

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT

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FAO No. 87 of 2021 (O & M)

Date of decision : 7.7.2021

National Insurance Company Ltd.

.....Appellant

Vs.

Tejinder Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Gopal Mittal, Advocate, for the appellant

Rajbir Sehrawat, J. (Oral)

This appeal has been filed challenging the award dated 17.1.2020 passed by the Motor Accidents Claims Tribunal, Rupnagar (in short 'the Tribunal'), whereby the injured claimant Tejinder Singh was granted an amount of Rs.25,26,000/- as compensation on account of the injuries suffered by him in the road accident.

The brief facts, as mentioned in the award passed by the Tribunal are; that on 13.1.2019 claimant Tejinder Singh along with Sumit and Waryam Singh had gone to Gurudwara Anandpur Sahib on a new tractor of Sonalika make. When they were returning on their tractor; which was being driven on the extreme left side of the road; then they found that one side of the road was partly blocked because of the religious procession which was coming from the side of Nangal to Anandpur Sahib. Therefore, the entire traffic was diverted only on one side of the road. When their tractor reached near TVS Suzuki Showroom, then the offending tanker; bearing registration no. PB-10-DZ-5105;

came from Nangal side. That Tanker was being driven in a very rash and negligent manner. The driver of the Tanker turned towards the side on which their tractor was going. As a result, the said tanker hit against the back tyre of the tractor. Consequently, the claimant fell from the tractor and his right leg struck against the back tyre of the tanker. Consequently, his right leg got trempled by the tanker and was badly damaged. The other person Sumit; sitting on the tractor; also fell on left side of the road and his right leg also got fractured. The claimant was got admitted in the hospital by the driver of the tractor. From there, the claimant was referred to PGI, Chandigarh. Surgery was performed upon the right leg of the claimant. Ultimately, the right leg of the claimant was amputated from knee. On account of this accident, an FIR No. 6 dated 16.1.2019 was also registered against the driver of the said tanker under Sections 279, 337 and 338 IPC at Police Station Anandpur Sahib. With these facts, the claim petition was filed with further assertions that the claimant was doing a course in ITI in the Plumber Trade. Being in technical training, he was contributing to help the family with Rs.1200/- per month. Injuries caused to the claimant have rendered him permanently disabled. An amount of more than Rs. One lakh was spent on his treatment, which was still undergoing. In this petition, the above said amount of Rs. 25,26,000/- was awarded by the Tribunal. It is that award which is under challenge in the present appeal.

While arguing the case, learned counsel for the appellant has submitted that the Insurance Company is not liable to make the payment of compensation because the tractor on which the claimant was travelling was not meant to be used as a passenger vehicle. The said tractor was being plied on the road in violation of the mandate of the law. Hence, no liability for making

the payment of compensation can be fastened on the Insurance Company. It is further submitted by counsel for the appellant that the Tribunal has wrongly assessed the income of the claimant to be Rs.9700/-per month despite the fact that no evidence has come on the file to show the earning of the claimant at this level. The Tribunal has wrongly taken the claimant as a Skilled Worker and accordingly has taken the notional income of Rs.9700/-per month. Once there was no evidence on the file qua the income, then the Tribunal could not have assessed the income of the claimant at the level of Skilled Worker. At the best, the claimant could have been granted benefit of minimum wages meant for an unskilled labourer. Still further argument of the counsel for the appellant is that the Tribunal has gone wrong in law in granting 40% of assessed income as the compensation for loss of future prospectus. No benefit of future prospectus could have been awarded in case of injury to the claimant because he was only a student at the relevant time and was aged about 20 years.

Having heard counsel for the appellant, this Court does not find any substance in the argument of the counsel for the appellant. The first argument of counsel for the appellant is that the tractor on which the claimant was travelling at the relevant time was wrongly being used as a passenger vehicle and therefore, the Insurance Company was not liable to make the payment of compensation on account of involvement of that tractor in accident. However, the Insurance Company is not the insurer of the said Tractor. Rather, the Insurance Company is the insurer of the offending Tanker mentioned above. The Insurance Company could have taken the plea of plying of the offending Tanker in violation of mandate of the law to avoid its liability for making payment. However, no such plea is available to the Insurance Company

qua the vehicle (Tractor) with which the vehicle insured by the Insurance Company caused accident. In that situation, the only plea which could have been available to the Insurance Company was qua the actual negligence in driving of the Tractor, if any. However, no evidence has been led by the Insurance Company qua any factual aspect of any actual negligence in driving on the part of the driver of the Tractor in question. Hence, this argument is liable to be noted only to be rejected.

Another argument of counsel for the appellant is qua assessment of the income of the claimant by taking him as a skilled worker. It is not even in dispute that it has come on record that the claimant was doing a technical course from ITI. Therefore, the Tribunal has not committed any error in assuming the income of the claimant as a skilled worker. Counsel for the appellant has submitted that the claimant was only a student at the relevant time, therefore, he had not become the skilled worker on the date of accident. However, even this argument is irrelevant. The award of compensation contains the guess work of income as on the date of accident, as well as, for future loss. Once it has come on record that the claimant was a regular student of a Technical Trade in ITI and he would have acquired the technical qualification of that trade in due course, then the Tribunal did not commit any mistake in assessing the income of the claimant by taking him as a skilled worker. Needless to say, that the income of the claimant has been assessed at the lowest level of the skilled worker and not at the level which a skilled worker of the trade of the claimant would have actually earned after acquiring the qualification. The market rates for the plumbing work are much higher than the one notionally assumed by the Tribunal. Hence, this argument of

counsel for the appellant also does not have any force.

The last argument of counsel for the appellant is qua wrongly granting the benefit of future prospectus while calculating the amount of compensation. However, as is mentioned in the award passed by the Tribunal itself, the award of future prospectus is duly supported by the judgment of the Hon'ble Supreme Court rendered in 'National Insurance Company Ltd. v. Pranay Sethi and others; (2017) 16 SCC 680'. Accordingly, even on this point, this Court does not find any legal error having been committed by the Tribunal.

No other argument was raised.

In view of the above finding no illegality or irregularity qua the claim of the present appellant, the present appeal is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

7.7.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No