

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO No.5558 of 2019(O&M)  
Date of Decision:23.10.2019

**Oriental Insurance Company Ltd.**

.....APPELLANT

Vs.

**Priya Rani and others**

.....RESPONDENTS

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

Present: Mr.Ashwani Talwar, Advocate with  
Mr.J.S.Chatrath, Advocate for the appellant.

Ms.Ekta Thakur, Advocate for the caveator/respondents.

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DR. RAVI RANJAN, J.(Oral)

This Appeal by the appellant-Oriental Insurance Company Ltd. has been preferred assailing the Judgment and Award dated 01.05.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') in Motor Accident Claims Case No.459 of 2018, by which a compensation of Rs.61,32,800/- has been awarded to the injured/claimant-respondent No.1-Priya Rani, who had received injury to the extent of 90% in a motor vehicular accident.

Brief facts, which would be necessary for consideration of the *lis*, stand enumerated as under:-

A claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") was filed by the injured/claimant (respondent No.1 herein) claiming compensation to the tune of Rs.75,00,000/- due to the injuries so received in a motor vehicular accident. She claimed therein that she was working as Tele Sales Executive with Hermitage Infra

Developers, SCO Nos.4 and 5, VIP Road, Zirakpur, District SAS Nagar and was earning Rs.25,000/- per month as salary. Besides that, she was also imparting tuitions and earning Rs.15,000/- per month. On 30.06.2018, the claimant was riding her scooter bearing Registration No.PB65-TC-1821 and proceeding from Village Dhakouli towards railway station, Chandigarh maintaining correct side of the road at a normal speed. When she was crossing the railway bridge at about 9.30/9.45 P.M. and was proceeding towards the light point, a Zen Car bearing Registration No.HR26-Y-0045 was moving ahead of her. Due to red signal, the said car stopped at the light point and claimant also stopped her scooter but the aforesaid Truck (hereinafter referred to as 'the offending vehicle') being driven by Ram Sewak(respondent No.2 herein) at a high speed in a rash and negligent manner, came from behind and hit her scooter and claimant also. As a result of which, the claimant alongwith her scooter and another rider fell on the road and suffered multiple injuries on vital organs of her body. Thereafter, the said driver of the offending vehicle struck with the aforesaid Zen Car also which was standing idle just ahead of the scooter and then hit the electricity pole after jumping over the divider. This shows that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner at high speed. Since the alleged accident took place due to rash and negligent driving of the offending vehicle by respondent No.1 in claim application and respondent No.2 herein, FIR No.186 dated 01.07.2018 was lodged under Sections 279 and 337 of Indian Penal Code, at Mauli Jagran, Chandigarh.

Respondent No. 1 to 3 of the claim application appeared and contested the claim by filing written statement. In their joint written statement, respondents No. 1 and 2 (respondents No.2 and 3 herein) took a stand that the claimant herself was negligent in driving the scooter and the alleged accident

was result of her negligent driving in violation of traffic rules, therefore the onus shifted upon her.

Respondent No.3, i.e., the Insurer of the offending vehicle (appellant herein) also denied the contents of the application taking several legal objections. A stand has been taken in the reply that liability of the Insurance Company would arise only if the driver of the offending vehicle was holding a valid and effective driving licence at the time of accident and the vehicle was being driven as per the provisions of the Motor Vehicles Act.

The Tribunal, upon consideration of the rival pleadings, framed following issues:-

“1. Whether claimant Priya Rani received injuries in a road side accident due to rash and negligent driving of Truck bearing registration No.HR38Q-0440 by respondent no.1? OPP

2. Whether the claimant is entitled to compensation, if so to what amount from whom? OPP

3. Whether the respondent no.1 was not having a valid and effective driving licence at the time of accident ? OPR-3

On appreciation of evidence led on behalf of the parties and considering the materials available on record, the Tribunal has returned the findings with respect to all the issues in favour of the injured-claimant and assessed the compensation amount to be of Rs.61,32,796/- alongwith interest on the compensation amount @7.5% per annum to be calculated from the date of filing the claim application till the realization of the amount.

In the aforesaid background of the factual matrix, I have heard learned counsel for the appellant-Oriental Insurance Company Ltd. as also the claimants/respondents and have perused the materials available on record.

The appellant-Insurance Company mainly challenge the Award compensation on three issues.

The first and foremost issue is the cost of two artificial limbs which has been assessed by the Tribunal to be Rs.10,28,076/-. Second one is regarding loss of 'future earning due to permanent disability' which has been assessed Rs.47,58,810/- and lastly the challenge is to the grant of Rs.2,00,000/- under the head of 'loss of amenities'.

Before coming to the issues, it would be apt to notice that as per the disability certificate which has been brought on record as Ex.P83 and cross-examination of PW7, i.e., Dr. Nirmal Raj, the injured-claimant was subjected to right shoulder dis-articulation(amputation of right hand from right shoulder level) and restriction of right knee due to the injury affecting right upper and lower limb. The permanent disability has been assessed to the extent of 90%. However, the functional disability, considering consequential loss of earning capacity, was assessed to the extent of 70% as it has come in the testimony of the concerned doctor that there was no likelihood of any improvement in future even in the case of knee injury.

Now coming to the first objection which has been raised by the appellant-Insurance Company, i.e., with regard to the cost of artificial limb, it has to be understood that the representatives of the Associate Rehabilitation Services O/o Ottobock Health Care India Pvt. Ltd., 375 Bulk Material Market, Phase 11, Sector-65 Mohali, v.i.z., Ishwar Singh has been examined as PW5 and his proposal/quotation has been brought on record as Ex.P76. He has clearly deposed that expert of their concern firm/company has examined injured/claimant-Priya Rani and has given proposal of supplying artificial limb at the cost of Rs.5,14,038/- inclusive of value of the artificial limb and its accessories. The PW5 has stated in his testimony that after two years of free service, maintenance charges would be levied on the same, however, within two

years, it being within warranty period, nothing would be charged. He has further stated that the life of artificial limb was four to five years and after the aforesaid period, it would required to be changed/replaced.

