

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-11757-CII-2022 in/and
FAO No.3473 of 2022
Date of Decision : 15.09.2022**

SBI General Insurance Company

....Appellant

VERSUS

Saloni Yadav & Anr.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajneesh Malhotra, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-11757-CII-2022

This is an application under Section 151 of the Code of Civil Procedure, 1908 for preponing the date of hearing in the main case (FAO-3473-2022) from 18.10.2022 to an early date.

For the reasons stated in the application, the same is allowed. With the consent of learned counsel for the applicant-appellant, the main appeal is taken on Board today itself.

CM stands disposed off.

FAO No.3473 of 2022

The present appeal has been preferred by the Insurance Company against the award dated 26.05.2022 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') awarding compensation of Rs.74,39,139/- to the claimant-respondent no.1 on account of injuries received by her in a road side accident with car bearing registration no.CH-01-BR-3456 (hereinafter referred to as the 'offending vehicle').

The brief facts relevant to the present *lis* are that on 20.04.2018 at about 01.55 p.m., Seeta Devi was coming on foot along with her granddaughter Saloni (claimant-respondent no.1) from Ambedkar Bhawan, Sector 37, Chandigarh to their home in Sector 24, Chandigarh. Respondent no.2 herein, who was driving the offending vehicle at a high speed in rash and negligent manner, came from the side of Batra Chowk and hit Seeta Devi and Saloni (claimant-respondent no.1). The claimant-respondent no.1 was taken to GMCH, Sector 16, Chandigarh and thereafter was referred to PGIMER, Chandigarh. In the claim petition, it was stated that the claimant-respondent no.1 was still under treatment. She suffered a head injury and was operated upon 3-4 times. One more surgery was recommended after she stabilized. It was further pleaded that the accident took place due to rash and negligent driving of the offending vehicle by respondent no.2 herein. FIR No.168 dated 20.04.2018 was registered under Sections 279, 337 and 304-A IPC at Police Station Sector 39, Chandigarh. It was also pleaded that the claimant-respondent no.1 was 13 years of age at the time of the accident and she was a student. A huge amount had been spent on her treatment and that she is still under treatment.

The claim petition was contested by respondent no.2 herein denying the factum of the accident. The appellant-Insurance Company took the usual pleas and the averments made in the claim petition were denied.

On the basis of pleadings of the parties the following issues were framed :

1. Whether Saloni Yadav suffered injuries in road side accident on 20.04.2018 due to rash and

negligent driving of Car bearing registration No.CH-01-BR-3456 by respondent no.1 ? OPP

2. Whether the claimant is entitled to compensation, if yes, what amount and from whom ? OPP
3. Whether the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident ? OPR2
4. Whether the offending vehicle was being driven in contravention of the terms and conditions of Insurance Policy ? OPR2
5. Relief.

The Tribunal, on the basis of the pleadings and evidence on the record, granted a compensation of Rs.74,39,139/- along with interest @ 8% per annum from the date of filing the claim petition till its realization. Aggrieved by the said award, the present appeal has been preferred by the Insurance Company.

Learned counsel for the appellant would contend that the Tribunal has relied upon a judgment passed by the Hon'ble Supreme Court in case of **Kajal vs. Jagdish Chand & Ors. [2020 (2) RCR (Civil) 27]** while awarding the compensation to the claimant-respondent no.1. Learned counsel would further contend that there is a distinction and the facts of the present case are totally different and distinguishable from the facts in the case of **Kajal (supra)**. He would further contend that in the case of **Kajal (supra)** the claimant therein had suffered a head injury and was confined to bed and, hence, it cannot be equated with the case in hand where the

disability though assessed as 100% is only *qua* the spine and the lower limb and it has been stated by Dr. Aditya Aggarwal, who appeared as PW-4, that the claimant would be able to do a job in future involving her upper limbs. Learned counsel further contends that the attendant charges awarded are excessive inasmuch as attendant charges only for one attendant ought to have been granted. It is also contended that amount awarded towards pain and suffering is also excessive.

I have heard learned counsel for the appellant.

Dr. Aditya Aggarwal, Professor, Deptt. of Orthopaedics, Member of Disability Board, PGI, Chandigarh, who appeared as PW-4, stated as under :

“I was member of Disability Board, Deptt. Patient Saloni Yadav d/o Sh. Narsingh Yadav reported for disability assessment before Disability Board of PGI, Chandigarh and was issued a Certificate vide Certificate No.9856 dated 26.07.2019. She was found to be having a disability of 100% due to road side accident whiplash injury, cervical spine injury with C7 – T4 Myelomalacia with Paraplegia with complete urinary retention with # pt. distal BB Leg Gd III B with # Lt. distal BB leg with Ankle D/L Lt. open Gd III B. I have seen original disability certificate which is correct and it bears my signatures. I also identify the signatures of other members of Disability Board. She is not able to do her daily activities of daily living. She always requires

the help of an attendant 24 hours for whole life. She still requires a special diet for her nutrition. She is confined to bed and not able to walk. In most of the cases the patients of this kind do not recover in life. The reassessment of disability is recommended for five years. Disability certificate is Ex. P-239. She won't be able to go to school for studies for ever."

In the cross-examination, not a suggestion was put that the claimant is not confined to bed and that she would not require an attendant for 24 hours. The claimant-respondent No.1 in the present case, as per statement of PW-4, is unable to do her daily activities and she would require an attendant for 24 hours for help throughout her life. That being so, no fault can be found with the award passed by the Tribunal awarding compensation for two attendants inasmuch as one attendant cannot be expected to work 24x7 and two attendants would be required in order to look after the claimant-respondent no.1. It has further come in the examination of PW-4 that the claimant-respondent No.1 is confined to bed and unable to walk. Since the claimant-respondent No 1 is unable to walk she would require assistance 24x7. It has also been stated that the patients of this kind do not recover in life. It has also come in the statement of PW-4 that the claimant-respondent No.1 would not be able to go to school for studies forever.

Keeping in view the condition of the claimant-respondent no.1 as well as the statement of PW-4 Dr. Aditya Aggarwal, which has gone totally un-rebutted, I do not find any illegality or infirmity in the award passed by the Tribunal.

Reliance on the judgment in case of **Kajal** (*supra*) has correctly been placed by the Tribunal. The claimant-respondent No.1 in the present case has also been rendered 100% disabled and compelled to live an assisted life as a result of the injuries received. Merely because the nature of injuries were different, a distinction cannot be drawn with the case cited.

In view of the above, the present appeal, which is devoid of any merits, is dismissed. Pending applications, if any, also stand disposed off.

15.09.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO