IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 4485 of 2014(O&M) with
XOBJC No.129-CII of 2015

Date of Decision: July 2 , 2019.

United India Insurance Company Ltd. ...... APPELLANT (s)

Versus

Inder Raj and another ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.K.Bashamboo, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent No.1/cross-objector.

None for respondent No.2.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This appeal has been filed by the Insurance company being aggrieved of award dated 13.02.2014 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as, the 'Tribunal'). Cross-objections have been filed by respondent No.1-claimant seeking enhancement of compensation awarded by the learned Tribunal.

Brief facts necessary for the adjudication of the case are that, the claimant/respondent No.1 filed a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') seeking compensation on account of the injuries suffered by him. It is pleaded in the claim petition that on 24.06.2012 the claimant was going from village Mathana to Pipli while driving his three-wheeler at a moderate speed on the correct side of the road. When he reached a little ahead of village Bir Mathana, a car bearing registration No.HR-02K-3181 which was being driven at a fast speed, came from the opposite direction on the wrong side of the road and struck against the three-wheeler. As a result thereof, the claimant received serious injuries and was taken to LNJP Hospital, Kurukshetra. Thereafter, he was referred to PGI Chandigarh. FIR No.188 dated 27.06.2012, under Sections 279/337 IPC was lodged against the driver of the offending car. Compensation of ₹25,00,000/- was thus prayed for.

Respondent-driver as well as the appellant-Insurance company took a categoric stand that no such accident had taken place on 24.06.2012 and a false claim petition was filed by the claimant in order to extract money. The amount spent by the claimant on his treatment was also denied.

The following issues were framed by the learned Tribunal on the basis of pleadings of the parties:-

1. Whether the accident in question took place due to rash and negligent driving of vehicle No.HR-02K-3181 driven by respondent No.1 and whether the petitioner Inder Raj suffered injuries in the accident, as alleged if so, to what effect? OPP
2. If issue No.1 is proved, whether the petitioner is entitled to compensation, as prayed for? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Relief.

Evidence was led by the parties in support of their respective claims.

Learned Tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent driving of car bearing registration No.HR-02K-3181 by respondent-Kanwerpal. While noting that the claimant suffered 67% disability, which included physical/mental disability, he was considered to be a skilled labourer and income of the claimant was assessed as ₹8,000/- per month by the learned Tribunal. A total sum of ₹17,32,000/- was awarded, which is detailed as hereunder:-

i) Permanent Disability (67%)	:	1,34,000
ii) Loss of income and loss of enjoyment of life	:	12,48,000
iii) Pain and sufferings	:	1,50,000
iv) Special diet and attendant etc.	:	50,000
v) Medical expenses	:	1,50,000

Aggrieved therefrom, present appeal has been filed by the Insurance company and cross-objections have been filed by the claimant/respondent No.1.

Learned counsel for the appellant-Insurance company submits that the aspect of contributory negligence has not been considered by the learned Tribunal. It is submitted that PW2 Sanjay Kumar, propounder of the FIR and son of the claimant, admitted in his cross-examination that the accident in question took place in the middle of the road. It is, therefore, submitted that the claimant himself is guilty of contributory negligence, therefore, compensation awarded by the learned Tribunal should be deducted to the extent of the negligence on the part of the claimant. It is further submitted that there is a delay of three days in lodging of the FIR, which shows the falsity of the case. Learned counsel for the

Insurance company submits that the site-plan, in question, should not be taken into consideration for the simple reason that it does not reflect the exact place of the accident and neither does it depict the manner in which the accident took place. The site-plan (Ex.P53) was prepared at the instance of the claimant-party. Thus the same be ignored. It is further submitted that the claimant has been able to prove medical expenses of only ₹25,000/-, whereas a sum of ₹1,50,000/- on account of medical expenses has been awarded in an unjustified manner. In fact PW1 Chinto Devi, wife of the claimant, herself stated that amount spent on the treatment of the claimant was ₹1,00,000/-. It is thus prayed that the appeal filed by the Insurance company be allowed and cross-objections of the claimant be dismissed.

