IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1960 of 2019 (O&M)
Date of Decision: 10.04.2019

New India Assurance Company Limited ....Appellant

Vs.

Neeraj Kumar and Others ....Respondents

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

Present:- Mr.Paul S.Saini, Advocate, for the appellant.

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DR. RAVI RANJAN, J. (Oral Judgment)

I have heard learned counsel for the appellant at length.

The appeal is directed against the Judgment and Award dated 14.12.2018 passed by the Motor Accident Claims Tribunal, Faridabad by which the Tribunal has Awarded compensation amount of Rs.14,62,000/- to be payable by the respondents (of the claim applications) jointly and severally along with interest of simple interest @7.5% per annum.

Brief facts of the case stand enumerated as under:

On the fateful day, i.e.,12.04.2016, the injured Neeraj Kumar was going from Itawa to Faridabad driving a tempo (four wheeler). At about 10.30 PM, when his vehicle reached near Meesa Chowk, Village Chandhut, a canter being driven by respondent No.1 of the claim application, i.e., the driver of the offending vehicle in a rash and negligent manner without observing traffic rules, came and hit the tempo from right side. Due to impact, he received multiple grievous injuries all over his body. His father Lallan Prasad also sustained injuries and his tempo (four-wheeler) was also

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damaged. Driver of the offending canter fled away from the spot after leaving his vehicle there. The claimant was taken to Civil Hospital, Palwal, where he was medico-legally examined. He was, thereafter, referred to B.K.Hospital, Faridabad, but due to serious injuries, he was shifted to Safdarjung Hospital, New Delhi where he remained admitted from 13.04.2016 upto 29.04.2016. On the statement of his father viz. Lallan Parsad, an FIR was registered under Sections 279 and 337 IPC was registered at Police Station Chandhut, Palwal.

According to the claimant, he was 22 years of age at the time of accident and was hale and hearty and employed as driver by his father Lallan Prasad on the monthly remuneration of Rs.12,000/-. It is further claimed that, due to accidental injuries and amputation of his right leg, he has become 100% disabled. It was also claimed that an amount of Rs.5 Lacs was spent on his treatment and he was still going under treatment at the time of filing of the claim application. The claimant, in the background of aforesaid facts and circumstances, sought compensation of Rs.10 Lacs to be paid by the respondents i.e. driver, owner and insurer of the offending vehicle.

It appears form the impugned judgment that initially only the driver and owner of the offending vehicle were impleaded as respondents No.1 and respondent No.2 and upon their non-appearance. The *ex-parte* Award dated 07.07.2017 was passed, but the particulars of Insurance Company was not disclosed in the claim application. However, on an application moved by the owner, the *ex-parte* Award was set aside by the Tribunal subject to payment of costs of Rs.5,000/- and since the respondent

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No.2, i.e., the owner, also supplied particulars of the insurer of the offending vehicle, the insurance company was also impleaded as respondent No.3.

Upon consideration of rival pleadings, the Tribunal framed following issues:

> (1) Whether petitioner sustained injuries in a motor vehicular accident allegedly caused on 12.04.2016 at about 10.30 p.m. near Meesa Chowk, Village Chandhut within the jurisdiction of P.S.Chandhut, Palwal, due to rash and negligent driving of Canter bearing registration No.HR-38U-3117 by respondent No.1? OPP
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> (2) If issue No.1 is proved, whether the petitioner is entitled to compensation, if so, how much and from whom?OPP.
>
> (3) Whether the insured has violated the terms and conditions of the insurance policy or that driver of the vehicle involved i.e. respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident ?OPR-3
>
> (4) Relief.

The Tribunal, after consideration of the pleadings and evidence led on behalf of parties, decided the issues No.1 and 2 in favour of the claimants holding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and the claimant was entitled for a compensation of Rs.14,62,000/-. The issue No.3 was decided in favour of the owner holding that there is no evidence led on part of the respondent No.3 (insurance company) to prove that the documents produced by the owner such as the national permit driving licence of the driver of the offending vehicle and the insurance policy are fake or there is any violation of the terms and conditions of the Insurance Policy.

