IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

233 XOBJC-17-2019 (O&M) in/and
FAO-203-2016 (O&M)
Date of decision: 24.02.2020

NEW INDIA ASSURANCE COMPANY LTD. ... Appellant

Versus

PARDEEP DUBEY AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate for the appellant.
Mr. Ravi Sharma, Advocate for respondent No.1/cross objector.
Ms. Brea Sandhu, Advocate for
Ms. Deepali Puri, Advocate for respondent No.3.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.203 of 2016 and cross objections No.17 of 2019 as these have emerged out of the same award dated 01.10.2015 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of injuries sustained by the claimant.

FAO No.203 of 2016 has been filed by New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas cross objections have been filed by the claimant seeking additional compensation.

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and findings on the issue of driving licence.

The Tribunal awarded Rs.9,03,762/-, detailed hereunder:-

Expenses incurred on medical treatment	Rs.53,862/-
Loss of actual income	Rs.46,200/-
Loss of future earnings	Rs.6,23,700/-
Physical disability	Rs.50,000/-
Incidental expenses	Rs.30,000/-
Pain and agony and deprivation of amenity of life	Rs.50,000/-
Future expenses	Rs.50,000/-

Counsel for the appellant would argue that claimant examined Dr. NK Aggarwal, Department of Orthopedic, GMSH, Sector 16, Chandigarh to prove disability and disability certificate Ex.P35. As per testimony of the doctor, claimant was found permanently disable to the extent of 10% qua left lower limb on account of limitation of movement of ankle joint, stated to be functional. The Tribunal has assessed loss of earning capacity to the extent of 30% contrary to medical opinion given by the doctor. It is argued that claimant is not entitle to benefit of addition for future prospects as he has suffered disability to the extent of 10% only. It is further argued that there is no justification for allowing compensation of Rs.50,000/- for physical disability, Rs.30,000/- for incidental charges and Rs.50,000/- for future expenses.

With regard to driving licence, it is argued that the driver had licence of LMV transport but as he was driving truck No.CH-01-G-1063, he was not duly licensed to drive the offending vehicle, therefore, the insurance company is entitle to be given right of recovery against the insured after payment of compensation to the claimant.

Counsel representing the claimant, on the contrary, has supported assessment by the Tribunal but prayed for grant of additional compensation qua attendant charges, transportation and special diet etc.

Counsel representing the insured would argue that the insurance company did not examine a witness of the concerned licensing authority to prove that driver did not possess licence to drive a transport vehicle.

The Tribunal has awarded Rs.53,862/- qua expenses incurred on medical treatment and the same is affirmed. Similarly, compensation awarded for loss of income during the period of treatment and recovery, pain and agony and deprivation of amenities of life is affirmed.

The Tribunal has awarded Rs.6,23,700/- towards future loss of income on account of disability to the extent of 10%. There is opinion by a doctor that 10% disability suffered qua left lower limb is functional in nature and as such, future loss of income is liable to be assessed by considering functional disability to the extent of 10%. Claimant shall not be entitle to addition in income for future prospects. In this manner, loss of future income qua disability is assessed at Rs.1,38,600/- (7700 x 12 x 15 x 10/100). Since the claimant has been allowed loss of future income by applying multiplier method, he is not entitle to compensation in respect of physical disability to the tune of Rs.50,000/- and the same is set aside. Similarly, there is no foundation for allowing incidental expenses of

Rs.30,000/- and future expenses of Rs.50,000/- and the same are set aside.

The claimant remained hospitalised for a period of about 15 days. He had undergone surgery and injury rendered him disable to the extent of 10% qua left lower limb. Taking a cumulative view of the aforesaid, the claimant is awarded Rs.20,000/- for services of an attendant, transportation and special diet. In this manner, total compensation is Rs.3,08,662/- and compensation assessed by the Tribunal is reduced to the extent of Rs.5,95,100/- (9,03,762 - 3,08,662). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

This brings the Court to issue No.3 pertaining to driving licence held by Kuldeep Singh. Perusal of document Ex.RW1/1 (driving licence) reveals that Kuldeep Singh was issued licence of a transport vehicle w.e.f 05.11.2009 valid for transport till 03.02.2016. In absence of any witness examined from concerned licensing authority by the insurance company that driver was authorized to drive LMV transport and not a transport vehicle, I do not find any reason to interfere in findings of the Tribunal on issue No.3.

In view of what has been discussed hereinbefore, the appeal and cross objections are disposed in the aforesaid terms. As the cross objections have been decided on merits, application for condonation of delay is of academic relevance.

24.02.2020 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No