

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 380 of 2017 (O&M)
& Cross Objection No. 177-CII of 2017
Date of decision : 29.5.2019

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Reliance General Insurance Co. Ltd.

.....Appellant

vs.

Virender and others

.....Respondents

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

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. Surinder Gandhi, Advocate for respondent No.1.

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H. S. Madaan, J.

Briefly stated, facts of the case are that petitioner – claimant Virender son of Sh. Alharam, resident of VPO Mokhra, Tehsil Meham, District Rohtak, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Yaad Ram – driver, Gurmit Singh – owner and Reliance General Insurance Company, Rohtak – insurer of Toyota Innova car No. HR 58-B-0321 (hereinafter to be referred to as 'the offending vehicle'), claiming compensation of Rs.50 lacs.

As per version of the claimant, on 25.9.2014, he alongwith his son Ravi Kant started journey for going from Sector 26, Panchkula to Ramgarh, on his motorcycle TVS Star City, bearing

registration No. HR-03H-1665, at about 3.30/3.45 P.M. When they reached in front of Sainik Petrol Pump, NH-73 PKL, Panchkula, the petitioner dropped his son Ravi Kant there and then he started for Ramgarh. At that moment a Toyota Innova car bearing registration No. HR-58B-0321, driven by respondent No.1 Yaad Ram, in a rash and negligent manner came from behind and struck against the motorcycle of petitioner – claimant resulting in an accident. The petitioner fell on the road, suffered injuries and become unconscious. Respondent No.1 Yaad Ram ran away from the spot after the mishap. Ravi Kant, son of the petitioner had noted down the number of the offending vehicle. Ravi Kant with the help of one Dharambeer shifted the petitioner – claimant to Government Hospital, Sector 6, Panchkula, for treatment. However, from that medical institution, the petitioner -injured was shifted to PGI, Chandigarh. The matter was reported to the police. Formal FIR regarding the accident was registered. Petitioner -claimant had then filed a claim petition before the Motor Accidents Claims Tribunal, Rohtak.

Notice of such petition was given to the respondents, who were served and put in appearance filing written statements.

Respondents No. 1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement. In the joint written statement, filed by respondents No. 1 and 2, they have taken up certain legal objections, on merits denying that Toyota Innova car bearing registration No. HR-58B-0321, driven by respondent No.1 Yaad Ram and owned by respondent No.2 – Gurmit Singh, had caused any accident, as alleged in the claim petition,

resulting in petitioner-claimant receiving any injuries. Rather according to such respondents, a false FIR has been registered against respondent No.1 in collusion with the police; that respondent No.1 was having a valid and effective driving license at the time of alleged accident and the offending vehicle was insured with respondent No.3 at the time of accident. Refuting the remaining assertions made in the claim petition, such respondents prayed for its dismissal.

In the written statement submitted on behalf of respondent No.3-Insurance company, it also vehemently contested the assertions made in the claim petition, denying involvement of Innova car in the accident in question or respondent No.1 being responsible for the mishap by rash and negligent driving of the Innova car in question. However, such respondent had taken up an objection that respondent No.1 was not having a valid and effective driving licence at the time of accident and the insurer has willfully violated the terms and conditions of the insurance policy. This respondent also prayed for dismissal of the claim petition.

No replication was filed.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident had taken place due to rash and negligent driving of Car bearing registration No. HR-58B-0321 by respondent No.1 in which Virender suffered injuries? OPP
2. If issue No.1 is proved in affirmative to what amount and from whom the petitioner is entitled to recover as alleged?

OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident and that respondent No.1 have violated the terms and conditions of Insurance Policy? OPR

4. Relief.

Parties lead evidence in support of their respective claim.

In order to prove his case, petitioner-claimant examined Ravi Kant, son of the claimant, as PW-1 and Rajpati as PW-2 and proved in evidence various documents Exhibits P-1 to P-96 and thereafter evidence of the petitioner was closed by order.

In rebuttal, respondents No. 1 and 2 tendered copy of driving license as Exhibit R-1, copy of RC as Exhibit R-2 and copy of insurance policy Exhibit R-3 and closed the evidence. Learned counsel for respondent No.3 also closed its evidence.

After hearing the arguments, the Tribunal, vide award dated 22.11.2016, decided issue No. 1 in favour of the claimant petitioner. Issue No.2 was decided in favour of the petitioner and against the respondents, whereas issue No.3 was decided against the respondents.

In view of the findings on the issues, the Tribunal accepted the claim petition, awarding compensation of Rs.23,21,104/- to the claimant alongwith interest @ 7.5 % per annum from the date of filing of petition till actual realization, observing that liability to pay this amount would be joint and several of all the three respondents.

Respondent No.3, Insurance company was not satisfied with the award passed by the Motor Accidents Claims Tribunal, Rohtak

and has filed an appeal before this court.

The claimant has also filed cross-objections craving for enhancement of compensation.

Notices of the appeal and Cross-objections were given to the opposite party.

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

The claimant-respondent No.1, who is the cross objector has moved an application under Order 41 Rule 27 CPC, to prove disability certificate, as well as, original treatment card.

As per version of the claimant, he has suffered 90% disability due to mental retardation, as a result of suffering injuries in the roadside accident and Medical Board, PGIMS, Rohtak, had issued disability certificate No. 8672 dated 7.11.2016, to him in that regard; that his age at the time of accident as 45 years and marital status - married. However, the Tribunal has assessed functional disability as 90%, but then it has to be taken note of the fact the claimant had not examined any doctor, who was member of the Medical Board, PGIMS, Rohtak, which had issued the disability certificate to him. It being so, the disability certificate, cannot be taken to be properly proved and relied upon to assess the compensation.

On behalf of the claimant-respondent- cross-objector, it is contended that since evidence of the petitioner -claimant was closed by order of the Tribunal, the doctor could not be examined to prove that certificate. The disability certificate is already there on the record

of the Tribunal.

The grouse of the learned counsel for the appellant is that without proper proof such disability certificate has been relied upon by the Tribunal while assessing the compensation. The disability certificate is an important piece of evidence, which is to be looked into to assess the compensation, in a proper and reasonable manner. Similarly treatment card is also an important piece of evidence. Therefore, in my considered view the case needs to be remanded.

Therefore, the cross-objections and the appeal are disposed of in as much as the impugned award is set aside and the matter is remanded to the Tribunal, for a fresh decision allowing the claimant an opportunity to adduce the evidence to prove the disability certificate, treatment card and other relevant medical documents, by summoning the doctor/official concerned. One effective date be given to the claimant for that purpose. Of course, the respondents would be allowed to cross examine the witnesses, so summoned and then to lead evidence in rebuttal. The Tribunal, after hearing the arguments, shall pass the award afresh, in light of the facts and circumstances of the case, evidence available on the record and settled law on the subject.

Since the case is quite old, the Tribunal is directed to conclude the whole exercise within three months, from the date of receipt of a copy of this order in the said Tribunal.

Parties through counsel are directed to appear before the Tribunal on 18.7.2019.

The presence of the respondents, who are not present before

this Court, may be got procured by the Tribunal, by taking prompt and expeditious action.

Disposed of accordingly.

29.5.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / Nos