

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

F.A.O. No. 6795 of 2018(O&M)

Date of Decision: 13.11.2018

SBI General Insurance Company Limited

.....Appellant.

Versus

Rajesh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Suman Jain, Advocate
for the appellant.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company challenging the award dated 20.08.2018, passed by the learned Motor Accident Claims Tribunal (for short 'MACT'), Jhajjar, whereby compensation to the tune of ₹33,13,208/- 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 16.12.2013.

As per averments in the claim petition, the claimant on 16.12.2013, at about 09.30.p.m., was going from Delhi to Achina Taal alongwith his friends Jai Parkash son of Dalip, Karambir son of Sadhu, Daya Kishan son of Shri Hari Singh and son son of Satbir, in Mohindra Bolero Jeep bearing registration no. HR-19-H-4092, which was being driven by Satish son of Satbir at a moderate speed duly following the traffic rules. When, they reached near Mehrana Chowk, Dujana, Police Station Jhajjar, at around 11.30.p.m., suddenly a Canter bearing registration no. HR-55-R-0581 being driven by respondent no.1 at a very high speed and in a rash and negligent manner, came and hit their vehicle. As a result thereof, respondent no.1 and his friends received multiple and grievous injuries. Respondent

no.1 was admitted and treated in Medanta-The Medicity, Sector 38, Gurgaon, Haryana. He remained admitted in the said hospital till 10.02.2014 and thereafter shifted to Hospital at Rewari till 24.02.2014. FIR No.818 dated 17.12.2013, under Sections 279, 337 IPC, was registered against respondent no.1-Krishan, in this respect.

Petition under Section 166 of the Motor Vehicles Act (for short 'the Act') was filed seeking compensation on account of injuries received by the appellant.

Claim was resisted by the appellant (respondent no.3 in the claim petition) as well as by respondents no.2 and 3 (in the present appeal).

Following issues were framed by the learned Tribunal:-

1. Whether the accident took place due to rash and negligent driving of vehicle bearing registration no. HR-55-R-0581, driven by respondent no.1, as alleged by the claimant?OPP
2. If issue no.1, is proved in favour of claimant, whether claimant is entitled to get compensation against respondent no.1 to 3 and if so to what amount and from whom, as prayed for?OPP
3. Whether respondent no.1 was having valid and effective driving licence at the time of accident?OPR-3.
4. Whether respondent no.2 has violated the terms and conditions of Insurance Police, Route Permit, etc.?OPR-3.
5. Relief.

Learned Tribunal on consideration of the evidence on record, held that respondent no.1 suffered 100% disability due to the injuries received by him in the accident due to the rash and negligent driving of the offending vehicle by respondent no.-2-Shahid.

A total sum of ₹33,13,208/- alongwith interest at the rate of 7% from the date of filing of the petition till realization was awarded to the claimant.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that in the present case negligence on the part of the vehicle insured by the appellant i.e. the Canter, is not proved on record. In-fact, the Canter was proceeding from Rohtak towards Jhajjar on the National Highway. It is the Bolero jeep in which the injured was travelling which is actually responsible for the accident in question. Therefore, the present, is not a case of composite negligence giving right to the claimant to file a claim against anyone of the vehicles involved. Moreover, a specific objection had been raised by the appellant-Insurance Company regarding non-joinder of necessary parties i.e. the owner, insurer and driver of the Bolero jeep. Therefore, reliance by the learned tribunal on the judgment of the Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Company Limited and others 2015 (9) SCC 273**, is misplaced.

It is further contended that the quantum of compensation awarded to the claimant is highly excessive. There is no evidence on record to prove that the claimant indeed suffered from 100% functional disability. Reference is made to the statement of PW-6-Dr. Murari Lal Sharma, Sr. M.O., Civil Hospital, Jhajjar, wherein he states that 100% disability is qua the limb, which is mentioned in the disability certificate Ex.P-37. Learned counsel further submits that income of the claimant has been wrongly assessed as ₹8000/- per month as even minimum wage of an unskilled labourer at that time was ₹5341.51/-. It is thus prayed that the present appeal be allowed and the insurance company be discharged of its liability to pay the compensation.

I have heard learned counsel for the appellant and have gone through the photocopy of the record produced in Court today.

