

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

**FAO-916-2021 (O&M)
Decided on : 19.07.2022**

National Insurance Company Limited
Versus
Kartikaya @ Kartikaya Phogat and others

... Appellant(s)

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate
for the appellant(s)-Insurance Company.

Mr. Sandeep K. Sharma, Advocate
for respondent No.1/injured-claimant.

Mr. Rajneesh Malhotra, Advocate with
Ms. Vatika Sharma, Advocate
for respondent No.5 – New India Assurance Co. Ltd.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the Insurance Company to impugn the award dated 26.05.2021, passed by the learned MACT, Rohtak (hereinafter referred to as ‘the Tribunal’), vide which the following compensation was awarded to the claimant/injured, in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, for the injuries received by him, in a motor vehicular accident, which took place on the intervening night of 16th & 17th May, 2017:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.23,847/-
2.	Annual Income	Rs.2,86,166/-
3.	Future Prospects (40%)	2,86,166 x 40% = Rs.1,14,466/-
4.	Total Annual Income	Rs.4,00,632/-
5.	Loss of income assessed (60%)	4,00,632 x 60/100 = Rs.2,40,379/-

6.	Multiplier	17
7.	Total Dependency	2,40,379 x 17 = Rs.40,86,443/-
8.	Total Value of Medical Bills	Rs.22,10,901/-
9.	Medi-claim policy amount	Rs.4,80,751/-
10.	Pain & agony	Rs.50,000/-
11.	Special diet	Rs.10,000/-
12.	Receipts amount	Rs.37,300/-
13.	Attendant charges	Rs.50,000/-
13.	Total Compensation	Rs.69,25,395/-

The pleaded case of the injured/claimant in the claim petition filed before the Tribunal, may be noticed as thus:-

On the fateful day, the injured/claimant, aged 27 years, along with his friend Vishwadeep, were going in Maruti Ciaz car bearing registration No. HR-12AA-0048. At about 1:00 A.M., due to some repairs being carried out on the road, entire traffic was diverted to one side. When the car in which the injured/claimant was travelling, reached second bridge of Sector 2, truck bearing registration No.HR-63B-5016 (hereinafter referred to as 'the offending vehicle') came in a rash and negligent manner, driven by respondent No.2, leading to a head on collision with the car on which the injured was travelling. Due to the collision, the door of the car opened and the injured was thrown out on the road. The offending truck ran over the right leg of the injured/claimant. The injured/claimant was immediately removed to PGIMS, Rohtak where his right leg was amputated. He had to be shifted to Sir Ganga Ram Hospital, Delhi, for his further treatment. It was claimed that the injured was a Government Contractor and also running a Milk diary. On account of the serious and multiple injuries received by the injured/claimant, he had been rendered permanently disabled.

Learned counsel for the appellant-Insurance Company has impugned the award passed by the Tribunal on the following grounds:-

- I. That the involvement of the offending vehicle was highly suspect, as neither the registration number of the offending vehicle nor the name of the driver of the offending vehicle was mentioned at the time of lodging the complaint before the police. Though, it was claimed that Vishwadeep was driving the car in which the injured/claimant was traveling at the time of the accident, however, strangely, he did not even accompany the injured/claimant to the hospital. The alleged eye witness PW-10 Nitin was evidently a planted witness which could be discerned from the fact that it was after 07 months of the accident that the offending vehicle was named by the injured/claimant otherwise the eye witness would have immediately reported the registration number of the offending vehicle to the police.
- II. That the compensation awarded was exorbitant, without there being any supportive evidence led on record by the injured that he was a Government Contractor and the disability suffered by him, had adversely affected his work. Hence, the compensation awarded for loss of future income by assessing his income as Rs.2,86,166/- per annum (Rs.23,847/- per month), required to be scaled down accordingly.
- III. That it was a matter of record that the injured claimant had a medi-claim policy with Star Health Insurance Company and an amount of Rs.4,80,751/- was paid by the Health Insurance

Company to Sir Gangaram Hospital, Delhi, towards the medical treatment undergone by the injured/claimant in the said hospital. Hence, the amount of Rs.4,80,751/-, which had been claimed by the injured/claimant towards medical expenses and which stood paid by the Star Health Insurance Company, should not have been granted by the Tribunal while assessing the compensation awarded to the injured/claimant.

