

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1303 of 2018 (O&M)
Date of Decision: March 07, 2018

IFFCO TOKIO General Insurance Company Ltd. ...Appellant

Versus

Shashi Bala and another ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vishal Aggarwal, Advocate
for the appellant – Insurance company.

HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 27.10.2017 passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 27.6.2016 in the area of Village Barsu, District Ambala a vehicular accident took place involving Car No.HR-94C-9400 (herein for short 'the offending vehicle'), wherein, the respondent Shashi Bala suffered injuries. One D.K.Gupta alias Devendra Kumar lost his life in the accident. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle by respondent No.1 Rajinder Kumar.

On filing a claim petition for the injuries suffered by Shashi Bala, the Tribunal awarded the following compensation :-

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount (In rupees)</i>
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1.	<i>Special Diet/hospitalization etc.</i>	2,000/-
2.	<i>Pain and suffering</i>	15,000/-
3.	<i>Medical bills</i>	93,830/-
4.	<i>Transportation</i>	5,000/-
5.	<i>Loss of earnings</i>	60,000/-
	Total amount	1,75,830/-

Ld. Counsel for the appellant – insurer has contended that the negligence of the driver of the offending vehicle was not proved and that the compensation awarded is excessive.

Having heard learned counsel for the appellant and going through the paper-book, I find no merit in the submissions raised on behalf of the appellant.

Shashi Bala, injured-claimant while appearing in the witness box as PW1 stated that on 27.6.2016 at about 4.00 am, she was coming from Rishikesh to Panchkula with her husband Rajinder Kumar, who was driving the offending vehicle at a fast speed and in a rash and negligent manner. D.K.Gupta @ Devendra Kumar, Shikha and Muskann were also sitting in the offending vehicle. They were being followed by Abhishek Gupta @ Abhishek, Ranjit Singh, Neelam Gupta and Bhavya in a separate car, which was being driven by Ranjit Singh. When the offending vehicle reached in the area of village Barsu, near Naraingarh, District Ambala, a cow appeared on the road and the driver of the offending vehicle (her husband) lost control over the vehicle due to over-speed. Resultantly, the offending vehicle struck against a tree. The occupants of the car suffered injuries. They were shifted to Alchemist Hospital, Panchkula. D.K.Gupta @ Devendra Kumar

succumbed to the injuries. She specifically stated that the accident took

place due to rash and negligent driving of the offending car by respondent No.2 Rajinder Kumar. She was cross-examined at length, but the veracity of her evidence could not be shaken. Though, she stated that the accident took place due to sudden appearance of a cow on the road, but at the same time, she also stated that had the offending vehicle been slow, it could be controlled and the accident avoided.

Respondent No.2 - Rajinder Kumar, the driver of the offending vehicle chose not to step into the witness box to controvert the allegations levelled against him. In the circumstances, adverse inference was rightly drawn against him by the Tribunal.

One more fact, which proved the accident is that the claimant – respondent was admitted in the hospital on 27.6.2016 with the history of road side accident. Admittedly, there was no FIR or DDR registered regarding the accident, but the cumulative effect of the evidence discussed above, is that the claimant had suffered accidental injuries due to rash and negligent driving of the offending vehicle.

It is well-settled that requirement of proof in a MACT case is not as stringent as in a criminal case.

To prove the loss, the claimant Shashi Bala testified that she was admitted in Raffels Hospital, Panchkula on 27.6.2016 and discharged on 30.6.2016. She was again admitted in the hospital on 24.12.2016. She also placed on record the prescription slips/patient summary regarding her admission and discharge as Ex.P4 and P5. She had suffered fracture of left femur for which nailing had been done, due to which her movements and activities were partially restricted. The documentary evidence also revealed

that she continued follow up treatment upto 25.3.2017 i.e. for about nine months after the accident. She was operated upon during her admission. Dr.Rajneesh Sood, Senior Medical Officer, Department of Orthopaedics, GMCH Sector-16, Chandigarh while appearing before the Tribunal as PW2 stated that the Medical Board examined the claimant and it was noticed that it was a case of fracture of left femur for which nailing had been done and her permanent physical disability could not be assessed at that stage and review was advised after six months. The Tribunal has not awarded any amount under the head of 'permanent disability'.

It was in view of the above evidence and the fact that the claimant – respondent Shashi Bala was an able-bodied person of 43 years at the time of accident and due to the injuries, she had to remain hospitalized for a few days and then to visit the hospital for follow up treatment for about nine months, that the Tribunal assessed the compensation, as tabulated above.

In view of above, there is no ground to disturb the findings of the Tribunal, which are based upon proper appreciation of evidence.

Appeal is dismissed.

March 07, 2018

(HARINDER SINGH SIDHU)

JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No