

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

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FAO-5685-2019

Date of Decision: September 13, 2019

United India Insurance Company Ltd.

.....Appellant(s)

versus

Kewal Singh and others

.....Respondent(s)

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

Present: Mr. Surinder Singh Sidhu, Advocate for the Appellant(s).

DR. RAVI RANJAN, J. (Oral Judgment)

1. I have heard learned counsel for the parties.
2. This appeal is directed against the decision dated 20.05.2019 of the Motor Accident Claims Tribunal, Kurukshetra, rendered in MACT Case No.238 of 2018 by virtue of which a claim application filed by the claimant-respondent under Section 166 of the Motor Vehicles Act, 1988 has been allowed and he has been found entitled to receive Rs.15,21,000/- as compensation alongwith interest @ 7.5 % per annum. The respondents have been held jointly and severely liable to pay the amount. Since the offending vehicle was insured with the appellant-Insurance company, it has been further directed that insurer will indemnify the insured and the compensation would be directly paid by the Insurance Company to the claimants.
3. Brief facts, which would be necessary for consideration of *lis*, stand enumerated as under.
4. That on 04.06.2018, the claimant-Kewal Singh was standing in

front of Generator Kingstar showroom at Ladwa on Kacha/Berm portion of the road along with one Singh Ram for the purpose of going to village Niwarsi to meet his sister. The offending Tractor-Trolley came from the side of Ladwa, which was fully loaded with the sand and was being driven in rash and negligent manner by the driver (Respondent No.2 herein). He struck against the petitioner who fell down and his left leg was run over by wheel of the trolley which was loaded with sand. As a result of which, he received crush injury on his left leg and also suffered various injuries on the other parts. He was taken to CHC Ladwa from where he was referred to PGI Chandigarh where his left leg was amputated. FIR No.198 was lodged on 06.09.2018 under Sections 279, 337 and 338 IPC. This led the injured claimant to file concerned application for grant of compensation from the respondents.

5. Respondents No.1 and 2, that is Driver and the Owner of the offending vehicle contested the claim application by filing written statement taking diverse objections including one that accident did not take place with the alleged offending vehicle. However, they have also stated that respondent No.1 was having valid Driving Licence and the Tractor/Trolley would be insured with respondent No.3. Thus, if any liability arises, the Insurance Company would be liable to indemnify the owner. Another objections was made that the police has falsely involved the Tractor-Trolley and concerned driver was falsely implicated in this criminal case as neither name of respondent No.1 nor the registration number of the Tractor-Trolley was mentioned in the First Information Report. Further, that it was lodged after delay of 5 days.

6. Respondent No.3-Insurance Company also filed written statement. Apart from other objections, it has taken a stand that the accident was result of the negligence on the part of the petitioner himself as he himself was trying to

cross the main road in a negligent manner without caring for the traffic rules and to cover his own negligent act, he has filed the claim petition. That apart, involvement of the vehicle in question was denied and it was also denied that the claimant could have spent huge amount of Rs.5 lacs on his treatment.

7. The Tribunal, on the consideration of the rival pleadings, frame following issues:-

- a) Whether the accident resulting into causing injuries to petitioner Kewal Singh took place due to rash and negligent driving of respondent No.1, while driving Tractor-Trolley bearing Registration No.HR-41J-3198?OPP*
- b) If issue No.1 is proved to what amount of compensation and from whom the petitioner is entitled to?OPP*
- c) Whether there was violation of the terms and conditions of the insurance policy and respondent no.3 is not liable to pay any compensation?OPR*
- d) Relief.*

8. The findings on all issues have been returned by the Tribunal in favour of the claimant and a sum of Rs.15,21,000/- along with interest @ 7.5 % per annum to be calculated from the date of institution of the claim petition till realization of the amount, was allowed.

9. Learned counsel for the appellant-Insurance Company assails the judgment on diverse grounds. First and the foremost ground which has been raised at the time of hearing is that the registration number of the offending vehicle stands disclosed in the FIR. On the strength of the aforesaid, it is submitted that the identity of vehicle is not fully established especially when the name of the driver has not been disclosed in the First Information Report. A

copy of the FIR has been appended as Annexure A-1. From perusal thereof, it appears that the same has been lodged by the injured claimants himself. It has been stated by him that a blue colour Sonalika Tractor along with Trolley, which was loaded with sand, hit him from the backside due to which he fell down on the left side of the road and wheel of the trolley crushed his left leg. The tractor driver came down but on seeing the crowd he fled away from the spot. He has stated that he can identify him on seeing. He has further stated that his leg was amputated due to the injury caused by the Tractor and trolley driven by the concerned Driver in a rash and negligent manner. It has also been recorded that on 04.06.2018, i.e., on the date of accident, he was taken to CHC Ladwa, which had referred the injured to the PGI Chandigarh, about which an information was received at Police Station Ladwa. On 05.06.2019, it was informed that the leg of the injured was amputated and as such, he was not fit to give statement. The injured was discharged from PGI, CHC, Sector 12 and then on 07.06.2018, his statement was recorded and FIR was registered. Therefore, in my view, the delay in lodging the FIR stands fully explained.

10. This also appears from the perusal of the judgment impugned that prior to recording the statement of Kewal, a DDR was entered, a copy of which has been brought on record as Ex. P-3 in which registration number and make of Tractor was also disclosed.

11. It has been noticed in the impugned order that there is no serious opposition to the fact of involvement of the vehicle. This is not a case of the appellant that though the injured has claimed that if the driver is produced before him, he can identify him but on such occasion, he could not identify the driver at all. After investigation, the police has already submitted a charge sheet indicting the driver after finding such evidence. That apart, on the basis of DDR

entry itself, the tractor and trolley was impounded even prior to the registration of the First Information Report.

12. Thus, in my considered view, for the purpose of deciding a claim case, there was sufficient material before the Tribunal to hold that the tractor and trolley concerned was involved in the motor vehicles accident and the accident took place due to rash and negligent driving by respondent No.2. This has also to be kept in mind that in claim cases, which is a summary proceedings in the nature of enquiry, strict proof of the issue, as required in the criminal trial, is not required. The matter has to be decided on the basis of preponderance of probabilities. There are catena of decisions even of Hon'ble Supreme Court of India on this issue. A reference is made in this regard to a decision rendered by the Apex Court in *Sunita and Others Vs. Rajasthan State Road Transport Corp. & Others*, AIR 2019 SC 994.

13. The second issue which has been raised by learned counsel for the appellant is that, in view of the crush injury on the leg, which was later on was amputated, a disability certificate has been issued by the Doctor and according to which, the disability qua left lower limb is 60%. However, during cross examination, the doctor has opined that, if the disability is considered qua whole body, it will be reduced by 18% and, thus, the same would be around 42%. However, even though the disability was 42%, the Tribunal has taken into consideration the disability as 100% and as such excessive compensation amount has been granted by the Tribunal.

14. I have perused the findings of the Tribunal on this issue. The Tribunal has opined that though his left limb has been amputated and the doctor might have opined that qua left limb, it is 60% disability and qua whole body, it is 42% only but if the functional disability is taken into account, the person who

is a labourer and has to be taken under the unskilled class of the labourer, after loosing one of his leg, would be unable to earn his livelihood, as no evidence has come on record to demonstrate that he is earning his livelihood by some other means or he is actually earning even after amputation of his leg.

15. In this regard and for calculation of the compensation amount, the Tribunal has referred a decision of Apex Court rendered in ***Raj Kumar Vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil)101.***

16. In my considered opinion, the view expressed by the Tribunal in this regard, cannot be faulted with. Even if the disability qua lower limb was only 60%, that has definitely rendered the injured totally unable to earn his livelihood from the work and profession by which he was earning his livelihood. In the absence of any evidence to the contrary and that he is doing some other work it would be very difficult to hold that the compensation so granted by the Tribunal is at the excessive side.

17. In the result, finding no merit in the appeal, the same is dismissed.

September 13, 2019
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[DR. RAVI RANJAN]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes