

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

FAO No. 2539 of 1999

Date of decision: 25-04-2022

Smt. Kailasho Devi

..Appellant

Versus

Surinder and others

..Respondents

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Ashit Malik, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.

MEENAKSHI I. MEHTA J.

Feeling dis-satisfied with the Award dated 18.02.1999 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') whereby the petition moved by the appellant for claiming compensation to the tune of Rs. 05 (five) lac from the respondents on account of her having sustained the injuries in a motor vehicular accident, has been allowed to the effect that she is entitled to claim an amount of Rs.16,000/- from respondents No.1 and 2 along-with the interest @12% per annum, she has preferred the instant appeal for seeking enhancement in the amount of compensation.

The appellant filed the above-said claim petition while averring that on 01.04.1996, when she and one Shagun Singh were

returning from their agricultural land to Village Gharaunda in a Bullock-Cart, a TATA-407 vehicle, bearing registration No.HR-45-0347, came from Karnal side, which was being driven by respondent No.1 in a rash and negligent manner at a high speed and it hit the back side of their Cart and resultantly, she fell down and sustained injuries in this accident.

Respondents No.1 and 2, in their joint written statement, contested the claim of the appellant, *inter-alia*, on the grounds that respondent No.1 was driving the said vehicle at a moderate speed while observing the traffic rules and the accident in question did not take place due to any negligence on his part.

Respondent No.3-Insurance Company, in its separately filed written statement, controverted the claim of the appellant and asserted that respondent No.1 was not at fault in causing the above-said accident and even otherwise, he was not having a valid driving licence at the time of this accident.

The Tribunal put the parties to the trial by framing the issues and both the parties led their evidence, oral as well as documentary, in support of their respective contentions. After the appraisal of the evidence as adduced by the parties and hearing their learned counsel, the Tribunal allowed the claim petition, as discussed in the opening para of this judgment, but exonerated respondent No.3-Insurance Company from the liability to pay the said amount of compensation, while observing that at the time of the accident in question, respondent No.1 was not having any valid driving licence to drive the offending vehicle.

I have heard learned counsel for the appellant as well as

learned counsel for respondent No.3-Insurance Company in the present appeal and have perused the record carefully.

Learned counsel for the appellant has contended that the appellant had suffered the fracture on her leg and had also sustained the head injury and she had to incur huge expenses on her medical treatment, special diet and transportation etc. and it being so, the amount of compensation, as awarded by the Tribunal to her vide the impugned Award, does not commensurate with the said expenditure and also with the pain and suffering undergone by her due to the said injuries and therefore, the same deserves to be enhanced.

However, the afore-raised contention is devoid of any merit because in Para No.17 of the impugned Award, the Tribunal has observed that though the appellant had suffered the injuries, including the fracture on her leg, in the said accident and was, therefore, entitled to the compensation for the same but there was no evidence regarding her having suffered any disability on account of the said injuries and no disability certificate had been produced by her and as mentioned in Para No.18 therein, she has been awarded a sum of Rs.10,000/- as compensation on the account of the pain and suffering undergone by her due to said injuries and the same cannot be termed to be insufficient at all. She has also been awarded an amount of Rs.2500/- on the score of the expenses incurred by her on her special diet and transportation etc. Further, as mentioned in Para No.19, PW-2 Dr. K.L. Sachdeva had stated that he had charged an amount of Rs.2515/- towards the hospital treatment and the Tribunal has awarded a sum of Rs.3500/- as

compensation towards the medical expenses. In view of the above-discussed facts and circumstances, it has to be held that the appellant has not been able to substantiate her claim for enhancement in the amount of compensation as already awarded to her by the Tribunal.

Further, it is pertinent to mention here that the Tribunal, while returning its findings on issue No.3 pertaining to the validity of the driving licence of the driver of the offending vehicle, has specifically held that respondent No.1-driver was not having a valid driving licence at the time of the above-said accident and has, therefore, absolved respondent No.3-Insurance Company from the liability to pay the amount of compensation and has, rather, fastened the said liability upon respondent No.1, being the driver and respondent No.2, being the owner of the said offending vehicle but it is well settled proposition of law that in such like eventuality, the insurer is to pay the award amount to the claimant and then, to recover the same from the insured. Resultantly, respondent No.3-Insurance Company is directed to pay the award amount to the claimant-appellant in the first instance, although it shall be entitled to recover the same from respondent No.2-owner-insured by resorting to the appropriate legal procedure for this purpose.

As a sequel to the foregoing discussion, the instant appeal stands dismissed but with the above-said modification in the Award.

25th April, 2022.
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No