In the aforementioned background of factual matrix, learned counsel for the appellant has raised primarily two issues to impress upon this Court that the compensation amount should not have been allowed at all or

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at best it could have been awarded holding that the accident was outcome of contributory negligence on part of both, i.e., the driver of the alleged offending vehicle and the injured himself who was driving the Tempo. The second issue which has been raised by the learned counsel is, though the disability certificate shows that there is only 80% disability, actually 100% disability has been considered by the Tribunal and compensation amount has been calculated on the basis of that.

On the first issue i.e. on the point of negligence, it is contended on behalf of the appellant that the person was driving continuously for 18 hours and he was in drunken condition as has been found in the Medico Legal Report (Ex.P-1). Thus, it can easily be held that it was the injured himself who was responsible for the accident. That apart, it is also raised that he was not holding any driving licence and therefore, he could not have been taken and considered to be a driver by the Tribunal. It has to be considered that a person without knowing any driving or having any driving licence was illegally driving the vehicle. It has further been contended that, since it was a head-on-collision on the national highway which is sufficiently wide for passage of two vehicles, it ought to be held by the Tribunal that both the persons, who were driving the respective vehicles, contributed in the accident.

After having heard learned counsel at length and perusing the impugned order, this Court finds no force in the submission raised on behalf of appellant for the following reasons:

There is nothing on record to show as to actually what is the distance of Faridabad to Itawa and it is also no where stated by any one that the claimant was driving continuously without any break having been taken

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by him during the course of driving which has contributed into accident. The fact that it has taken more than 12 hours from reaching Faridabad to Itawa itself speaks that he must have taken several breaks in the journey. Apart from the above, there is no such pleading in the written statement of the Insurance Company or even the owner to that extent. A copy of the written statement and the claim petition was produced by learned counsel for the Insurance Company at the time of hearing. After going through the same it does not appears that such point was ever raised.

It is pointed by the learned counsel that claimant himself has stated while being cross-examined that in the morning at 4:00 AM, he started from Faridabad to Itawa on his tempo, and reached at about 3:00 p.m. Thereafter, he was coming back to Faridabad. On the strength of the above, learned counsel for the appellant submits that it would mean that he was driving continuously for about 12 hours and after off-loading the goods at Itawa, he again started at 4:00 p.m for Faridabad. At about 10:30 p.m, the accident had taken place which means that he was driving continuously for about 18 hours. However, learned counsel forgets a thing that in the cross-examination, the question is asked by the counsel for the other side and that is answered by the witness. If he is asked a question as to at what time he started in the morning and at what time he reached at Itawa, he simply answered by saying that he had started from Faridabad at 4:00 am and he reached at Itawa at 3:00 p.m. It was not required for him to disclose as to how many breaks he had taken in his journey from Faridabad to Itawa. No such suggestion was made or question was put by counsel for the Insurance Company to him so that he could have answered it. In such a situation, it would be very difficult to hold that he was continuously driving the vehicle

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without any break for 12 hours and after a break of one hour again for a period of 6 ½ hours. It has to be understood that he may have taken few breaks also in the 12 hours journey in the absence of any specific pleading or any specific suggestion having been made at the time of cross-examination in that regard.

It is next contended that in the medico legal report the Doctor has opined in clear terms that he was smelling like Alcohol. However, there is no breath analysis or any medico-chemical examination by any expert or instrument to prove that. The opinion is only on the basis of smell which was emitting out of the person and above all, from the copy of medico legal report, which has been produced at the time of hearing, it appears that it has been written in the place where particular of injuries is to be recorded. That apart, there is no such pleading in the written statement also of any of the respondents. Even if it is assumed that that medico legal report came after filing of the pleadings by the parties, no such question was put before the PW-1 while he was being examined as a witness. Even no suggestion was given to him that he was driving the vehicle in a drunken state. Even if it is assumed that he was smelling like Alcohol, the question would be as to what was the extent of alcohol that has been found? Whether it was sufficient for holding that he was not in a condition to drive the vehicle? In the absence of such evidence, only on the basis that he was smelling like Alcohol, it cannot be held that he was not fit to drive a vehicle. That apart, there is no evidence on the part of the driver or the owner of the offending vehicle or the insurance company that it was he, who actually dashed with the truck. The evidence is otherwise that the offending canter dashed into the vehicle of the claimants.

