

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO NO.6219 of 2018(O&M)
Date of Order: 14.01.2019

National Insurance Company Limited

..Appellant

Versus

Manjinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Taunque, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Insurance Company is in the appeal against the award passed by the learned Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as the Tribunal) awarding compensation of Rs.2,10,000/- to the respondent-claimant on account of permanent disability to the extent of 50%.

Respondent-claimant was 22 years old, working as a conductor in a bus which met with an accident and suffered as many as 4 fractures i.e. left leg, left hip, left rib and left arm apart from the injuries in abdomen. He remained admitted in hospital for 14 days and iron plate had to be inserted to cure the fractures.

Learned counsel for the appellant-Insurance Company has raised the following points:-

- (i) the claim petition was not maintainable as no accident had taken place with another vehicle;
- (ii) the bus which had turned turtle after going off the road

was not having valid permit;

(iii) Quantum of compensation has been wrongly assessed;

(iv) In the FIR, it has been recorded that driver started looking at the mobile which resulted the bus going off the road and having turned turtle.

As regards first argument, Section 166 of the Motor Vehicle Act provides that the application for compensation shall be maintainable if an accident in the natures specified in Sub-Section 1 of Section 165 has taken place. Section 165 does not provide or envisage that claim petition would be maintainable only if two motor vehicles are involved in the accident. Still further the word “Accident” has not been defined under the Motor Vehicle Act, 1988. In the considered view of this court, accident can be without involvement of any other vehicle particularly when the vehicle in which the injured or the deceased was travelling met with an accident. Accident does not mean that there must be involvement of second vehicle. Accident can even happen without involvement of other vehicle like the skidding of vehicle's tyre on the road and turns turtle or the vehicle skids from the road and falls into a valley. There can be number of examples of accident having happened without involvement of any other vehicle.

As regards second argument i.e. non-availability of permit, learned counsel for the appellant could not draw attention of the court to any contention raised by the Insurance Company before the courts below. In such circumstances, this court while exercising the appellate jurisdiction cannot permit the counsel to raise a new argument.

Next argument of learned counsel is with reference to quantum.

Learned Tribunal has awarded the amount under the following heads:-

“1. Pain and sufferings	Rs.90,000/-
2. Loss of income	Rs.30,000/-
3. Hospital charges and expenditure on treatment.	Rs.70,000/-
4. Special diet	Rs.20,000/-
Total compensation	Rs.2,10,000/-

Learned counsel has drawn attention of the court to the head “Hospital Charges and Expenses on Treatment” and has stated that the hospital in which treatment was taken was a Charitable Hospital and therefore, the court wrongly assessed the hospital charges and expenditure on medicines at Rs.70,000/-. On careful reading of paragraph 15 of the award, it is apparent that the bills for purchase of medicines were produced for an amount of Rs.20,000/-. The court further noticed that the respondent-claimant remained admitted in hospital for 14 days and he was also to take follow up treatment. The court further noticed that there is no evidence that free treatment was provided. Learned counsel for the appellant could not draw attention of the court to any such evidence proving that the hospital did not charge any amount for the operation or for admission for 14 days in hospital.

Next argument of learned counsel is with reference to the First Information Report in which it has been recorded that the accident took place due to the fact that the driver started looking at the Mobile phone. No doubt, such facts is recorded in the first information report, however, no further evidence has been led to prove that fact. The Investigating Officer has appeared as PW6 but attention of this court has not been drawn to any

part of his statement from where the court should conclude that the accident took place in the manner suggested in the FIR. First information report is only an information given to the police and the facts as noticed in the first information report have to be proved. In absence of supporting evidence, the court cannot record a finding merely on the basis of first information report.

For the reasons recorded above, the appeal is dismissed.

C.M.No.21744-CII of 2018

Prayer in this application is for condonation of delay of 50 days in filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 50 days in filing the appeal is condoned.

Application is allowed.

January 14, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No