

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

F.A.O. No. 5153 of 2018(O&M)

Date of Decision: 12.11.2018

The Oriental Insurance Company Limited

.....Appellant.

Versus

Kunal and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.P.Arora, Advocate
for the appellant.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company against the impugned award dated 08.05.2018, passed by the learned Motor Accident Claims Tribunal (for short 'MACT'), Jhajjar, whereby compensation to the tune of ₹4,23,422/- has been awarded to claimant-respondent no.1 on account of the injuries suffered by him in the motor vehicle accident which took place on 27.09.2015.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act, petitioner on 27.09.2015, at about 08.30.a.m., was walking on the left side at the verge of the road, when a bus bearing registration no. HR-66-A-0577 came from the side of village Bamnoli at a very high speed being driven by respondent-Krishan in a rash and negligent manner directly hit the petitioner. As a result thereof, petitioner sustained multiple grievous injuries. FIR No.268 dated 27.09.2015, under Sections 279, 337 and 338 IPC, Police Station City Bahadurgarh, was registered

against respondent no.2-Krishan, in this respect.

Petition under Section 166 of the Motor Vehicle Act (for short 'the Act') was filed through his mother-Bimla seeking compensation on account of the injuries received by the claimant in the abovesaid accident.

Claim was resisted by the appellant-respondent no.3. Following issues were framed by the learned Tribunal:-

1. Whether the accident, resulting into the injuries sustained by Kunal (minor) son of Sh. Mahender had taken place due to rash and negligent driving of vehicle i.e. bus bearing registration no. HR-66-A-0577 by respondent no.1?OPP
2. If issue no.1 is proved in affirmative, whether the petitioner is entitled to compensation, if so, to what amount and from whom?OPP
3. Whether respondent no.1 was not holding valid driving license on the date of alleged accident and whether respondent no.2 has contravened the terms and conditions of the Insurance Policy, if so its effect?OPR3.
4. Relief.

Learned Tribunal on consideration of the evidence on record, held that claimant-Kunal received injuries in the accident caused by the rash and negligent driving of the offending bus by respondent no.-1-Krishan.

A sum of ₹4,23,422/- was awarded to the claimant alongwith interest at the rate of 9% within forty days (40) from the date of decision of the claim petition i.e. 08.05.2018, failing which after 45 days, the claimant was held entitled to interest @ 12% per annum.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant submits that in-fact the accident in question took place with the vehicle owned by PW-2-Manjeet. The bus bearing registration no. HR-66-A-0577, insured by the appellant, has been falsely involved only because the tempo in question was not

insured. Moreover, compensation awarded to the claimant is excessive. It is thus prayed that the impugned awarded be set aside.

I have heard learned counsel for the appellant and have gone through the certified copies of the record produced by him in Court today.

It is not in dispute that FIR No. 268 was registered under Section 279, 337 and 338 IPC on 27.09.2015 itself i.e., the day on which the accident took place. FIR in question was registered on the statement of PW-2-Manjeet. The number of the offending vehicle is duly mentioned therein. The appellant cannot derive much benefit from the response of PW-2 to the effect that he is unable to read or write English as he has cleared only Class-IV. It is not proved on record that PW-2 did not give the registration number of the offending vehicle at the time of registration of the FIR or that the vehicle was wrongly involved in this matter only to seek compensation. It is further not denied that driver of the offending vehicle arrayed as respondent no.1 before the learned tribunal is facing trial arising out of FIR No. 268. Therefore, finding of the learned tribunal to the extent that the accident in question was caused due to rash and negligent driving of the offending bus by respondent-driver brooks no interference.

Similarly, contention on behalf of the appellant that the disability certificate (Ex.P-4) does not stand proved as the competent authority/doctor, who had issued the same was not examined, is devoid of any merit. It is so for the reason that in the copy of the record produced before this Court today, there is a verification report dated 07.12.2017 by an investigator of the insurance company to the effect that disability certificate dated 16.08.2017 as well as the medical bills were duly verified by him. It is

specifically stated in the said report that the investigator went to Jhajjar in the office of the Civil Surgeon, Jhajjar. He personally checked the record. Written report of the Civil Surgeon, Jhajjar was enclosed with the report. Medical bills were also duly verified. There is a specific report that the disability certificate along with the bills are genuine. As per the said disability certificate, the claimant suffered injuries on his foot. There were multiple fractures leading to amputation of the 3rd, 4th and 5th toe. The claimant, who was an 11 year old child is reported to have suffered 20% permanent disability in relation to the limb. Therefore, in my considered opinion, there is no ground whatsoever to interfere in the impugned award.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 08.05.2018 passed by the learned MACT, Jhajjar, which calls for interference by this Court at the instance of the appellant. Needless to say, any observation made in this appeal would not have any effect on the appeal, if any, filed by the claimant.

Appeal is accordingly dismissed with no order as to costs.

12.11.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.