IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 114 of 2019
Date of Decision: 30.01.2019

Randhir Singh

......Petitioner

versus

National Insurance Company Ltd. and others

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Chander Shekhar Singhal, Advocate, for the petitioner.

AMOL RATTAN SINGH, J.

By this petition, the petitioner has challenged the order of the learned Motor Accidents Claims Tribunal, Patiala, as an Execution Court, dated 24.07.2018 (Annexure P-1), as also the Awards passed by the learned Tribunal on 07.10.2015 and 06.12.2017, both the Awards having been passed in the same claim petition, i.e. MACT No. 14 of 15.10.2014.

2. Before going onto as to how two Awards came to be passed, it is to be stated here that the order dated 24.07.2018 is one by which recovery of the compensation awarded to respondent no.5 (claimant in the claim petition), Mohinder Singh, has been directed to be made in favour of the insurance company, i.e. respondent no. 1 herein, by the process stipulated in Section 174 of the Motor Vehicles Act, 1988.

Therefore, the petitioner is aggrieved of such recovery being made from him as the owner and driver of motor cycle bearing registration no. PB-39-E-9094, despite the testimony in cross-examination by respondent no. 5 (claimant Mohinder Singh), to the effect that the petitioner was not negligent in causing the accident.

3. In the claim petition, respondent no. 5 herein had sought compensation in respect of the injuries stated to have been sustained by him in a motor vehicle accident that took place on 18.08.2012, while he was going on the aforesaid motor cycle 'driven' by the petitioner herein in a rash and negligent manner. Despite the claimants' objections, the petitioner is stated to have continued driving in the same manner and consequently when they reached village Pathreri Jattan, where there was a lot of heavy traffic, a Tata Indica car bearing registration no. PB-48-A-0059 came from the front, stated to have been driven by an unnamed person, with it having struck the motor-cycle, and a result of the accident the claimant was stated to have suffered injuries on his right leg and other parts of his body.

4. He was taken to the Civil Hospital by petitioner Randhir Singh and other persons, from where he is stated to have been referred to a private hospital. There his leg was operated upon and the other injuries treated.

Thereafter, he is also stated to have been treated at the PGI, Chandigarh and the Gian Sagar Hospital, village Ram Nagar.

5. Despite the above, the respondent-claimant was contended to have suffered a permanent disability, further contending that he had spent Rs. 2,50,000/- on his treatment, special diet and transportation etc.

Eventually, the claim petition came to be filed seeking compensation.

DDR No. 21 is also stated to have been registered on 19.08.2012 at Police Station Bhagwantpura at the instance of respondent no.4 Randhir Singh, which, as per the claimant, was in collusion with the owner of the Tata Indica car, i.e. respondent no. 2 herein (M/s J.S Khasla Steel Pvt. Ltd.), due to which no FIR was registered against the driver of either vehicle.

6. The claimant gave his age to be 64 years with him earning Rs. 50,000/- per month from agricultural and dairy farming and consequently, alleging that his disability and suffering was due to the negligent driving by driver of both the vehicles, compensation of an amount of Rs. 10,00,000/- was claimed by him.

7. Upon notice issued by the Tribunal, respondents no. 1 and 5 before the Tribunal (i.e. the owner of the aforementioned car and the insurance company as had insured the motor-cycle owned by the petitioner herein), not having put in an appearance they were proceeded against *ex parte*, and with the name of the driver of the car and the insurer thereof to have been disclosed by the owner of the car, no notices could be issued to them by the Tribunal for lack of particulars.

8. The petitioner herein, however, filed his written statement admitting the factum of the accident as also the injuries sustained by the claimant, further stating that the claimant was unable to do routine work.

As per the Award dated 07.10.2015, the petitioner had also stated that since his motor-cycle was insured with respondent no. 1 herein, i.e. the National Insurance Company Ltd., if the Tribunal came to the conclusion that he was negligent in driving, the said company was liable to indemnify him in respect of any compensation awarded to the claimant.

