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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 199 of 2012
Date of decision: 24.09.2019

Vivek Mukhi ...Appellant

V/s.

Saiyad Salman Asraf and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Anil Shukla, Advocate for the appellant.

Mr. Vishal Aggarwal, Advocate for respondent No. 3-insurance co.

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<u>RITU BAHRI, J. (Oral).</u>

The claimant has come up in appeal against the award of the Tribunal dated 24.12.2009 whereby his claim petition under Section 166 and 140 of Motor Vehicles Act 1988 has been dismissed.

Brief facts of the case are that on 17.03.2007 at about 11:40 a.m., he was going to telephone office Sector 16 Faridabad from his house to deposit bill. When he reached somewhere ahead of Laxmi Narain Mandir Sector 16 Faridabad then driver of Scorpio bearing No. HR-51X-9800 (hereinafter referred to as 'the offending vehicle') brought the vehicle from the other side in a rash and negligent manner and hit the petitioner because of which he fell down on the ground alongwith the scooter and sustained fracture and injuries on right hip including injuries on right lower limb and both the hands. Consequently, the claimant filed claim petition before the Tribunal. An FIR No. 111 dated 19.03.2007 under Sections 279, 337 and 338 IPC was registered at Police Station Central Faridabad against respondent No. 1.

On notice of the claim petition, respondents No. 1 and 2 filed written statement denying the accident. The insurance company-respondent No. 3 filed a written statement taking a plea that the driver of the offending vehicle did not have valid driving licence and the driver had contravened, violated, infringed and breached the terms and conditions of the insurance policy.

On the pleadings of the parties, following issues were framed:-

1. Whether petitioner received injuries in a motor vehicular accident which took place due to rash or negligent driving of Scorpio vehicle No. HR-51X-9800 being driven by respondent No. 1 as alleged in the petition? OPP
2. If issue No. 1 is proved whether the petitioner is entitled to compensation, if so to what amount and from whom? OPP
3. Whether respondent No. 1 was not holding a valid and effective driving licence at the time of alleged accident? OPR
4. Relief

After leading the evidence by both the parties, the Tribunal returned a finding on issue No. 1 against the claimant and held that as per the testimonies of PW11 claimant and PW4 Dr. Harish Handa, the claimant had to prove that the accident took place due to rash and negligent driving of respondent No. 1 and mere registration of FIR which was proved by PW3 ASI Surender Singh, was not sufficient to return a finding that the accident was caused by respondent No. 1.

By way of CM-23037-CII-2018, which was allowed on 18.03.2019, the claimant has placed on record Annexure A-1, the order dated 01.12.2007 passed by Additional Chief Judicial Magistrate in Lok

Adalat to show that the driver of the offending vehicle had confessed his guilt and had been released with a direction to deposit total fine of Rs.2,500/- out of which Rs.2,000 be given to the injured. However, the insurance company is not obeying this order (Annexure A-1) keeping in view that the driver had accepted his guilt as he caused the accident and he paid Rs.2,000/- to the injured.

Keeping in view the above, the finding of the Tribunal on issue No. 1 is liable to be reversed and it is held that the accident was caused on account of rash and negligent driving of respondent No. 1.

The next question for consideration is as to what compensation the claimant is entitled to?.

The claimant examined PW7 Raj Kumar from M/s. Atrenta India Pvt. Ltd. Company A9 Sector 4 Noida UP, where he was working and while appearing as PW11, he had admitted that he received compensation against the bills under group insurance policy from M/S. Vipul which was done by his employer. The claimant further examined PW4 Dr. Harish Handa and PW5 Hemant Kumar Proprietor and Pharmacist Kritika Medicos Handa Medical Research Centre Sector 16, Faridabad to prove the bills Ex.P4 to Ex.P14 which were photocopies and as per the claimant, the original bills were misplaced. The Tribunal further observed that the claimant had never stated that these bills were with M/s. Vipul and on this account, the Tribunal returned a finding that he had mislead the court with regard to medical bills.

Learned counsel for the claimant has rightly argued that in the cross-examination, the claimant admitted that he was reimbursed by M/s. Vipul, the claimant could not be denied compensation under the conventional heads under Section 166 of the Motor Vehicles Act, 1988. Further in para 18 of the award, it has been observed that PW4 Dr. Harish Handa had stated that the claimant was advised bed rest for 12 weeks.

Hence, to meet the ends of justice, a lumpsum amount of Rs.60,000/- is given as compensation under the conventional heads i.e. loss of income, special diet, attendant and transportation keeping in view the judgment passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017), which shall be payable within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others,*** Civil Appeal No. 4528 of 2019. The amount of compensation shall be paid by respondent No.3-insurance co.

Accordingly, the present appeal is allowed.

(RITU BAHRI)
JUDGE

24.09.2019
Divyanshi

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