Learned counsel for the appellant-Insurance Company has submitted that merely on the basis of quotation, such high amount for artificial limb has been allowed. He has vehemently argued that in **Mangla Ram Vs. Oriental Insurance Co. Ltd. and others, 2018 AIR (SC) 1900**, the Hon'ble Apex Court has merely allowed only Rs.25,000/- for procurement of a 'Prosthetic Leg'.

However, learned counsel has miserably failed in showing from the judgment that the requirement of the injured in that particular case and the present case was identical or any guideline has been framed in that case on which basis the expenses for procurement of 'Prosthetic Leg' is to be allowed. In fact in another decision of the Apex Court in **New India Assurance Co. Ltd. Vs. Gajender Yadav and others, 2017 (3) R.C.R. (Civil) 974**, Rs.2,00,000/- has been allowed for procurement of artificial limb. The issue is that some evidence has been brought on record on behalf of the claimant and a representative of the company has been produced as a witness (PW5), who has been cross-examined by the respondents but he has withstood the test of cross-examination. There is no evidence on behalf of respondents at all on the point as to what should be the cost of the Prosthetic Limb.

In the absence of any evidence to the contrary, in my considered view, the Tribunal did not have any option than to accept the aforesaid amount as cost of the artificial limb and, further, in view of the fact that the life of the artificial limb is stated to be four to five years and she would be required to change the same after the aforesaid period, the grant of compensation for

purchase of two artificial limbs would be fully justified.

Second issue raised on behalf of the appellant-Insurance Company is regarding computation of future earnings. The first objection is that income tax return of assessment year 2018-2019 has been considered. The alleged accident took place on 30.06.2018. Therefore, though learned counsel admits that the assessment years for the relevant year would be 2018-2019 for the purpose of income tax but in view of the fact that the return was filed after the accident and there would be possibility of raising the gross income for the purpose of getting compensation at higher side cannot be ruled out. Therefore, learned counsel suggests that either the income of the assessment year 2017-2018 should have been taken in account or the average of three years of gross salary shown in income tax return should have been taken as the income of the injured.

In my considered view, this limb of argument advanced on behalf of the appellant-Insurance Company is to be noted only to be rejected. The income tax return of three assessment years are there. Learned counsel for the appellant-Insurance Company himself has stated that for the assessment year 2017-2018, income has been shown to be Rs.2,75,650/ whereas for the assessment year 2018-2019, it has been shown as Rs.2,89,930/-. The difference of earning in the two subsequent assessment years is merely of Rs.14,280/- This Court regrets that for the enhancement of Rs.14,280/-, such objection is being raised by the Insurance Company.

Another objection under this issue taken by the learned counsel for the appellant-Insurance Company is that though, as per the disability certificate, the permanent disability is of 90% and there is no likelihood of improvement also but functional disability could not have been taken at 70%. Learned

counsel submits that, since only right arm from the shoulder has been amputated and there is some injury in the right knee due to which movement of right knee is also restricted but the injured-claimant can easily engage herself in some other job and can earn. Therefore, the functional disability, at best, could have been taken as 50% only.

In my view, such submission is also not tenable. The claimant-injured is young person as she is about 30 years at the time of accident and she was working in a company and was earning Rs.2500/- per month and also imparting tuitions and earning and preparing for U.P.S.C exam but after the injury, there is ample evidence on record that even for doing daily routine work, she needs help of others and, as such, she has engaged two attendants also as she is not able to take bath or use toilet or cook meal or put on or put off her clothes or ply any cycle, scooter and also cannot ride. Though, in his examination, the representative of her employer has stated that she has not been terminated from service but he has admitted that she is not been able to come and discharge her duties due to the injuries she has received. It has come on record that she was preparing for IAS examination and all her hopes have dashed because of the accident. She had beautiful handwriting but her right hand has been amputated now. There is no evidence on record to show that she has engaged herself in some other work which would be suitable to her status. There is no evidence led at all on this point on behalf of the appellant-Insurance Company suggesting that either she was working somewhere else for earning her livelihood or even suggesting what work can be done by her in the absence of right hand and without using right leg. Thus, in my view, the assessment of functional disability to the extent of 70% would not be at the higher side.

The third issue which has been raised by the appellant-Insurance Company is regarding grant of Rs.2,00,000/- against the head of loss of amenities.

It is contended that this is at much higher side. However, this submission is also not tenable for the reason that all the hopes of young lady have dashed. Now, she would not be able to write the UPSC examinations as she has not only lost her fingers but her entire right hand as also her right leg has completely become worthless. Now, she would not be able to do any work even her routine works nor would be able to marry somebody as perhaps it would be almost impossible that somebody would come up and take her into the matrimony. Against such emotional, physical and intellectual loss, the amount of Rs. 2,00,000/- would be meagre and not at the excessive side.

Having regard to the aforesaid discussion, this Court is of the opinion that learned counsel for the appellant-Insurance company has failed to put forth any cogent ground warranting any interference of this Court in the impugned Judgment and Award.

In the result, this appeal is dismissed.

However, before parting with the matter, I must indicate that no other ground has been raised on behalf of the parties save and except those which have already been discussed and considered as above.

(DR. RAVI RANJAN)  
JUDGE

23.10.2019  
Anjal

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| Whether speaking/reasoned? | Yes/No |
| Whether reportable?        | Yes/No |