 Dr. K.K. Bansal. The submission made by counsel for the appellant-Insurance Company as regards the disability element being qua only the upper limb and the functional disability while computing compensation under the head of future loss of earnings being assessed at 20% to be on the higher side, cannot stated to be without merit. Be that as it may no intervention in the matter is called for as the notional income of the claimant/respondent No.1 assessed as Rs.3,000/- per month is on the lower side. The Apex Court in the case of **Lata Wadhwa and others Vs. State of Bihar and others (2001), 8 SCC 197**, had assessed the monthly income of the deceased housewife as Rs.3000,-. In that case the accident had taken place in the

year 1991 and the accident in the present case had taken place in the year 2013. Keeping in view the time period elapse of more than 30 years between the accident in the case of Lata Wadhwa and the accident in the present case, the Tribunal ought to have taken the monthly income of the claimant/respondent No.1 on higher side. If that was to be done, it would off-set the decrease in compensation amount even if submission of counsel for the appellant-Insurance Company was to be accepted as regards functional disability to be taken at a lower level. Furthermore, this Court finds that the Tribunal has awarded meagre sums under the heads of Attendant Charges, Diet and Nutrition Charges, Pain and Suffering/Mental Agony and Transportation. No case for reduction in the compensation amount of Rs.1,30,296,- is made out.

There is no merit in the instant appeal and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

31.08.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No