

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

FAO No.5072 of 2018 (O&M)

Date of Decision: 10.08.2018

Oriental Insurance Co. Ltd.

... Appellant

Versus

Mukesh and others

... Respondents

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

Present:- Mr. Ram Avtar, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Appellant Insurance Company has filed the instant appeal assailing the award dated 06.04.2018 passed by the Motor Accident Claims Tribunal, Rohtak and in terms of which respondent No.1 Mukesh has been awarded a compensation amount of Rs.2,40,000/- along with interest @ 7% per annum from the date of filing of the claim petition till actual realization for the injuries that he suffered in an accident on 18.01.2017.

Counsel for the appellant Insurance Company has primarily raised submissions with regard to quantum of compensation. It is contended that the claimant had suffered 10% temporary disability qua limb and did not suffer any permanent disability and yet the Tribunal has awarded Rs.1 lakh towards loss of income. It is argued that such amount awarded towards loss of income cannot sustain. Further urged that the compensation amount of Rs.50,000/- awarded towards pain and sufferings is also

on the higher side. The contention with regard to false involvement of the insured truck is also raised by contending that the author of the FIR namely, Narender had not disclosed the identity of the driver and FIR had been registered in collusion with the police officials.

Counsel for the appellant has been heard at length and the case paper book has been perused.

Claim petition had been filed under Section 166 of the Motor Vehicles Act, 1988 at the hands of Mukesh (respondent No.1 herein) on the averments that he is a labourer by profession and earning about Rs.20,000/- per month. On 18.01.2017, the claimant along with other fellow co-workers were returning to their village from the fields of Kuldeep in a tractor trolley. When they reached near village Kalanaur, a truck bearing registration No. RJ-14-GE-1024 being driven at a high speed and in a rash and negligent manner came from behind and struck the tractor trolley. Due to impact, the claimant as also his other co-workers sitting in the tractor trolley suffered grievous injuries. Claimant asserted in the claim petition that he has become disabled and has suffered loss of work. He has spent more than 3 lakhs on his treatment and had also spent to engage an attendant at Rs.8000/- per month.

The claim petition having been contested, the following issues were framed by the Tribunal:

- 1. "Whether the accident in question resulting in injuries to petitioner Mukesh took place due to the rash and negligent driving of vehicle bearing registration No. RJ-14GE/1024 being***

driven by respondent No.1? OPP

2. If issue No.1 is proved in affirmative, then whether the petitioner is entitled to compensation? If so, to what extent and from whom? OPP

3. Whether respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident? Whether the respondent No.1 has violated the terms and conditions of the insurance policy? If so, its effect? OPR-3

4. Relief."

Tribunal in its award dated 06.04.2018 has returned findings in favour of the claimant and has held that he suffered injuries on account of rash and negligent driving of the offending/insured truck.

As regards quantum of compensation, a sum of Rs.75,000/- has been awarded towards medical bills/treatment, Rs.50,000/- towards pain and sufferings, Rs.15,000/- in all towards transportation, special diet and services of an attendant and a sum of Rs.1 lakh has been awarded towards disability and loss of income. The total compensation amount awarded is Rs.2,40,000/- along with simple interest @ 7% per annum from the date of institution of the claim petition till realization. The liability to pay the compensation amount was held to be joint and several upon the owner, driver of the offending vehicle as also the Insurance Company.

The contention raised by counsel with regard to false involvement of the insured truck is not well founded. The accident

had taken place on 18.01.2017. FIR No.112 dated 19.04.2017 under Sections 279 and 337 IPC was registered at Police Station Kalanaur on the statement of Narender who was also a co-worker and sitting in the same very tractor trolley. Narender as such was an eye witness to the accident. The claimant had himself stepped into the witness box as PW-1 and had supported and substantiated his version with regard to the accident. Narender had appeared as PW-2 and had corroborated the version of the claimant as also his first version on the basis of which FIR had been registered. The complainant Narender PW-2 had disclosed the registration number of the offending truck at the very outset. Understandably, he could not have disclosed the identity of the driver. It is during the course of investigation that the police had found out the identity of the driver of the offending truck and had submitted a final investigation report naming him an accused being driver of the same.

It has gone uncontroverted that respondent No.1 in the claim petition, namely, Pardeep was facing trial in pursuance to registration of the FIR on the charge of rash and negligent driving of the offending vehicle.

It is by now well settled that the standard of evidence required for purpose of inquiry in a claim petition before the Motor Accident Claims Tribunal would not be as stringent as would be the case in a criminal trial.

This Court does not find any perversity in the findings recorded by the Tribunal with regard to issue No.1.

Even as regards quantum of compensation, no basis for interference is warranted.

The claimant had adduced on record before the Tribunal the original documents/bills towards treatment taken by him at PGIMS Rohtak Exhibits P-1 to P-21 and Exhibits P-24 to P-28. Claimant had been hospitalized on account of injuries on his legs as per MLR (Ex.P-29). The total amount towards medicines, treatment as per the original bills adduced on record was Rs.74,499/-. Under such circumstances, the Tribunal has rightfully awarded a sum of Rs.75,000/- towards medical treatment/medicines.

MLR (Ex.P-29) coupled with the follow up and discharge card (Ex.P-30) issued by the PGIMS Rohtak reflected that the claimant had sustained fractures in both his legs and had remained hospitalized for treatment from 19.04.2017 to 07.05.2017. A disability certificate (Ex.P-3) had been adduced which recited a 10% temporary disability. The amount of Rs.50,000/- awarded towards pain and sufferings to the claimant would be just and equitable on account of the fractures suffered in both the legs and towards period of hospitalization. The Tribunal has awarded a sum of Rs.5,000/- each towards transportation, special diet and services of an attendant i.e. Rs.15,000/- in total.

By no stretch of imagination can such amount be stated to be excessive. Rather the Tribunal has been frugal in having awarded only Rs.5000/- each on such heads.

The submission made by counsel for the appellant as

regards a sum of Rs.1 lakh having been awarded towards loss of income against the temporary disability of 10% qua limb would appear attractive at first blush. However, even on such account, this Court would decline to interfere. Claimant was a labourer by profession. Even though he claimed to be earning Rs.20,000/- per month but no evidence had been adduced to substantiate such plea. The accident had taken place in the year 2017. It would be safe to presume that he was earning Rs.8000/- per month i.e. minimum wages admissible to a daily wager. Claimant remained hospitalized from 19.04.2017 to 07.05.2017 on account of fractures suffered in his legs. Concededly, claimant had suffered a temporary disability element to the extent of 10% qua limb. It would be safe to presume that claimant was kept away from work completely for a period of 2-3 months on account of the accident and thereafter it would have taken him at least a period of 06 months approximately to recuperate and be completely fit to discharge the work of manual labour. Under such circumstances, by assessing the notional monthly income of Rs.8000/-, taking into account, a temporary disability element of 10% and by keeping in mind his avocation of being a labourer, the sum of Rs.1 lakh awarded by the Tribunal cannot be stated to be a bonanza in his hands.

Even if a view was to be taken that such amount is slightly on the higher side, the Tribunal on the other hand ought to have awarded more than Rs.5000/- each towards transportation, special diet and services of an attendant.

In an overview of the matter, the total compensation amount of Rs.2,40,000/- awarded in favour of the claimant as such would not call for variance.

Appeal is dismissed.

10.08.2018	(TEJINDER SINGH DHINDSA)
vandana	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	No