9. Upon the aforesaid pleadings, the learned Tribunal framed the usual issues of whether or not the accident was caused by the negligent driving of the petitioner and the driver of the car and if so the extent of the compensation that the claimant was entitled to and from whom, which issues are not being reproduced in *extenso*, this not being an <u>appeal</u> filed against that

Award, but a revision sought after execution proceedings have been instituted by the respondent-claimant in order to obtain the compensation awarded. Thus, even though the petitioner has challenged the said Award by way of this petition, the petition is not maintainable qua that prayer (seeking that the two Awards passed be set aside), with an appeal duly provided for vide Section 173 of the Motor Vehicles Act, 1988.

Even so, this Court felt bound to at least discuss the details of the claim petition, as there is a challenge made to that Award and a subsequent one, as also to the order of the Execution Court, as already noticed at the outset.

10. To continue with the contents of the Award dated 07.10.2015, after evidence was led by the claimant, both oral and documentary, such documentary evidence also including the registration certificate and the insurance policy in respect of the motor-cycle owned by the petitioner, the Tribunal recorded its findings, holding the drivers of both the vehicles negligent in driving, essentially on the testimony of the respondent-claimant, from whose cross-examination nothing adverse to his case was seen. A disability of 15% was also found to be proved on the basis of a disability certificate, Ex. P-2, with the medical bills produced also found to be genuine.

11. Thereafter, holding that the claimant was a labourer earning about Rs. 6,000/- in a month, a total compensation of Rs. 54,000/- was awarded to him for loss of income in the future (owing to the disability in his knee), even taking his age to be 69 years, with a multiplier of 5 applied to the annual loss of Rs. 10,800/- found to have been suffered by him.

On account of his medical treatment, he was awarded Rs. 10,000/- and another Rs. 10,000/- for pain and suffering, he also having remained admitted to hospital for about 09 days.

Rs. 3,000/- were also awarded for engaging an attendant, with a like sum awarded for the special diet that he would have needed for his recovery.

Rs. 10,000/- was further awarded on account of actual loss of earnings during the period that the claimant remained admitted to hospital and for the time that he spent in hospital and for him to recover and work again.

Thus, a total compensation of Rs. 1,05,910/- was awarded by the Tribunal, vide the said Award dated 07.10.2015, with interest @ 6% per annum also ordered to be paid, running from the date of filing of the claim petition till the date of its realization.

12. Upon the aforesaid Award having been pronounced, respondent no. 1 herein, i.e. the National Insurance Company, filed an application under Order 9 Rule 13 CPC, seeking that the aforesaid Award, passed *ex parte,* be set aside and a fresh Award be passed after it.

13. That application having been allowed, another Award came to be passed on 06.12.2017 by the Tribunal, with it not changing the findings as regards the negligence or even the amount of compensation awarded, but with additional issues having been framed by it on:-

(i) whether the motor-cycle owned and driven by the petitioner was actually insured or not by the respondent insurance company;

(ii) whether the driver of the car involved in the accident was holding a valid and effective driving licence or not, as also whether the car was validly registered or not; and

(iii) whether the claim petition was liable to be dismissed as the claimant had already received the compensation on account of the injuries and disability suffered by him.

14. On the issue of whether the motor-cycle owned by the petitioner was duly insured by the respondent insurance company or not on the date of the accident, the Tribunal recorded a finding that the vehicle was insured from 29.08.2011 to the midnight of 28.02.2012 and that on 25.05.2017 the claimant had filed an application for amendment of the claim petition (after it was heard *de novo* upon the application under Order 9 Rule 13 having been allowed).

Vide that application, it was stated that due to a clerical/ typographical mistake, the registration number of the motor-cycle was incorrectly written as PB-39-E-9094 instead of PB-39-D-6094.

