

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7374 of 2018 (O&M)
Date of decision:07.12.2018.

IFFCO TOKIO General Insurance Company Ltd.

...Appellant

Versus

Kulvir Singh and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

LISA GILL, J.

This appeal has been filed by the Insurance Company challenging award dated 21.08.2018 passed by learned Motor Accident Claims Tribunal, Rupnagar ('Tribunal' for short), vide which claimant was awarded compensation of Rs.7,40,724/- on account of injuries sustained by him in a motor vehicle accident on 25.05.2017.

Brief facts, necessary for adjudication of the case, are that a petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him. The appellant was involved in a motor vehicle accident on 25.05.2017 when he was proceeding from Village Sarhana towards Chamkaur Sahib on his motorcycle bearing No.PB-12Z-5474. At about 2.30/3.00 pm, when he reached the revenue limits of village Kalran on Morinda to Chamkaur Sahib, the offending Skoda Car bearing No.HR-70B-6149, which was being driven by its driver respondent No.1 in a rash and negligent manner, at a high speed, came from the opposite side. The said Skoda car while overtaking the bus after coming on the wrong side of the road, struck against the motorcycle of the claimant. Claimant fell on the road and received multiple injuries. Firstly, he was taken to Civil Hospital, Morinda

and thereafter referred to PGI, Chandigarh, where his right foot was ultimately amputated. He remained admitted there from 25.05.2017 to 27.05.2017. It was pleaded that the claimant was working as heavy vehicle driver, earning Rs.20,000/- per month. Compensation was, thus, prayed for.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. Learned Tribunal awarded a sum of Rs.1724/- towards medical expenses besides Rs.5,000/- each towards transportation charges and special diet. Learned Tribunal assessed the annual income of the appellant as Rs.84,000/-. By taking into consideration 50% of the expected annual income, loss of future earnings was assessed at Rs.42,000/- per annum. Multiplier of 17 was applied. Thus, loss of income was assessed at Rs.7,14,000/- ($42,000 \times 17$). A sum of Rs.5,000/- was awarded towards attendant charges besides Rs.10,000/- for pain and sufferings. Thus, the appellant was held entitled to total compensation of Rs.7,40,724/- along with interest @ 9% per annum from the date of filing of claim petition till realisation.

It is primarily argued that the accident in question is not proved to have taken place on 25.05.2017 involving the offending vehicle which was insured with the Insurance Company. It is vehemently argued that the accident in question took place on 25.05.2017, whereas FIR was registered, after an unexplained delay of 5 months, on 25.10.2017. It is, thus, clear that the accident in which the claimant is stated to have received injuries, is not proved on record, neither negligence of the respondent driver is proved. Moreover, compensation awarded to the claimant is submitted to be excessive. Thus, it is prayed that this appeal be allowed.

I have heard learned counsel for the appellant and have gone through the file.

As per the claim petition filed by claimant/respondent No.1, an accident took place on 25.05.2017 when he on his motorcycle bearing No.PB-12Z-5474 was proceeding from Village Sarhana towards Chamkaur Sahib. At about 2.30/3.00 pm, when he reached the revenue limits of village Kalran on Morinda to Chamkaur Sahib, the offending Skoda Car bearing No.HR-70B-6149 came from the opposite side. The car was being driven by its driver respondent No.1 in a rash and negligent manner, at a high speed. The said skoda car, while overtaking the bus after coming on the wrong side of the road, struck against the motorcycle of the claimant. Claimant fell on the road and received multiple injuries. His right foot was ultimately amputated at PGI Chandigarh. Disability certificate (Ex.P6) proving amputation of the claimant's right lower limb, declaring disability of the claimant to the extent of 50% was proved by PW3 Dr. Mahesh Goyal, Medical Officer. Amputation is admittedly at the level of the ankle. The claimant was averred to be heavy vehicle driver.

FIR in this case was registered on 25.10.2017. As per the FIR itself (Ex.P7), it is mentioned that case was entrusted to ASI Sajan Singh, who in connivance with respondent No.1/driver was pressurizing the claimant to come to terms in this case. It is only after an application was moved by the complainant side to higher authorities that enquiry was conducted and FIR was registered against the driver of the offending vehicle under Sections 279, 338 and 427 IPC on 25.10.2017. RW1 ASI Sajan Singh admitted that an application was moved by the uncle of the complainant (claimant) before the DSP, Chamkaur Sahib on which the SHO conducted investigation. Final

report under Section 173 Cr.P.C. was ultimately presented against the driver of the offending vehicle.

In this view of the matter, delay in registration of FIR is duly explained by the claimant. It cannot be said that due to the delay in the FIR, accident in question is not proved. There is thus no merit in this argument urged by learned counsel for the appellant. Claimant has successfully proved his stand on the touchstone of preponderance of probabilities.

Furthermore, medical evidence has been led to prove the disability suffered by the claimant. It has come on record that the claimant after the accident was firstly taken to Civil Hospital and thereafter referred to PGI, Chandigarh, where the lower limb upto level of ankle was amputated. Claimant has exhibited his driving licence Ex.P9 to prove that he was a heavy vehicle driver. Income of the claimant has been assessed as Rs.84,000/- per annum and loss of earning assessed at 50%. In the facts and circumstances of the case, functional disability of the claimant cannot be assessed to be less than 50%. There is no dispute regarding the age of the claimant. It is proved on record that the accident in question took place due to the rash and negligent driving of Skoda Car by its driver. Therefore, argument that quantum of compensation awarded to the claimant is excessive is devoid of any merit. There is no ground for reduction of the compensation awarded to the claimant.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in award dated 21.08.2018 which calls for any interference in this appeal, preferred by the Insurance Company.

Appeal is accordingly dismissed with no order as to cost.

(LISA GILL)
JUDGE

December 07, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No