Learned counsel for respondent No.1/claimant-cross objector submits that delay in lodging of the FIR cannot be taken against the claimant as the nature of injuries suffered by the claimant were such that first priority of his family was to ensure proper medical aid for the injured. It is further contended that the plea of contributory negligence is conspicuously absent in the pleadings of the driver, owner as well as insurer of the offending vehicle. The said parties, in fact, denied the occurrence of the accident in question. No such pleadings have been raised before the learned Tribunal. The driver and owner of the offending vehicle did not even step in the witness box. Reference is made to Ex.P53 i.e., copy of site-plan to submit that same does not reflect any negligence on the part of the claimant. It is further submitted that meagre compensation has been awarded by the learned Tribunal, which needs to be enhanced. Increment towards future prospects be included in the loss of income. Compensation towards future medical expenses, loss of amenities, attendant charges, special diet be also awarded.

I have heard learned counsel for the parties and have gone through the record with their assistance.

Argument of learned counsel for the appellant-Insurance company that there is a delay of three days in lodging of the FIR which *per se* proves the falsity of the case, is bereft of any merit as mere delay in lodging of the FIR by itself, does not detract from the credibility thereof. The injuries and resultant disability suffered by the claimant as a result of the accident in question, is a matter of record. A perusal of the FIR (Ex.P50) reveals that in the police proceedings, it is specifically mentioned that information regarding the accident was received by the MHC at Police Station Sadar Thanesar on 24.06.2012 itself i.e., the date on which the accident took place. The police officials, ASI Satyawan alongwith HC Mohinder Singh reached the place of occurrence and found a three-wheeler as well as a car at the spot and it came to light that the injured was taken to the hospital at Kurukshetra. The police officials came to know at the hospital at Kurukshetra that the patient was referred to PGI, Chandigarh on which the police officials proceeded to PGI, Chandigarh. It was thereafter that statement of Sanjay Kumar was recorded in respect to the incident and the FIR lodged on 27.06.2012. In such a situation, it is apparent that the first anxiety of the relatives of the injured is to secure the best possible treatment for the injured. Therefore, it cannot be said that there is any inexplicable delay in lodging of the FIR, which affects the credibility of the same.

Learned counsel for the appellant-Insurance company has further argued that as there is a head on collision between the three-wheeler and the offending car, therefore, the element of contributory negligence is apparent on the face of it. However, a perusal of the record including the mechanical report of the three-wheeler as well as the offending car i.e., Ex.P54 and Ex.P55, respectively, reveal that it is the offending car which had hit the three-wheeler towards its right side. The damage to the car is on its right side as is evident from the mechanical report (Ex.P55). Therefore, judgment of the Hon'ble Supreme Court in Bijoy Kumar Dugar v. Bidyadhar Dutta and others, *2006(3) SCC 242* relied upon by learned counsel for the appellant is not applicable to the facts and circumstances of the case. This is so for the reason that the stand put forth by the claimant is borne out from the record inasmuch as it is apparent that the offending car came towards wrong side of the road and hit against the three-wheeler causing it to turn turtle. The site-plan, which is on record reveals Point 'A' as the spot where the accident took place. It is specifically mentioned in the site-plan that Point 'A' is the spot where the offending car hit the three-wheeler from its side. Perusal of the site-plan reveals that the three-wheeler was on its correct side of the road. There is no reason to ignore the said site-plan and the mechanical report which do not point to any negligence on the part of the driver of the three-wheeler.

Furthermore, learned counsel for the appellant is unable to deny that the ground of contributory negligence was never raised before the learned Tribunal, neither is such a ground raised in the pleadings of the Insurance company or of the driver of the offending car. Moreover, the driver of the car has not even stepped in the witness box in order to substantiate such an argument. The ground admittedly taken by the appellant is of denial of the occurrence of the accident. Therefore, learned Tribunal has rightly held that the accident in question was caused due to the rash and negligent driving of the offending car by its driver. The Insurance company has led no evidence to falsify the stand put-forth by the claimant before the learned Tribunal. In view of the above, finding of the learned Tribunal on this issue is upheld.