That application was accepted on 01.09.2017 and the claimant was allowed to place on record a photostat copy of the registration certificate and insurance policy of the motor-cycle bearing registration No. PB-39-D-6094, seen to be issued in the name of the petitioner Randhir Singh, with the documents found to be valid on the date of the accident.

Consequently, that issue was decided against the insurance company.

15. However, as regards the validity of the driving licence of the petitioner, i.e. issue no. 5, it was found from a perusal of the previous Award dated 07.10.2015, that the petitioner had not produced his driving licence to show that it was valid on the date of the accident, and consequently, the insurance company was held entitled to recover the compensation amount from the petitioner, after it had paid the same to the claimant.

16. It is to be noticed here that the petitioner is not shown to be either present in person or represented by any counsel at the time when the Award dated 06.12.2017, i.e. the 2nd Award, was passed. That obviously would be for

the reason that the petitioner had duly appeared at the time when the first Award was passed on 07.10.2015 and thereafter the application of the insurance company under Order IX Rule 13 CPC having been allowed, he did not appear, though the claimant was duly represented by his counsel.

17. The compensation to the claimant having been duly paid, the insurance company filed an application seeking execution of the Award in its favour as regards right to recover the compensation from the petitioner, in which proceedings the impugned order dated 24.07.2018 has been passed by the execution court.

18. Before this court, on 25.01.2019 the following order had been passed:-

> *"Learned counsel for the petitioner would go into the findings of the Tribunal on issue no. 1 and address arguments, accordingly."*

Today, learned counsel for the petitioner points to the following finding recorded by the Tribunal in paragraph 10 of its Award dated 07.10.2015 (such finding being a part of issues no. 1 and 2 which were taken up and decided together, with repetitions having been made by the Tribunal in its Award as regards the manner of accident):-

> "*There is nothing in the cross-examination of PW-1 to favour the version of the respondents. It is significant to note here that in order to controvert the version of the claimant, the drivers of both the offending vehicles, i.e. respondent no. 2 and respondent no. 4 did not dare to step into the witness box. Ex. P-2 is the Disability Certificate showing that the claimant is permanently physically disabled to the extent of 15% in relation to right lower limb."*

19. Thereafter, a reference has been made by the Tribunal to various

documents tendered by way of medical evidence, after which, in paragraph 11, it is recorded as follows:-

> *"In view of the aforesaid discussion, the rashness and negligence on the part of respondents no. 2 and 4 while driving the offending vehicles at the time of accident has been duly proved on the record by the testimony of the injured/claimant Mohinder Singh, who is also the eye-witnesses of the accident and the documents placed on file and it is held that the accident was the result of rash and negligent act of respondent no. 2, i.e. the driver of the offending car as well as respondent no. 4, i.e. driver of the motor cycle involved in the accident as a result of which the claimant Mohinder Singh sustained serious multiple injuries on 18.08.2012 at about 05:30 p.m. in the area of village Pathreri Jattan on the Ropar-Morinda road."*

20. Thus, the petitioner, i.e. respondent no. 4 before the Tribunal, was held equally rash and negligent in causing the accident, alongwith the driver of the car bearing registration No. PB-48-A-0059, (whose name is neither given in the memo of parties in this petition, nor was it given in the memo of parties in the motor accidents claims' case, a copy of the Award having been annexed as Annexure P-2 with this petition. In fact, it has not been pointed out from the Award that the name of the driver of the aforesaid car has even been mentioned anywhere by the Tribunal).

21. Learned counsel thereafter points to the cross-examination of respondent no. 1, i.e. the claimant (as PW-1 before the Tribunal), as recorded on 09.09.2015, wherein he stated as follows:-

> *".......Randhir Singh was driving motor cycle on correct side. The accident took due to wrong driving of car no. PB-48-A-0059......"*

Subsequently, however, it seems that the said witness (claimant) was recalled for further cross-examination and is shown to be CW-1, as per the photocopy of the record of evidence produced in Court today by learned counsel, and on 29.07.2017 he stated as follows:-

> *"........it is incorrect to suggest that it is mentioned in the DDR Ex. P-1 that accident was not caused due to the rash and negligent driving of drivers of both vehicle....."*

Strangely, the aforesaid contradiction has not been noticed by the Tribunal in its Award.

