IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5430 of 2014 (O&M)
Date of decision : 20.5.2019
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Shri Ram General Insurance Company Ltd.
................Appellant

vs.

Hukam Chand and others
................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for the appellant.

Mr. P.K. Sehrawat, Advocate for
Mr. J.P. Jangu, Advocate for respondent No.1.
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<u>H. S. Madaan, J. (Oral)</u>

Petitioner -claimant Hukam Chand had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Naveen – Driver, Rajender Singh – Owner and Shri Ram General Insurance Company Limited, Jaipur – Insurer of motor cycle bearing registration No. DL-8SAQ-9208 (hereinafter to be referred to as 'the offending vehicle'), claiming compensation of Rs.25 lacs.

As per case of the claimant, on 13.12.2011 he was coming to his village Nahar, Tehsil Kosli, District Rewari, on his motorcycle Hero Honda Splendor Plus, having registration No. HR-36-L-0134. At about 5.00 P.M., when he reached near village Khushpura, then the offending motorcycle being driven by respondent No.1 Naveen, in a rash and negligent manner at a high speed, without observing traffic rules, came from Dadoli side and hit motorcycle of the petitioner, due to which he fell down and sustained injuries on his left hand, left leg and teeth. He was taken to Government Hospital, Rewari, where he was given medical treatment and medico legally examined. As a result of suffering injuries in the accident, he became handicapped and his efficiency and ability to work has been adversely affected; that FIR No. 102/11 dated 14.12.2011 for offences under Sections 279, 337, 338, 427 IPC and Section 192 of the Motor Vehicles Act, was registered, with regard to the accident. The petitioner claimant brought the claim petition in question before the Tribunal contending that prior to accident he was hale and hearty having good physique, aged about 38 years and was working as Junior Engineer in Haryana Irrigation Department and was earning Rs.25,000/- per month. But after the accident, he has become handicapped due to fractures in leg and hand and injury to his teeth, which had rendered him unable to speak clearly and do his normal routine work, due to which his life has become miserable and pitiable and disgraceful.

Notice of the claim petition was given to the respondents. Respondents No. 1 and 2 did not appear despite service, as such they were proceeded against ex parte. Only respondent No.3, put in appearance and file written reply contesting the claim petition, raising preliminary objections with regard to maintainability of the claim petition, denying the involvement of motorcycle No. DL-8SAQ-9208 in the accident, further pleading that driver of that motorcycle was not holding a valid and effective driving licence at the time of accident. All other averments made in the claim petition were denied, while praying for its dismissal.

Issues on merits were framed. Parties led evidence and vide award dated 7.4.2014, the Tribunal awarded compensation of Rs.17,86,483/- to the claimant with interest @ 7% per annum from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several qua all the respondents.

Respondent No.3 – Insurance company felt aggrieved by the award and has filed the present appeal before this Court, notice of which was given to the respondents. However, only respondent No.1 put in appearance.

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

Learned counsel for the appellant has assailed the award passed by the Tribunal contending that the Tribunal has been unduly liberal with the claimant in granting the compensation, ignoring the fact that he being in Government service, had not suffered any monetary loss on account of his inability to report for duty on account of suffering injuries and loss of income, loss of future earnings, etc. Therefore, permanent disability would also not cause any financial loss to him and the Tribunal in a mechanical manner has granted the compensation.

Learned counsel for the appellant has referred to judgment by the Apex Court in support of his contentions i.e. ***Raj Kumar vs. Ajay Kumar and another 2011 ACJ 1.***

These contentions are strongly controverted by learned counsel appearing for claimant-respondent No.1.

After hearing the rival contentions and going through the record and perusing the judgment pressed into service by learned counsel for the appellant-Insurance company, I do not find any illegality or infirmity with the award passed by the Tribunal.

The fact which needs to be kept in mind is that the claimant has suffered 33% disability, which is permanent in nature, which is duly proved from disability certificate Exhibit PW 2/A, proved on record by PW-2 Dr. Ashok Saini. As a result of suffering such permanent disability, the petitioner-claimant would not be able to perform his normal functions and duties and has been rendered cripple for remaining part of his life. It comes out that he was aged about 38 years at the time of filing of claim petition. Therefore, for remaining years of his life, he would have to live a life of a handicapped person and it cannot be said that he has not suffered any loss in monetary terms. Though medical leave is available to a Government employee but that is upto a certain limit and thereafter one has to avail of leave without pay. It has to be kept in mind that the leave earned by a Government employee keeps on accumulating and employee is allowed to encash that leave at the time of his retirement/superannuation, though upto a certain limit and if such leave is utilized for the reason of suffering injuries then ultimately pecuniary loss by employee is always going to be there. Then after retirement/superannuation the disability which shall certainly come in the way of the claimant in getting further employment or doing any other work. The Tribunal was justified in granting the compensation and no ground is made out to set aside the award or modify it in any manner.

The judgment referred to by learned counsel for the claimant-Insurance company is not applicable to the facts and circumstances of the present case.

The appeal is found to be without any merit and the same is dismissed accordingly.

(H.S. Madaan)
20.5.2019 **Judge**
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No