IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

217 FAO-8432-2015 (O&M)

Date of decision: 06.05.2019

NATIONAL INSURANCE CO LTD ... Appellant

Versus

ASHOK KUMAR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. SS Sidhu, Advocate for the appellant.
Ms. Parveen Maan, Advocate for
Mr. RS Budhwar, Advocate for respondent No.1.
None for respondents No.2 and 3.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against order dated 22.09.2015 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account of injuries sustained by Ashok Kumar respondent No.1 in a motor vehicular accident that took place on 08.11.2012.

Counsel for the insurance company would inform that the appeal has been preferred to assail quantum of compensation and findings of the Tribunal on issue No.3 with regard to driving licence.

It is argued that the Tribunal has allowed loss of future earning qua disability to the tune of Rs.1,17,612/- by applying multiplier method. It is argued that no findings have been recorded by the Tribunal that disability to the extent of 18% to a particular limb is to be treated as functional disability, therefore, compensation qua loss of future earning assessed by the Tribunal is not well founded and liable to be reduced.

With regard to driving licence, it is argued that in view of testimony of two official witnesses examined by the insurance company, referred to in paras 23 to 25 under issue No.3, it has been proved on record that driving licence No.J-82136/1990 dated 15.02.1990 was not issued to Joginder Singh son of Gurmukh Singh by the Regional Transport Office, Gwalior and as such, renewal of the said licence by Regional Transport Authority, Ambala would not cure the defect in original licence and accordingly, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimant.

Counsel representing respondent No.1 has supported assessment made by the Tribunal with the submission that the same is based upon materials on record.

Respondents No.2 and 3 failed to cause appearance, despite service and as such, there is no contest to the appeal by owner of offending vehicle namely Dalbir Singh respondent No.2 therein.

The Tribunal awarded Rs.2,59,257/-, represented in a tabulated form in para 20 of the award, detailed hereunder:-

Loss of income	Rs.1010
Loss of future earnings	Rs.1,17,612/-
Pain and sufferings	Rs.25,000/-
Medical expenses	Rs.40,635/-
Transportation expenses	Rs.10,000/-
Attendant charges	Rs.5000/-
Diet and nutrition	Rs.10,000/-
Loss of amenities and enjoyment	Rs.50,000/-

As has been rightly pointed out by counsel for the insurance company, the Tribunal has assessed income of the victim at Rs.6050/- per month, applied multiplier of 9 and loss of earning capacity to the extent of 18% on the basis of permanent disability of 18% to compute loss of future earning to the extent of Rs.1,17,612/-. This assessment made by the Tribunal is patently erroneous and result of failure to take into consideration evidence on record particularly testimony of Dr. RL Arya, SMO, CHC, Shahabad, examined to prove disability certificate Ex.P1.

A relevant extract from para 15 of the award dealing with disability, reads as follows:-

> The witness has clarified that the said physical disability assessed was attributed to post operative restricted movements of right foot and ankle with deformity of skin. He has clarified that disability qua restriction of movements was temporary in nature and it may improve with the physiotherapy, medication and passage of time. The disability was of a particular limb and not of the entire body, but the earning capacity of the petitioner would be effected to some extent.

Taking a clue from the aforesaid observations/opinion by Dr.

RL Arya, it is difficult to sustain loss of future earning by applying multiplier method. The claimant did not suffer permanent disability but he only suffered temporary disability which is likely to improve with physiotherapy, medication and passage of time. There is nothing on record suggestive of the fact that the respondent/claimant ever got his disability reassessed. The temporary disability is only to right foot and ankle with deformity of skin. I would hasten to add that the Tribunal has even awarded a sum of Rs.50,000/- towards loss of amenities and enjoyment in a case temporary disability to the extent of 18% to a particular limb. Taking a reasonable and sympathetic view in the matter, the claimant is awarded a sum of Rs.18,000/- in respect of disability suffered by him. As such, compensation assessed by the Tribunal is reduced to the extent of Rs.99,612/- (1,17,612 – 18,000).

This brings the Court to findings of the Tribunal on issue No.3 in respect of driving licence possessed by Joginder Singh, driver of offending vehicle. The witness from office of Transport Authority at Ambala proved renewal of driving licence on the basis of earlier licence No.J-82136/1990 dated 15.02.1990 issued by Regional Transport Office, Gwalior. As per testimony of the witness from the said office (Gwalior office), the original licence was not issued in favour of Joginder Singh. Despite the insurance company having examined a witness from Regional Transport Office, Gwalior neither Joginder Singh nor the insured brought any evidence to prove that number of licence J-82136/1990 dated 15.02.1990 has been wrongly recorded in the documents issued by Regional Transport Authority, Ambala. As the original licence was not issued by Licensing Authority, Gwalior, renewal of the said licence would not enure to benefit of the insured to escape his liability for violating the terms and conditions of insurance policy. The insured did not appear in the witness box to say that licence possessed by the driver was taken as genuine when he had employed Joginder Singh for driving the offending truck. In the given scenario, findings of the Tribunal on issue No.3 are liable to be modified to the effect that Joginder Singh was not possessing valid licence and as such, the insured is guilty of violating the terms and conditions of policy which entitle the insurance company to press for recovery right against the insured after payment of compensation to the claimant and I order accordingly.

In view of what has been discussed hereinabove, the appeal is partly allowed. Compensation assessed by the Tribunal is reduced to the extent of Rs.99,612/-. The insurance company shall be entitle to recover the excess amount from the claimant, if already paid, by filing an appropriate application before the Tribunal. The insurance company shall have right of recovery against the insured after payment of compensation to the claimant.

06.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No