

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

CM No. 17429 CII of 2019 in/and
FAO No. 5305 of 2019 (O&M)
Date of decision: 29.8.2019

Bharti AXA General Insurance Company Limited.

...Appellant

Versus

Sanjay and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ankur Gupta, Advocate,
for the appellants.

JAISHREE THAKUR, J.

CM No. 17429 CII of 2019

This is an application that has been filed for condonation of 93 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

This appeal seeks to challenge the award dated 11.2.2019 passed by the Motor Accident Claims Tribunal, Rewari, whereby respondent No.1 herein has been allowed compensation of ₹1,56,829/- on account of the injuries suffered by him.

In brief, the facts are that on 17.11.2011, when the claimant/respondent No.1 herein, along with his younger brother Ishwar

Singh, was going towards Pilot Chowk from Poshwal Chowk Rewari, on a motorcycle bearing No. HR-36K-5683, being driven by his brother—Ishwar Singh, they were hit by a motorcycle bearing No. HR-76-6835, being driven by respondent No.2 herein in rash and negligent manner, as a result of which, claimant/respondent No.1 fell down on the road and suffered multiple injuries on his person, whereas his brother was tossed on the kaccha portion of the road. It was alleged that the accident took place due to the rash and negligent driving of respondent No.2 and consequently FIR 423 dated 18.11.2011 under Sections 279, 336, 337 and 338 IPC came to be lodged with the Police Station Model Town, Rewari. With these averments, a claim petition was filed by respondent No.1 stating that on account of the injuries suffered by him, he was hospitalized in Trauma Centre, Rewari and thereafter in Nathani Neuro Centre, Rewari and a sum of ₹2,00,000/- was spent on the treatment, transport, special diet, attendant etc.

The claim petition was contested by the appellant—Insurance Company as well as the driver of the offending vehicle, inter-alia, taking a number of preliminary objections, including violation of the terms and conditions of the insurance policy, no cause of action had accrued etc. Issues were framed and thereafter oral as well as documentary evidence was led by the parties in order to establish their respective claims.

After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No.2 and on assessment of the facts and evidence produced before it allowed compensation of ₹1,56,829/- which has been now challenged in the instant appeal.

Challenge to the award has been made primarily on the ground that the injured—respondent No.1, who was pillion rider, was in drunken condition and, therefore, he was not entitled to the compensation as allowed by the learned Tribunal. It is further submitted that the quantum of compensation assessed by the Tribunal is on the higher side and as such the same deserves to be reduced.

I have heard learned counsel for the appellant and have perused the impugned award.

The Tribunal, after examining the evidence produced by the respective parties allowed a sum of ₹1,56,829/- as compensation under different heads. It is an admitted case that respondent No.1 was a pillion rider and he had no control over the vehicle. Even if for the sake of argument, it is assumed that respondent No. 1 was in a drunken condition, the learned counsel for the appellant has not been able to point out as to which terms and conditions of the insurance policy was violated by him and in what manner he contributed to the accident. The Tribunal, while allowing the claim petition observed as under:-

“There is no alcoholic basis over carried over the petitioner during his entire course of treatment. Otherwise also petitioner was stated to be a mere pillion rider and so, even if it is presumed that there was smell of some alcohol, even then it has no direct connection with the accident and he cannot be held responsible even for contributory negligence.”

In so far as quantum of compensation is concerned, it is noted that though respondent No.1 claimed compensation of ₹2 lakhs, the Tribunal has awarded only the amount which respondent No.1 proved to have spent in his

treatment and on account of special diet, attendant charges, mental pain and agony suffered by the injured etc.

From a bare reading of the impugned award, this Court is of the view that the findings recorded by the Tribunal are based on the proper appreciation of the evidence brought on record and cannot be said to be perverse. The award passed by the Tribunal is just and proper and no interference is called for in the same.

Consequently, the appeal filed by appellant—Insurance Company being devoid of merit stands dismissed.

29.8.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No