

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

FAO no. 7132 of 2018 (O&M)
Decided on: 01.12.2018.

Cholamandlam MS General Insurance Company Ltd.Appellant

versus

Roop Singh and othersRespondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Sanjeev K. Arora, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral)

CM-26127-CII-2018

This application has been filed seeking condonation of delay of 4 days which has occurred in re-filing the present appeal.

On the grounds mentioned in the application, the delay of 4 days in re-filing the appeal is hereby condoned. This application stands allowed.

FAO-7132-2018

By preferring this appeal the appellant-Insurance Company has challenged the Judgment and Award dated 03.08.2018 passed in Claim Petition no.111 of 2016 by the Motor Accident Claims Tribunal, Hisar.

1. The case of the claimant is that he was working as driver on a canter bearing Registration No.HR-57-3455 owned by one Ved Parkash and was getting salary of Rs.15,000/- per month plus daily allowances. On 13.02.2016 at about 3.30 a.m., he was driving his Eicher canter at a moderate speed and was returning from Delhi to Abohar. The work on road for four-laning was in progress on Hisar bypass. As such, traffic was diverted to right hand side road. When he reached near Airport Bypass

Chowk, Hisar, the offending truck driven by respondent no.1 of the claim application, rashly and negligently and without adhering the traffic rules came from Hisar side and, after coming towards wrong side of the road, dashed the offending vehicle into his canter. As a result of which, he suffered multiple and grievous injuries on his right leg and canter was also damaged. The driver of the offending vehicle escaped from the scene. Thereafter, he was shifted to Sai Hospital, Hisar, where he was medico-legally examined and remained admitted in the hospital upto 24.02.2016 and his right leg was amputated. He spent Rs.2 Lakh in his treatment. FIR was also lodged in which police report has already been submitted under Section 173 of Cr.P.C. He claimed that the accident took place solely due to the rash and negligent driving on the part of respondent no.1, who being driver, respondent no.2 being owner and respondent no.3 being insurer of the offending vehicle are jointly and severally liable to pay compensation to the petitioner.

The applicant claimed compensation of Rs.50 Lakh on account of injuries sustained by him in the motor vehicular accident due to which he has become permanently disabled.

2. Respondents no.1 and 2 filed a written statement opposing the claim of the claimant and so did the respondent no.3-appellant/Insurance Company making averment in his written statement that the driver of the offending vehicle was not having a valid and effective driving licence and, thus, the insurance company was not liable to indemnify the owner who also did not give any information in writing to the insurance company regarding the accident and has violated Section 134 (C) of the Act.

3. From the pleadings of the parties, the Tribunal framed

following issues:

1. Whether accident in question took place on account of rash and negligent driving of respondent no.1 while driving vehicle bearing registration No.RJ-10GA-3648?OPP
 2. If issue no.1 is proved whether the petitioner is entitled to claim compensation, if so, how much and from whom?OPP
 3. Whether insured/owner of the offending vehicle has violated terms and conditions of the insurance policy, if so to what effect?OPR-3
 4. Relief.
4. The applicant/claimant-respondent examined himself as PW1, one Ved Parkash, the owner of the canter driven by him as PW2 and Dr.Raj Singh as PW3.

The respondents tendered in evidence some documents which are exhibited as Ex.R1 to Ex.R5.

5. Upon consideration of the facts and circumstances of the case and the further fact that FIR was drawn and registered and police report under Section 173 Cr.P.C. has already been submitted in the concerned case, the Tribunal has held that accident took place due to the rash and negligent driving of the driver of the offending vehicle, who is facing trial for causing grievous injuries to the claimant/petitioner. It has also been noticed that no evidence has been adduced by respondent no.1 showing that any step has been taken by him to substantiate his claim that it is case of false implication. The respondent no.2 also remained silent for a long period.

The Tribunal has also noticed the testimony of PW3 Dr.Raj Singh who has supported the injury as also Ex.P8 Disability Certificate issued by the Board of Doctors which reveals that the petitioner suffered

permanent disability to the extent of 80 per cent and has suffered amputation of right leg. The owner of the canter being driven by the claimant, namely Ved Parkash has also been examined as PW2 who has stated that he was paying Rs.15,000/-per month salary to claimant/petitioner who was driving his canter, however, in cross-examination this witness has admitted that he had not maintained any record of employment and payment of salary to the petitioner. Since no record was produced by PW2, the income of the claimant, considering him to be a skilled person, has been assessed at Rs.10,000/- per month.

The Tribunal has also held that petitioner is a driver by profession, who, after amputation of his leg, would not be able to drive the vehicle in future and, thus, has held that due to this 80 per cent disablement, he has been rendered with functional disability of 100 per cent and there would be 100 per cent loss in earning capacity which he is likely to suffer throughout his life. In view of the various decisions of the Hon'ble Supreme, the Tribunal has chosen the multiplier of 15 and assessed the monthly income after adding 40 per cent of actual monthly salary towards future prospects and has calculated the compensation amount to be Rs.25,20,000/- for permanent disability, Rs.2 Lakh for pain and sufferings, Rs.1,38,280/- for expenses towards treatment and Rs.50,000/- towards special diet, stay and conveyance charges etc. Thus, total amount of compensation awarded is Rs.29,08,280/- alongwith interest at the rate of 9 per cent per annum to be calculated since the date of filing of petition till its payment.

6. Learned counsel for the appellant has produced a sketch map of the site of the accident prepared by the police authority to impress upon this

Court that the truck cannot be held to be an offending vehicle and it is a case of a contributory negligence. However, in my considered opinion the map does not create such impression.

7. It is next contended that in the FIR, the age of the claimant/appellant has been shown to be 40 years whereas in the claim petition that has been shown to be 38 years and due to this variation the multiplier has been chosen is at 15 instead of 14 and that has resulted in higher amount under the head of future prospect which has been calculated at 40 per cent in place of 25 per cent. It is contended that both these aspects have resulted into awarding higher compensation.

However, learned counsel was totally at loss when a question was put to him, as to whether this aspect was raised in the written statement or not before the Tribunal and whether the age was challenged or not. In the absence of the same, this Court is not in a position to accept such limb of argument raised on behalf of the appellant as the age written in the police document does not have any presumption of its correctness.

8. The issue of contributory negligence raised by the appellant is also of no value since this Court finds no flaw in findings recorded by the Tribunal that accident was a result of rash and negligent driving of the driver of the offending truck resulting in collusion with the canter driven by the claimant.

9. Another point raised on behalf of the appellant that, in view of the fact that permanent disability has been assessed by the competent authority to be 80 per cent only, there was no occasion for the Tribunal to consider it to be 100 per cent, is also noted to be rejected for the reason that the Tribunal has held that 80 per cent of permanent disability has resulted in

amputation of one of the limbs of the claimant who was a professional driver and, thus, has rendered him 100 per cent functional disability due to which he would not be able to earn from his profession. In my considered opinion, the aforesaid finding suffers from no flaw.

10. No other ground has been raised by the appellant at the time of hearing of his appeal.

In the result, this appeal, being devoid of any merit, is dismissed.

However, there would be no order as to costs.

December 01, 2018
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes