IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5486-2012(O&M)
Date of decision:-3.10.2019

New India Assurance Company Ltd.

...Appellant

Versus

S.S. Vohra and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashwani Talwar, Advocate
for the appellant.

Mr.Raman Sharma, Advocate
for the respondent No.1.

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H.S. MADAAN, J.

Petitioner-claimant – S.S. Vohra aged about 62 years son of Sh.Mehar Chand Vohra, resident of Chandigarh had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Sonu – driver, T.N. Noor Hassan – owner and New India Assurance Company Ltd. - insurer of truck bearing registration No.HR38-F-9741 (hereinafter referred to as the offending vehicle), claiming compensation on account of suffering injuries in a motor vehicular accident.

As per the version of the claimant, on 19.12.2006 at about 3:30 p.m., when he was going on his scooter bearing registration No.CH-01-K-0237 make Kinetic Honda from the market of Sector 38, Chandigarh towards his home in Sector 38 West and when he was in the process of crossing the small chowk on the dividing road of Sectors 38 and 38-West, then the offending vehicle loaded with gas cylinders being driven by respondent No.1 – Sonu in a rash and negligent manner without blowing any horn turned from right side instead of left side and hit the scooter of the claimant; due to the impact the claimant along with the scooter jumped high in the air and fell on the ground; the offending vehicle was stopped at some distance ahead; in the accident the claimant suffered serious injuries and became unconscious; he was taken to PGI, Chandigarh from where he was shifted to Fortis Hospital, Mohali; he got medical treatment; FIR No.393 dated 19.12.2006 was registered regarding the accident with Police Station Sector 39, Chandigarh. The claimant, who was aged about 60 years at that time, had retired from State Bank of India and was running business of SIFY Franchisee in the name of his son Sunny Vohra, earning Rs.10,000/- per month. The claimant prayed that compensation of Rs.10 lakhs be granted to him.

Notice of the claim petition was given to the respondents, who were duly served but they did not appear.

After recording ex-parte evidence, the Motor Accidents Claims Tribunal, Chandigarh(hereinafter referred to as the Tribunal) came to the conclusion that respondent No.1 - Sonu was author of the accident in which the claimant had received injuries, by his rash and negligent driving of the offending vehicle. Therefore such respondent No.1 being driver, respondent No.2 - T.N. Noor Hassan being owner and respondent No.3 – New India Assurance Company Ltd. - insurer of the the offending vehicle were held liable to pay compensation to the claimant. With regard to the quantum of compensation, in view of bills Ex.P-5/1 to Ex.P-5/37 and considering the affidavit of the claimant wherein he had stated that he had suffered multiple injuries/fractures RT Femur Hip. A.P., L.T. Ankle of both the legs and he had received treatment from Fortis Hospital, Mohali where surgery was performed upon him during period from 20.12.2006 to 8.1.2007 and he was discharged after 18 days and again remained admitted from 31.1.2007 to 5.2.2007, the Tribunal awarded compensation of Rs.5,35,000/- towards his medical treatment, then observing that the claimant must have lost the amenities of life during the period he remained under treatment and he had to take special diet and also to spend on transportation and his office work must have suffered, he was entitled to another sum of Rs.25,000/-. Therefore, the total compensation awarded to him was Rs.5,60,000/-, the liability to pay this amount being joint and several of all the three respondents.

The respondent No.3 – insurance company being of the view that the compensation awarded by Tribunal was on higher side has approached this Court by way of filing an appeal, notice of which was given to respondent No.1, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The main argument of learned counsel for the appellant – insurance company was that the claimant had received double reimbursement of amount of Rs.2 lakhs i.e. under SBI Retired Employees Medical Benefit Scheme and including the said amount for the expenses claimed from the Tribunal.

Learned counsel for the appellant has contended that this amount be deducted from the compensation awarded to the claimant since he could not get double benefit.

Whereas learned counsel for the claimant/respondent No.1 is opposing such contention.

After hearing the arguments, I find that the appellant – insurance company should have agitated this matter before the Tribunal rather than taking such plea at a belated stage. The claimant should have been confronted with the relevant documents during his cross-examination and insurance company could have produce that evidence from its side then the Tribunal could have passed the award considering all facts and circumstances. On getting notice, none of the respondents including the insurance company had put in appearance before the Tribunal. Subsequently, an application was filed by the insurance company for setting aside of ex-parte order and proceedings, which was dismissed by the Tribunal. Taking such type of defences in appeal is not proper and appropriate. Nevertheless, a perusal of the award goes to show that the compensation awarded by the Tribunal cannot be said to be unreasonable or arbitrary. Towards medical treatment a sum of Rs.5,35,000/- has been awarded. Even if we take that the claimant has received medical reimbursement of Rs.2 lakhs from his employer, then he was entitled to get compensation under various other heads just like transportation charges, attendant charges, pain and suffering, special diet, loss of amenities of life and expectancy of life. The Tribunal by clubbing all the heads has awarded a compensation of Rs.25,000/- only, when much more compensation under different heads should have been granted, keeping in view the totality of circumstances, the nature and extent of injuries suffered by the claimant, period of his hospitalization, money spent on follow up treatment including physiotherapy, fractures suffered by the claimant in hip and other parts of body. No compensation has been awarded by the Tribunal on account of loss of work. I find that the compensation is not liable to be reduced.

The appeal is without any merit and is dismissed accordingly.

3.10.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No