

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

FAO No. 9827 of 2014(O&M)

Date of Decision: 24.07.2018

Sanjay Kumar

..... Appellant.

Versus

Anand Gopal and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.V.B.Aggarwal, Advocate
for the appellant.

Mr. R.N.Singal, Advocate
for respondent no.3.

LISA GILL, J (Oral).

This appeal has been filed by the injured-claimant impugning award dated 30.05.2014, passed by the learned Motor Accident Claims Tribunal, Kaithal.

It is submitted that the appellant was injured in an accident which took place on 10.06.2012 due to the rash and negligent driving of the offending vehicle by Anand Gopal-respondent no.1. He suffered grievous injuries on his right knee and leg.

Petition under Section 166 of the Motor Vehicles Act was filed by the claimant. The same was resisted by the respondents. Following issues were framed by the learned tribunal:-

1. Whether claimant Sanjay Kumar son of Mangat Ram resident of Dhand, District Kaithal had sustained multiple injuries on his person in a road side vehicular accident which had occurred on 10.06.2012 in the area of Police Station Dhand on account of rash and negligent driving of car No. HR-07B-9045 by respondent no.1?OPP
2. Whether the claimant is entitled to be compensated for the injuries sustained by him in this accident, if so to

what extent and by whom?OPP

3. Whether respondent no.1 was driving the above car in violation of the terms and conditions of the insurance policy, as pleaded by respondent no.3 in its reply, if so its effect?OPR-3.
4. Whether the petition has been filed by the claimant in collusion with respondents no.1 and 2?OPR-3.
5. Relief.

Issue no.1 was decided in favour of the claimant-appellant.

Issues no.3 and 4 were answered against the insurance company. The learned tribunal awarded a paltry sum of ₹3000/- on account of pain and suffering, special diet, transportation with interest @ 7.5% per annum.

Learned counsel for the appellant contends that the appellant was afforded treatment at Anand Orthopedic Centre, Kurukshetra till 20.06.2012 and thereafter from 24.06.2012 at Vardhman Trauma & Laproscopy Centre (P) Ltd., Muzaffarnagar, where he was operated upon and remained admitted till 27.06.2012. It is contended that all the relevant documents related to his treatment, operation etc., are available on record as marked documents. Appellant, it is contended is not aware of the complexities of law and Court proceedings. His counsel before the learned tribunal did not deem it proper to examine the concerned doctors and witnesses to prove the case of the appellant though all relevant documents etc., had been supplied.

An application under Section 41 Rule 27 CPC has been moved alongwith this appeal for examining Dr. Himanshu Anand, Anand Orthopaedic Centre, Opposite Theme Park, Pehowa Road, Kurukshetra and Dr. Mukesh Jain, Vardhman Trauma & Laparoscopy Centre (Pvt.) Ltd., A-36, South Civil Lines, Mahaveer Chowk Muzaffarnagar (UP), for this purpose.

Reply to the said application by respondent no.3 has been filed. Liability of the insurance company is not in dispute. It is contended by learned counsel for respondent no.3 that this application has been filed merely for filling up of lacunae, therefore, this application should be dismissed.

Heard learned counsel for the parties.

Question of the appellant-claimant receiving injuries in the accident which took place on 10.06.2012 with the offending vehicle is not in dispute. Learned counsel for the insurance company does not seriously dispute that the appellant-claimant did indeed receive serious injuries in the accident which took place on 10.06.2012.

Keeping in view of the facts and circumstances of the case and in view of the specific stand of the parties in respect to the multiple, grievous injuries received by the appellant in the said accident, it is considered just and expedient to give one opportunity to the appellant-claimant to examine the abovesaid doctors in order to prove the injuries/disability suffered by him so that the learned tribunal can assess reasonable compensation to be awarded to the claimant.

Accordingly, the matter is remanded to the learned tribunal for a decision on issue no.2 afresh to the extent of quantum of compensation. The appellant-claimant be afforded an opportunity to examine the abovesaid witnesses/other witnesses to prove the extent of his disability and medical expenses incurred by him. Learned tribunal shall afford two effective opportunities to the claimant to lead evidence in this respect. Needless to say corresponding right of the insurance company shall remain intact.

Parties are directed to appear before the learned tribunal on 30.08.2018.

Appeal is accordingly disposed of.

24.07.2018

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.