

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

114

FAO-2598-2019 (O&M)

Date of decision: 12.04.2019

SHRI RAM GENERAL INSURANCE COMPANY LIMITED

... Appellant

Versus

BHUPINDER SINGH AND ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajbir Singh, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.8594-CII of 2019

Heard.

Allowed as prayed for. Delay of 8 days in refiling the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 17.11.2018 passed by the Motor Accidents Claims Tribunal, Ludhiana whereby compensation has been awarded on account of injuries sustained by Bhupinder Singh in a motor vehicular accident that took place on 09.03.2015.

The insurance company has assailed the award on the issue of negligence being attributed to driver of truck bearing No.PB-10-DC-9508 owned by Satwant Singh and insured with Shri Ram General Insurance Co. Ltd. (appellant herein). He has also assailed quantum of compensation assessed by the Tribunal.

With regard to negligence attributed to the aforesaid offending vehicle, it is argued that as per plea of the claimant, in the First Information Report lodged with Police Station Focal Point, Ludhiana dated 12.03.2015, the injured was in the process of crossing a stationary vehicle and the truck aforesaid came from the opposite direction and hit the three wheeler driven by him and in the meantime, three wheeler was hit from backside by truck No.HR-63B-2629 resulting in three wheeler having turned turtle. It is

argued with vehemence that in view of the first version recorded by Bhupinder Singh in the FIR marked as Ex.C1 at the behest of the respondent claimant, the Tribunal has seriously erred by holding Rajinder Kumar, driver of aforesaid truck being exclusively responsible for the occurrence.

He has assailed quantum of compensation primarily on the ground that the injured has suffered 85% disability only qua a particular limb but the Tribunal has allowed loss of future income on account of disability to the tune of Rs.14,28,000/- by considering the entire disability to the extent of 85% and assessing income of the victim @ Rs.10,000/- per month as against minimum wage available at the relevant time.

The claimant appeared in the witness box to discharge onus of issue No.1 that accident is the result of rash and negligent driving of tanker No.PB-10DC-9508, insured with the appellant-insurance company. He examined another witness namely Rimpay CW3 and she corroborated testimony of the claimant with regard to accident being the result of rash and negligent driving of offending vehicle. Counsel for the appellant, in response to a query, would fairly inform that in cross examination of the claimant, he was not confronted with the contents of FIR Ex.C1. He has also failed to point any materials elicited in cross examination of the claimant to prove that negligence in causing the occurrence can be attributed to the victim in order to say that the present is a case of contributory negligence of the victim himself.

Rajinder Kumar, driver of the offending vehicle did not appear in the witness box to counter case of the claimant and testimony of Bhupinder Singh corroborated by Rimpay CW3. An adverse inference is liable to be drawn against the driver, owner and insurer of aforesaid tanker for failure to examine the driver without any tangible explanation. In the given circumstances, it is difficult to accept contention of the appellant that findings of the Tribunal on issue No.1, attributing rashness and negligence to offending tanker, suffer from an error much less perversity warranting intervention. Accordingly, findings of the Tribunal on issue No.1 are affirmed.

This brings the Court to quantum of compensation assessed by

the Tribunal. The victim has suffered disability to the extent of 85% because of amputation of left leg with paralysed lower limb and neurogenic bladder, as per testimony of Dr. Jatinder Syal CW2. Indisputably, the injured was driver of auto/three wheeler bearing No.PB-10CD-4733 that met with accident on the unfortunate day of 09.03.2015. The disability may be to a particular limb but keeping in view the nature of disability resulting in amputation with paralysed lower limb and neurogenic bladder, it may not be possible for the injured to drive the three wheeler in future. In the given circumstances, I find myself unable to accept contention of the appellant that the Tribunal has wrongly taken into consideration the entire disability for computing loss of future income. The minimum wage of a highly skilled worker at the relevant time was approximately Rs.9500/- per month. Hon'ble the Supreme Court in **R.D. Hattangadi vs. M/s Pest Control (India) Private Limited, AIR 1995 (SC) 755** has held that in its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy liked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. Taking into consideration the aforesaid discussion, I do not find any reason to differ with assessment of compensation qua loss of income more particularly in the circumstances that the Tribunal has not awarded any compensation for services of an attendant and loss of amenities of life.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

12.04.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No