IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-20-CII of 2016 (O&M) in/and
FAO No.5011 of 2015 (O&M)
Date of decision: 31.01.2020

Lal Chand ... Appellant

Versus

Subhash Chand and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Veena Hooda, Advocate for
Mr. Chanderhas Yadav, Advocate
for the appellant.

Mr. Rajbir Singh, Advocate
for insurance company/cross objector.

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REKHA MITTAL, J. (Oral)

CM No.2697-CII of 2016 in XOBJC-20-CII of 2016

Heard.

Allowed as prayed for. Delay of 59 days in filing the cross objections stands condoned.

CM Nos.15388-89-CII of 2015 in FAO No.5011 of 2015

Heard.

Allowed as prayed for. Delay of 09 days in re-filing and 10 days in filing the appeal stands condoned.

Main Case

This order will dispose of FAO No.5011 of 2015 and cross objections No.20-CII of 2016 as these have emerged out of the same award dated 31.10.2014 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been assessed on account of injuries sustained by Lal Chand in a motor vehicular accident that took place on 18.03.2012.

FAO No.5011 of 2015 has been filed by the claimant seeking additional compensation whereas cross objections have been filed by Shri Ram General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') to assail liability to pay compensation.

The Tribunal awarded Rs.2,32,845/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.53,845/-
Compensation on account of disability	Rs.70,000/-
Loss of earning capacity and amenities of life	Rs.50,000/-
Transportation charges	Rs.24,000/-
Attendant charges	Rs.15,000/-
Special diet	Rs.5000/-
Pain and sufferings	Rs.15,000/-

The Tribunal has allowed reimbursement of medical expenses on the basis of medical bills and the same is affirmed. The injured remained hospitalised for a period of 25 days. Compensation allowed qua transportation, attendant charges and special diet is affirmed.

Claimant did not examine treating doctor to prove nature of injuries and treatment during hospitalisation. However, it remains a fact that injured remained hospitalized for a period of 25 days and injuries rendered him disable to the extent of 35%. The appellant is awarded Rs.20,000/- for pain and sufferings (additional amount of Rs.5000/-).

There is no clear evidence on record with regard to avocation and income of the injured. However, he was more than 50 years old at the time of unfortunate occurrence. Taking into consideration the aforesaid and assessing income of the victim at Rs.5300/- per month, claimant is awarded Rs.15,900/- (5300 x 3) for loss of income during period of hospitalisation and recovery for a period of three months.

The injured has suffered disability to the extent of 35%. Dr. Dinesh Podar was examined to prove disability and disability certificate Ex.PW3/A. He would depose that Lal Chand suffered permanent disability on account of range of motion of right wrist joint (pronation and supination) reduced by 50%, left knee joint by 30% with superficial and deep complication. In cross examination, he stated that chances of recovery after physiotherapy is remote. Taking into consideration the nature and extent of disability suffered by the victim coupled with that his income has been assessed by treating him to be a casual worker, entire disability shall be taken into account for computing loss of future income. Accordingly, claimant is awarded Rs.2,44,860/- (5300 x 12 x 11 x 35%). Compensation to the tune of Rs.50,000/- for loss of earning capacity and amenities of life is reduced to Rs.35,000/-.

Total compensation is Rs.4,13,605/- and additional amount is Rs.1,80,760/- (4,13,605 – 2,32,845), payable with interest @ 7.5% per annum from the date of petition till realization.

Counsel for the insurance company/cross objector would argue that as the injured was a gratuitous passenger, the insurance company is liable to be exonerated of liability to pay compensation in place of right of recovery given by the Tribunal. The contention raised by the insurance company cannot be accepted when examined in the light of latest judgment of Hon'ble the Supreme Court **Anu Bhanvara etc. Vs. Iffco Tokio General Insurance Co. Ltd. and ors., Civil Appeal No.6231-32 of 2019, decided on 09.08.2019.**

As there is no privity of contract between the insurer and driver, there is no question of driver being guilty of violating the terms and conditions of policy and as such, recovery right given against driver of offending vehicle is set aside.

In view of what has been discussed hereinbefore, the appeal and cross objections stand disposed of in the aforesaid terms.

31.01.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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