22. Even so, having noticed the above as pointed out by learned counsel for the petitioner, this petition is only maintainable as one challenging an order of the Tribunal as an Execution Court, dated 24.07.2018, by which recovery of the compensation awarded to respondent no. 5 (claimant), has been directed to be made in favour of the insurance company (i.e. respondent no.1 herein), vide the process stipulated in Section 174 of the Motor Vehicles Act, 1988.

As already observed in paragraph 9 hereinabove, a revision against an Award passed by the Tribunal in terms of Section 173 of the Act of 1988, is not maintainable, the remedy against such Award being an appeal in terms of Section 173 thereof.

Thus, the petitioner in these proceedings cannot seek redressal of any grievance he has against the finding in the Award of the Tribunal dated 06.12.2017, granting recovery rights to the insurance company (from him) of the compensation paid to the complainant.

This would be so even in the face of the fact that there is an apparent contradiction in the cross-examination of the respondent-claimant as has been referred to hereinabove, with his statement in the first cross-examination being that the petitioner was driving the motorcycle on the correct side and the accident having taken place due to the "wrong driving" of the car bearing registration no.PB-48-A-0059, but the subsequent statement on another date having effectively been that it was the rash and negligent driving of drivers of both the vehicles being cause of the accident.

The finding of the Tribunal as regards the contributory negligence of the petitioner herein and the driver of the vehicle, not having been challenged in appeal, this revision petition is not appropriate remedy to challenge the same.

(On specific query to learned counsel as to whether any appeal was filed by the petitioner challenging the finding of the Tribunal in either of its Awards dated 07.10.2015 and 06.12.2017, to the effect that the petitioner and the driver of the car bearing registration no. PB-48-A-0059, were equally negligent in causing the accident, or whether any appeal was filed against the right of recovery given to the insurance company, he replies in the negative).

23. That being so, with that finding never having been challenged, then despite what has been noticed hereinabove, with regard to the apparent contradiction in the testimony of the claimant, the impugned Awards cannot be interfered with, nor even can the order dated 24.07.2018 passed by the execution court, which in any case cannot go beyond the Award passed by the Tribunal holding the petitioner to be negligent alongwith the driver of the aforesaid car and granting rights of recovery to the respondent insurance company.

Undoubtedly, this petition has been filed invoking jurisdiction of this Court under Article 227 of the Constitution, but in the opinion of this Court, it would not be possible to interfere with the impugned order, even in the face of the aforesaid seemingly contradictory testimony brought to the notice of this Court, in the absence of any challenge by the petitioner to the Awards of the Tribunal, holding him and the driver of the car to be equally negligent, also granting liberty to the respondent insurance company to recover the compensation awarded in favour of respondent no. 5 herein.

24. It is to be also specifically noticed that nothing at all has been submitted by learned counsel to the effect that the petitioner actually possessed a valid driving licence on the date of the accident.

In any case, to repeat, as regards the two Awards of the Tribunal, as have also been impugned impugned in this petition, the revision petition is held to be not maintainable, in view of the fact that a remedy of appeal is available to the petitioner in terms of Section 173 of the Motor Vehicle Act, 1988.

Of course as regards maintainability of the revision petition against the order of the execution Court dated 24.07.2018, the petition would otherwise be maintainable, but on merits, in view of what has been held hereinabove, that the execution court cannot go beyond what has been held in the Awards of the Tribunal and therefore is to execute the recovery ordered in favour of the respondent insurance company, the petition cannot be allowed.

Consequently, it is dismissed.

January 30, 2019 **(AMOL RATTAN SINGH)**
nitin/dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes