

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

FAO No.443 of 2018(O&M)

Date of decision:18.5.2018

National Insurance Co. Ltd.

.....Appellant

VERSUS

Joginder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 25.09.2017 passed by the Motor Accidents Claims Tribunal, Amritsar (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by Joginder Singh in a motor vehicular accident that took place on 04.11.2014 due to rash and negligent driving of Truck No.PB-02-AV-9027 by Gurnam Singh.

Counsel for the appellant/insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 qua rash and negligent driving of the offending vehicle and quantum of compensation assessed. The first submission made by counsel is that Joginder Singh – injured appeared in the witness box to substantiate his plea with regard to accident being result of rashness and negligence on the part of Gurnam Singh, driver of offending truck. Joginder Singh appeared in the criminal proceedings but he failed to support cause of the prosecution as per his statement marked Ex.R2 put to Binder Singh PW-3

brother of injured Joginder Singh. Binder Singh PW-3 was also examined in the criminal case but turned hostile and failed to connect the offending vehicle and its driver with the crime, therefore, testimonies of Joginder Singh and Binder Singh cannot form the basis for determining issue No.1 in favour of claimant and against the respondents.

With regard to quantum of compensation, it is argued that Joginder Singh suffered disability to the extent of 40%. The Tribunal has assessed his functional disability to the extent of 25% but awarded a sum of Rs.6,30,000/- towards loss of earning by assessing his income at Rs.15,000/- per month. It is argued with vehemence that despite the Tribunal refusing to accept plea of the claimant that he was earning Rs.25,000/- per month but still proceeded to assess his income at Rs.15,000/- per month when on the contrary the minimum wage available to a skilled worker at the relevant time was approximately Rs.7000/- per month.

Counsel for the appellant has placed on record testimonies of Joginder Singh PW-1, Binder Singh PW-3 recorded before the Tribunal and their statements dated 10.12.2015 before the criminal Court. Joginder Singh was examined before the Tribunal in September 2016, he tendered into evidence his affidavit Ex.P1 (Annexure P-1) by way of examination in chief. In para 1 of the affidavit, he has reiterated his version set up in the claim application. In his cross examination by counsel for the respondents before the Tribunal, it was put to him that truck No.4018 Tata Horse No.PB-03-AA-9377 struck against truck No.PB02-AV-9027 that was standing on the road and the said fact was admitted to be correct by Joginder Singh. The witness was suggested that at 5.30 AM, there was

light. He was further suggested that light of Tata bearing No.PB-03-AA-9377 was on but the witness denied that it was light at 5.30 AM but admitted that light of Tata No.PB03-AA-9377 was on. Taking into consideration the facts elicited in cross examination of Joginder Singh, it becomes undisputed position of the case that there was hardly any challenge by the respondents before the Tribunal with regard to accident having taken place when the truck driven by Joginder Singh struck against truck bearing No.PB-02-AV-9027 that was standing on the road. Statement of Joginder Singh before the criminal Court was not put to the witness to seek his explanation. As the respondents did not dispute happening of the accident and in the manner deposed by Joginder Singh, the appellant cannot derive advantage to his contention from the statements of Joginder Singh and Binder Singh in the criminal proceedings wherein they failed to support cause of the prosecution. Joginder Singh and Binder Singh may be prosecuted for committing perjury before the criminal Court in accordance with law but Joginder Singh's claim for compensation cannot be denied, in the given circumstances. The matter would have been different had the respondents challenged involvement of truck No.PB-02-AV-9027 in the occurrence because in that eventuality, statement of Joginder Singh and Binder Singh before the criminal Court would have assumed relevance. In this view of the matter, I do not find any reason to differ with findings of the Tribunal on issue No.1.

This brings the Court to quantum of compensation assessed by the Tribunal. Indisputably, Joginder Singh was driver of Truck No.4018 Tata Horse when the accident in question took place. Injuries sustained in the occurrence rendered him disable to the extent of 40% and

the disability is qua both lower limbs. The nature and extent of disability suffered by the victim would render him disable to drive the vehicle of the kind he had been driving, though the injured may be able to take up some other work for making living for himself and his family. In the given circumstances, functional disability is liable to be assessed more than the extent of disability suffered by the victim. Even if income of the victim is assessed @ Rs.8,000/- per month plus he is allowed benefit of future prospects qua functional disability at 50%, future loss of income would certainly be more than what has been assessed by the Tribunal. That being so, I do not find any reason to interfere in assessment qua future loss of income.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, noting stated hereinbefore shall cause prejudice to the claimant if he files an appeal for enhancement of compensation.

MAY 18, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no