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As a next submission, learned counsel has urged that the accident was a result of head on collision between the vehicles. Thus, on the strength of a judgment of Hon'ble Supreme Court rendered in **Pramod Kumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak and Ors. 2002(6) SCC 455,** he submits that in case it was a collision between two vehicles, drivers of both the vehicle should be held responsible in contributing the negligence. However, this submission raised on behalf of the appellant is also noted only to be rejected for the reason that the same has been considered by the Tribunal also which has recorded a finding that it is not a case of head on collision rather the case of the claimant is that the canter had hit at the right side of the vehicle where the driver was sitting. On the basis of evidence led and materials available on record, the Tribunal has come to the conclusion that negligence was on the part of the driver of the offending vehicle. Apart from the above, this has also to be noted that FIR was lodged against the driver of the offending vehicle.

Learned counsel for the appellant has also urged that, since the claimant has not brought his driving licence on record, it has to be assumed that he was not having a driving licence, thus, he would not be entitled for any compensation as he was not authorized to drive any vehicle what to say about the vehicle in question.

Ordinarily, the Insurance Companies used to raise such objection in the case of driver of the offending vehicle as if the vehicle was not being driven by the person authorized by Transport Department by granting driving licence, it would be violation of the terms of the insurance policy and as such, the Insurance Company would not be liable to indemnify the owner. However, in the present case, an issue has been raised that the

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driver of the vehicle which was subjected to accident by the offending vehicle was not holding driving licence because he has not produced the same. The question would be as to whether, when it is stated in the claim-application that he is a driver and is earning also as a driver by driving the vehicle of his father who was also accompanying him at the time of accident, any dispute was raised in this regard by making a specific pleading by the respondents that he was not holding a valid licence, therefore, he can not consider to be a driver? If no such pleading is there in the written statement refuting the statement of the claimant that he was a driver, whether this limb of argument would be available to the appellant/insurance Company specially when, at the time of being cross-examination, no suggestion to that effect was made to the claimant by the respondents? If, there is nothing in the pleading and at the time of cross-examination also no question in this regard was asked by the Insurance Company then it has to be deemed that the Insurance company has admitted the stand of the claimant that he was a driver and there was no mandatory requirement for the claimant to prove such fact by producing a driving licence. Thus, this limb of submission is also not found tenable.

Next issue raised by the appellant is that notional income of claimant was assessed to be Rs.6,000/- per month and though the disability certificate granted by the competent authority (copy produced at the time of hearing by the learned counsel for the appellant) discloses that he has got 80% of permanent physical impairment, the Tribunal has erroneously considered the entire income for calculating loss of future income on account of permanent disability. According to the appellant, only 80% of the monthly income should have been considered for the said purpose.

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Prima facie, this limb of argument made on behalf of appellants appears to be attractive but on deeper scrutiny this Court does not find force in the same for the reason that the disability certificate discloses that there was amputation of his right leg above the knee. Though it could be taken that he suffered 80% permanent physical impairment but considering that he was a driver and he would not be able to drive a car any more due to loss of the right leg, for that purpose, the functional disability would be 100% as he would be deprived from earning from the profession which he had adopted. In such a situation, in the absence of any evidence that he continued to earn by any other means, his entire income would have to be taken for the purpose of calculation of loss of future income of the claim-applicant.

No other ground has been raised by the learned counsel at the time of hearing save and except those which have already been discussed and finding has been recorded by this Court hereinabove.

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

Ordered accordingly.

However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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