Per contra, learned counsel for the injured/claimant while opposing the prayer and submissions made by the counsel opposite, submitted that on account of the injuries received in the accident in question, the injured/claimant, who was just 27 years of age, had suffered 80% permanent disability, which had resulted in 100% loss of his earning capacity. The compensation awarded was thus perfectly justified in the light of pain and suffering as well as permanent disability suffered. Learned counsel while placing reliance upon ***National Insurance Company Vs. Aman Kapoor, 2014 ACJ 1342*** and ***FAO-1655-2017, titled as, "Royal Sundaram Gen. Insurance Co. Ltd. Vs. Meenakshi Mann and others"***, decided on ***19.11.2019***, submitted that the Tribunal had rightly awarded compensation in the sum of Rs.4,80,751/- qua the medical expenses incurred by the injured/claimant during his treatment at different hospitals. He, thus, prayed for dismissal of the instant appeal.

I have heard learned counsel for the parties and perused the material on record.

Coming to the first contention of the learned counsel for the appellant-Insurance Company *qua* the involvement of the offending vehicle

being suspect in view of the fact that in the complaint neither the registration number of the offending vehicle was mentioned nor the name of the driver of the offending vehicle, coupled with the fact, that the FIR had been registered after seven months of the accident, is devoid of any merit. The submission made that the eye-witness Nitin was a planted witness, cannot be accepted. It needs to be reiterated that standard of proof in claim petitions filed under the Motor Vehicles Act, cannot be equated with that of criminal cases. In criminal cases, the prosecution has to prove its case beyond reasonable doubt, whereas, in cases before the Motor Accidents Claimants Tribunal, the claimants are only required to prove their case on the touchstone of preponderance of probabilities. It is a matter of record that the injured did receive serious and multiple injuries in the accident in question. Just because there happened to be some delay in naming the offending vehicle, and the eye-witness not accompanying the injured to the hospital, would not in any way raise a question mark about the authenticity of version given by the injured/claimant *qua* the involvement of the offending vehicle in the accident in question. The delay, if any, cannot thus be a ground to suspect the involvement of the offending vehicle in the accident in question. This Court cannot ignore the fact that the injured/claimant received serious injuries for which he remained hospitalized for many months. It is but natural that the injured/claimant would have been in a severe shock, on account of the serious injuries received including amputation of his right leg. Hence, the delay if any in the registration of the FIR cannot be a ground to disbelieve the involvement of the offending vehicle in the accident in question. The next question which arises for consideration of this Court is whether the Tribunal erred in

granting compensation to the injured claimant qua the medical expenses incurred since he had also received money qua the same from his medi-claim policy. This Court is unable to agree with the submissions made by learned counsel for the appellant-Insurance Company. The Hon'ble Supreme Court in ***Helen C. Rebello Vs. Maharashtra State Road Transport Corporation, 1998 AIR (SC) 3191***, has categorically held that the compensation awarded under the Motor Vehicles Act is statutory in nature, whereas, under an insurance policy, it is akin to a contract between the insured and the insurer. In an insurance policy, the insured contributes his own money, whereas, the amount of compensation received under the Motor Vehicles Act, on account of an injury received or death is not a result of any contribution made by the claimants. It would be relevant to reproduce the observations of the Apex Court in ***Helen C. Rebello's case (supra)***:-

“This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on account of

one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law.”

As a sequel to the above discussion, this Court does not find any error in the impugned award.

Consequently, the instant appeal fails and stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 19, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No