

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

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FAO No.167 of 2018 (O & M)
Date of Decision:17.01.2018

Iffco Tokio General Insurance Company Limited

...Appellant

Versus

Narender Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kodan, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Insurance Company is in the appeal against the award passed by the Motor Accident Claims Tribunal awarding a sum of Rs.10,05,000/- in favour of the claimant, who has suffered permanent disability to the extent of 40% at the young age of 24.

Counsel for the appellant has very vehemently argued that the injured was admittedly in senses and was knowing the registration number of the offending vehicle. However, he did not get the FIR registered by giving the registration number of the vehicle.

Next argument of learned counsel is that the author of the FIR i.e. Sandeep has not been produced in evidence. He has further submitted that the disability certificate produced on file, no doubt assess the disability at 40%, however, it is not clearly mentioned whether such disability is with regard to the whole body or not. He has further submitted that the learned Court has further erred in taking the minimum wages at Rs.11,400/- per month, which should be somewhere around Rs7,400/-.

assistance of learned counsel for the appellant gone through the judgment passed by the Motor Accident Claims Tribunal and photocopy of the record produced by him.

In the present case, in a motor vehicle accident, Narender Kumar injured had suffered serious injuries including fracture of shaft and femur. He had also suffered other injuries. He was immediately admitted in the hospital.

In such circumstances, the claimant-respondent is not the author of the FIR. Hence non disclosure of name of the driver in the FIR itself cannot be taken as a circumstance against the claimant. Author of the FIR is Sandeep son of Umed, who was driving the motorcycle. Claimant was sitting on the pillion. Hence, Sandeep, who was driving the vehicle and had met with an accident and informed the police. The FIR was registered on the next day i.e. 19.05.2015, whereas the accident took place on 18.05.2015.

Next submission of learned counsel is that Sandeep, author of the FIR, has not been produced in evidence, therefore, the case filed by the claimant could not be allowed. In this case, claimant injured has appeared in the witness-box and supported the case of the prosecution. The evidence given by the injured has been found reliable by the Court. Merely because Sandeep had not been examined, the case set up by the claimant can not be thrown out.

Next argument of learned counsel is with regard to the disability certificate. It is not in dispute that a Board of expert doctors had examined the claimant and opined that the claimant has suffered disability to the extent of 40%. This disability certificate has been proved on file by examination of

Dr. Lav Kumar as PW-1, one of the member of the Board of expert doctors.

Insurance Company did not lead any evidence to prove that such disability certificate is not qua whole body. In the absence of any such evidence, the conclusion arrived at by the Motor Accident Claims Tribunal appears to be just and reasonable and need no interference.

Last submission of learned counsel is that the Court has taken the minimum wages at Rs.11,400/-, whereas normally it is Rs.7,400/-.

A careful reading of the Motor Accident Claims Tribunal proves that the Motor Accident Claims Tribunal relied upon notification issued by the Deputy Commissioner, Mahendargarh dated 15.05.2015 notifying minimum wages for a skilled labourer at Rs.11,400/-.

It was the case of the claimant that he was serving in a Company drawing salary of Rs.15,000/- per month. However, apart from self serving statement, no supporting evidence was produced. Hence, the Court after noticing that the claimant was 24 years of age and was supporting his family assessed the income at Rs.11,400/- per month. Claimant is Bachelor of Computer Application. In these circumstances, the Court treated the claimant to be a skilled worker and assess the income.

In view the discussion made above, this Court does not find any good ground to interfere with the order passed by the Motor Accident Claims Tribunal.

Accordingly, the appeal is dismissed.

17.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No