In order to prove the injuries and disability suffered by the claimant, he has relied upon the statement of PW4 Dr. Navneet Singla, Assistant Professor, Department of Neuro Surgery, PGI, Chandigarh as well as PW5 Dr. Rajesh Chhabra, Neuro Surgeon, PGI, Chandigarh, besides, the medical treatment record. It is matter of record that after the accident which took place on 24.06.2012, the claimant was taken to LNJP Hospital at the first instance, from where he was referred to PGI Chandigarh. The claimant was admitted in the Emergency OPD, PGI Chandigarh on 24.06.2012 itself. PW4 Dr. Navneet Singla has specifically deposed in this regard and stated that the claimant was unconscious at the time of admission and he had a lacerated wound over his forehead. CT Scan of the head was carried out which revealed that there was 'right side sylvian and sulcal subarachnoid hemorrhage'. The claimant was managed with tracheostomy and was discharged on 30.06.2012 in an unconscious but stable condition. The claimant was referred to District Hospital, Kurukshetra for further general nursing care and was asked to come for follow-up after three weeks. PW4 Dr. Navneet Singla testified that injuries were dangerous to life.

PW5 Dr. Rajesh Chhabra proved the disability certificate and testified that the patient was examined by the board as a diagnosed case of head injury. The claimant was suffering from moderate left upper and lower limb weakness, low I.Q. and left facial nerve weakness. The claimant was evaluated for his permanent physical disability and was found to be suffering from 67%

permanent physical/mental disability in relation to whole body. PW5 Dr. Rajesh Chhabra further testified that the condition of the patient is not likely to improve. Disability certificate (Ex.P56) was proved by him.

PW1 Smt. Chinto Devi wife of the claimant has specifically deposed in respect to the accident in question and the treatment received by her husband. It is further stated by her that the claimant was the owner and driver of the three-wheeler, earning a sum of ₹12,000/- per month, but after the accident he is unable to even carry out his routine chores. There is no denial of the factum of the claimant being the owner of the three-wheeler. He was driving the three-wheeler at the time of the accident. His income has been assessed with reference to the minimum wage of a skilled labourer in the State of Haryana at the relevant time. His income has, thus, been rightly assessed to be ₹8,000/- per month by the learned Tribunal and is accordingly upheld.

There is no dispute regarding age of the claimant at the time of the accident i.e., 48 years. The claimant has admittedly been visited with serious consequences pursuant to the injuries received by him in the motor vehicle accident in question. It is a matter of record that he is afflicted with weakness in his lower as well as uper limb, besides, being left with a low mental I.Q./mental retardation and facial nerve weakness of the left lower and upper limb as well. It is a matter of record that the disability is permanent and is not likely to improve. The physical disability coupled with the mental disability of the claimant clearly entail proper care and assistance to be rendered to him. Therefore, in this situation functional disability of the claimant is assessed as 85%.

Compensation to the claimant is thus required to be reworked in terms of the guidelines laid down by the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company**, ***2014 (1) RCR (Civil) 765***. Loss of income is thus assessed as ₹6,800/- per month (8,000x85%).

Increase in income on account of future prospects at the rate of 25% has to be afforded taking the amount to [(6,800 + (6,800 **x** 25%)] = ₹8,500/- per month i.e., ₹1,02,000/- per annum. Age of the claimant was admittedly 48 years at the relevant time, therefore, multiplier of 13 is to be applied. Loss of earnings is, thus, assessed as **₹13,26,000/-** [1,02,000 **x** 13].

The claimant is further held entitled to ₹1,00,000/- on account of loss of amenities. Amount of ₹1,50,000/- awarded towards pain and suffering is upheld. Instead of ₹50,000/- is awarded on account of special diet, attendant charges etc., claimant is entitled to ₹20,000/- for special diet and ₹50,000/- for attendant charges. I do not find any ground whatsoever to reduce the amount awarded by the learned Tribunal on account of medical and hospital expenses i.e., ₹1,50,000/-. The same is maintained.

Appellant is, thus, entitled to compensation detailed as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Loss of earnings	₹13,26,000
2.	Pain and sufferings	₹1,50,000
3.	Loss of amenities	₹1,00,000
4.	Special diet	₹20,000
5.	Attendant charges	₹50,000
6.	Medical expenses	₹1,50,000
	Grand Total	**₹17,96,000/-**

Amount already awarded by the Tribunal to the claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

Consequently, appeal filed by the Insurance company is dismissed. With the abovesaid modification in the amount of compensation, cross-objections are disposed of.

(LISA GILL)
JUDGE

July *2* , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No