It is the specific case of the claimant that the injured was travelling in a Mahindra Bolero vehicle bearing registration no. HR-49-H-4092 alongwith his friends. The vehicle was being driven by Satish son of Satbir at a moderate speed in a careful manner. When, they reached near Mehrana Chowk, Dujana, PS Jhajjar, the offending vehicle i.e., Canter bearing registration no. HR-55-R-0581 approached from the side of Rohtak. It was driven in a rash and negligent manner by respondent no.2-Shahid. Claimant-respondent no.1 received multiple and grievous injuries. He was admitted at Medanta-The Medicity, Sector 38, Gurgaon, Haryana, on 16.12.2013, itself. He remained admitted in the said hospital till 10.02.2014 and was thereafter shifted to a hospital at Rewari, where he remained admitted till 24.02.2014. FIR No. 818 dated 17.12.2013, was registered on a statement of Satish son of Satbir who was driving the Bolero vehicle, though Satish has not been examined. Jai Parkash son of Dalip (PW-4), who was admittedly one of the occupants of the Bolero, clearly stated about the manner of the accident. The driver of the offending Canter is admittedly facing criminal trial. Contention on behalf of learned counsel for the appellant that there was no negligence whatsoever on the part of the driver of the Canter, cannot be accepted in the factual matrix of the case. Furthermore, I have perused the site plan Ex.R-6, which reflects that there are in-fact cross roads, therefore driver of the Canter proceeding on the National Highway was also under an equal duty to be careful at such a crossing. It may be true that a vehicle coming onto the National Highway

would be under a duty to be careful, but at the same time the offending vehicle i.e., Canter cannot be absolved of all responsibilities neither can it be said that the said vehicle was not driven in a rash and negligent manner and thus not responsible at all for the accident in question.

Learned tribunal in this situation rightly observed that it is open to the claimant to proceed against any/either of the two vehicles/their owners and insurers. An opportunity has been afforded to the appellant to initiate action against the driver, owner and insurer of the Bolero vehicle and get determined the negligence on its part, if any, and recover the compensation amount paid by the company. Thus right of the insurance company in this respect has been duly protected.

Learned counsel for the appellant is unable to point out any ground whatsoever for reduction of the compensation awarded to the claimant. It is a matter of record that the claimant was taken to Medanta-The Medicity, Sector 38, Gurgaon, Haryana, where he remained admitted till 10.02.2014. Thereafter, he was treated at Naithani Neuro & Multispeciality Hospital, Rewari from 10.02.2014 till 26.02.2014.

Disability certificate dated 13.05.2015 of the appellant is on record as Ex.P-37. It is specifically mentioned that appellant has suffered 100% disability due to a head injury. Disability certificate has been proved by PW-6-Dr. Murari Lal Sharma, Sr. M.O. Civil Hospital, Jhajjar, who was a member of the board which assessed the disability of the appellant. PW-7-Arunanshu Bhardwaj, Manager, Naithani Neuro Centre, Rewari, proved the discharge summary Ex.P-73 and the bills Ex.P-74 of the said Neuro Centre. PW-5-Ravinder Singh, Record-keeper, Medanta, Hospital, Gurgaon, has

proved the discharge summary from the Medanta Hospital, Gurgaon, as Ex.P-42 as well as the relevant bills Ex.P-43 to Ex.P-72. The relevant extract of the discharge summary as mentioned in Ex.P-42 reads as under:-

“Mr. Rajesh, 25 years old male presented with alleged history of RTA on 16.12.2013 at 11.p.m. There was history of loss of consciousness since the incident. No history of vomiting/ convulsion and ENT bleed. Patient was initially taken to PGI, Rohtak where he was evaluated and primary care given and tracheostomy was done. NCCT head done which revealed right frontal SDH with contusion and multiple skull bone fracture. Now patient was admitted here for further evaluation and management.”

“Patient was admitted in emergency with above said history under Neurosurgery Team. NCCT head done showed multiple B/L hemorrhagic contusions with SDH at right FT regions. No mid line shift. Patient was kept in ICU for close monitoring and intensive care. Plastic surgery consultation was taken for multiple abrasions and treatment started accordingly. Ortho team was reviewed the patient for fracture 5th MC with fracture pelvis and advice incorporated in the line of management.

Blood investigations revealed raised level of TLC count for which he was put on appropriate antibiotic therapy. ENT team was consulted and advice followed. Thoracic surgery team opinion was taken who advised for CECT thorax to rule out any injury to lung or any vascular injury. CECT thorax was done suggestive of B/L pneumothorax and B/L ICD insertion was done under all aseptic precautions on 18.12.2013. Neuro-critical care team opinion was taken and treatment started accordingly.

In view of low Hb multiple sittings of PRBC were transfused during his hospital stay.”

Condition of the appellant at the time of discharge from

Medanta-The Medicity, Sector 38, Gurgaon, Haryana, was mentioned as under:-

“E4VtM4-5, TT in situ,
RT and foleys in situ,
on RT feeding,
chest and limb physiotherapy.”

It is apparent that the appellant is in a near vegetative state.

Petition under Section 166 of the Motor Vehicles Act was also filed by the claimant through his wife and legal representative Smt. Sunita. The same has been accepted without demure by the appellant. Therefore, it cannot be said that the claimant does not suffer from 100% disability. The appellant, who was 29 years old at the time of accident was treated at par with a casual labourer inasmuch as his stand that he was running a Karyana shop was not accepted and his income assessed as ₹8000/- per month. No ground is made out for the reduction of the compensation awarded to the claimant by the learned tribunal.

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 20.08.2018 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.

13.11.2018
s.khan

[LISA GILL]
Judge

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