

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.760 of 2022(O&M)

Date of decision:24.03.2022

Oriental Insurance Company Ltd.

...Appellant

Versus

Deepak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tejinder Pal Singh, Advocate,
for the applicant-appellant.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

C.M.No.3363-CII-2022

The application is allowed and the deposition of PW1-Sh. Jagbir son of Sh. Dharam Chand is taken on record.

MAIN

This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.

While assailing the correctness of the award passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal'), the Insurance Company has filed the present appeal.

The Tribunal has awarded a sum of Rs.39,75,231/- for various injuries to the claimant, who is lying in a vegetated state (coma) from the time of the accident. The accident took place on 04.12.2017. The manner in which the accident took place, the findings of the Tribunal with regard to rash and negligent driving of pick up van by Roop Singh (respondent no.2) and the liability of the appellant is not in dispute.

The learned counsel representing the appellant has made following 4 submissions:-

- (1) As per the Aadhar Card, Sh. Deepak at the time of an accident was 13 years old.
- (2) The Tribunal has assessed the income of the injured @ Rs.11,000/- per month on the basis of the minimum wages fixed by the Deputy Commissioner.
- (3) That Roop Singh did not have valid driving licence to drive a pick up van.
- (4) There is a delay of 41 days in registering the FIR.

The learned counsel representing the appellant admits that when Sh. Jagbir (Deepak's father) appeared in evidence, no question with regard to the age of Deepak was put to him. The Aadhar Card is not a conclusive proof of a person's age. As per the hospital record, Deepak at the time of accident was only 17 years old. In the absence of conclusive evidence to the contrary, this Court does not find it appropriate to interfere with the age of Deepak as assessed by the Tribunal.

As regards the next argument of the learned counsel representing the appellant with regard to the income, the Tribunal has assessed the income on the basis of minimum wages notified by the Deputy Commissioner of the District. In the considered view of the Court, in absence of the conclusive evidence to the contrary, it would not be appropriate to interfere in the assessment made by the Tribunal particularly when it is based on the DC rates.

The next argument of the learned counsel is also liable to be rejected because the Tribunal has noticed that Roop Singh possessed a valid driving licence and was authorised to drive a scooter, motorcycle, car and jeep. RW1-Narveer in his testimony has stated that the driving licence that was issued to Roop Singh, is valid for driving a light motor vehicle. He has also stated that Roop Singh was entitled to drive a pick up van which is a light motor vehicle. In these peculiar circumstances, the argument of the learned counsel cannot be accepted.

As regards the last argument, it may be noted that Deepak suffered grievous injuries in the automobile accident. The accident has been proved by examining as many as six witnesses including the eye witness Jai Parkash. Sh. Jai Parkash was driving the motorcycle while Deepak was on pillion. In such circumstances, Jai Parkash is a natural witness.

The delay in the registration of the FIR creates some doubt about the correctness of the case of the claimant, however, in the facts

of the present case, particularly when Jai Parkash, who is a primary witness i.e. his evidence being in the form of Direct Evidence has deposited in the case, this court does not find it appropriate to interfere.

In view thereof, the appeal is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

March 24, 2022

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Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No

(ANIL KSHETARPAL)

JUDGE