

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of decision : 29.10.2019

1. FAO No. 4327 of 2015 (O&M)

Cholamandalam MS General Insurance Co. Ltd.

...Petitioner

versus

Sunil Kumar and Ors.

...Respondents

2. FAO No. 4123 of 2015 (O&M)

Sunil Kumar

... Petitioner

Versus

Krishan Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Vandana Malhotra, Advocate for the appellant
in FAO No. 4327 of 2015 and
for respondent No. 3-insurance company
in FAO No. 4123 of 2015.

Mr. Sunil Kumar, Advocate for the appellant
in FAO No. 4123 of 2015.

Mr. Ranjit Saini, Advocate
for respondents No. 1 and 2 in FAO No. 4123 of 2015 and
for respondents No. 2 and 3 in FAO No. 4327 of 2015.

RITU BAHRI, J. (Oral)

This common order shall dispose of aforesaid two appeals since
identical questions of law and facts are involved in the same.

The Insurance Company and the injured-claimant Sunil Kumar
have filed aforestated two separate appeals against the award dated
23.02.2015 passed by the learned Motor Accident Claims Tribunal, Karnal
(for short, 'the Tribunal') granting a total sum of Rs.4,53,000/- as

compensation on account of injuries having been suffered by said Sunil Kumar.

As per the claimant, on 29.07.2012, Sunil Kumar, along with his son was going on his bicycle. When they reached near hospital of Dr. Raj Kumar, a three wheeler bearing no. HR-45A-6072 (offending vehicle) driven by Krishan Kumar in a rash and negligent manner came and hit the bicycle of the claimant, as a result of which, he fell down and Krishan Kumar(driver of the offending vehicle) run over his vehicle on the right leg of claimant and right arm of his son. The claimant and his son were shifted to General hospital, Karnal and thereafter they were shifted to Anand Hospital, Kurukshetra where they remained admitted from 30.07.2012 to 19.08.2012. FIR No. 281 dated 29.07.2012, under Sections 279, 337, 338 of IPC, Police Station Indri, was registered against said Krishan Kumar (respondent No. 1 in appeal No. 4123 of 2015) on 29.07.2012.

The following issues were framed vide order dated 10.03.2014:-

1. Whether injured Sunil Kumar met with an accident which took place on 29.07.2012 at about 5/5.30 p.m. near Hospital of Dr. Raj Kumar, Indri, District Karnal due to rash and negligent driving of respondent No.1 being driver of offending vehicle No.HR-45A-6072?OPP
2. If issue no. 1 is proved in affirmative, whether the claimant is entitled for compensation on account of injuries as claimed. If so, to what amount, from whom and on what terms and conditions?OPP.
3. Whether the respondent No.1 was not having valid and effective driving licence at the time of accident and the offending vehicle was being plied in violation of the terms and conditions of the policy, if so, to what effect?OPR.
4. Whether the petition of claimant is bad for misjoinder or nonjoinder of necessary parties?OPR.

5. Whether the claimant has no locus standi and cause of action to file and maintain the present petition? OPR.
6. Relief.

Appellant Insurance Company has challenged the findings in respect of issue No. 1 stating that infact one Rajinder Kumar son of Sanjay had caused the accident and the FIR was lodged against him at the instance of respondent No.1-Krishan Kumar. Said Rajinder was also arrested by the Police in this respect. However, subsequently said Krishan Kumar changed his version and filed an affidavit stating that respondent No. 2-Rajinder Kumar was wrongly arrested and this fact has been ignored by the learned Tribunal. Later on another affidavit was given by the claimant that it was respondent No.1 who had caused accident and was arrested. The finding from the record shows that the offending vehicle was taken into possession on the spot by the police and respondent No.1-Krishan Kumar on 26.10.2012, was produced before the police alongwith registration certificate and insurance of the offending vehicle. Since the vehicle was taken into possession on the date of the accident.

Since the RC as well as insurance of the offending vehicle were also taken into possession alongwith the vehicle on the date of accident, the Investigating Officer has rightly arrayed the name of the driver. Moreover, the claimant has also given his affidavit and clarified the name of the driver before the Tribunal. Even, the driver of the offending vehicle i.e. respondent No.1 did not appear before the tribunal to state that he had been involved falsely by the police.

The appeal of the insurance company is dismissed since the claimant has suffered permanent functional disability to the extent of 20%

which has been proved by PW3 Dr. Vinod Kumar.

A perusal of the paragraph 14 shows that PW3-Dr. Vinod Kumar stated that even though claimant had suffered 20% permanent disability, the disability qua whole body would come down to approximately 10% while the functional disability has been recorded as 20% and he will not be able to do any labour work in future.

Taking into account the facts of the present case, the tribunal has assessed the income of the claimant as Rs.5500/- per month and after reducing the same to Rs. 4400/- per month because of claimant having suffered permanent functional disability to the extent of 20%, multiplier of 15 was applied thereby holding appellant-claimant Sunil Kumar entitled to Rs.1,98,000/- as compensation on account of permanent disability.

Further the tribunal after appraising the medical bills proved on record in evidence besides a sum of Rs.60,000/- on account of mental and physical pain and agony and further a sum of Rs. 50,000/- on account of transportation, attendant charges and special diet has rightly awarded a total sum of Rs.4,53,000/- in faovur of the claimant-appellant.

I do not find any justifiable reason to interfere with the well reasoned award passed by the learned Tribunal warranting any interference.

Both the appeals are dismissed.

October 29, 2019
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(RITU BAHRI)
JUDGE