

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3251 of 2016 (O&M)
Date of decision: 30th November, 2022

The New India Assurance Company Ltd.
... Appellant

Versus

Harpreet Kaur & others
... Respondents

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.C. Gupta, Advocate for the appellant.
Ms. Ekta Thakur, Advocate for respondent No.1.
Mr. Vishal Ahuja, Advocate for respondents No.2 and 3.

MANJARI NEHRU KAUL, J.

The instant appeal has been filed by the Insurance Company to impugn the award dated 17.11.2015 passed by Motor Accident Claims Tribunal, Chandigarh, wherein the following compensation was awarded to the injured/claimant/respondent No.1 on account of the injuries sustained by her in a motor vehicular accident which took place on 11.10.2013, when she was pillion riding on the scooter and returning home from her office:-

Sr. No.	Head	Amount
1.	Monthly income	₹ 14,500/-
2.	Future prospects @ 50%	₹ 7,250/-
3.	Total income	₹ 21,750/-
4.	Monthly loss of income @ 15%	₹ 3,262.50
5.	Annual loss of income	₹ 39,150/-

6.	Multiplier	17
7.	Total amount	₹ 6,65,550/-
8.	Special diet & attendant charges	₹ 30,000/-
9.	Transport charges	₹ 15,000/-
10.	Pain and suffering	₹ 50,000/-
	Total compensation	₹ 7,60,550/-

The amount of compensation along with interest @ 7.5% p.a. was ordered to be paid by the respondents in the claim petition, jointly and severally.

As per the pleaded case of the injured/claimant, on the fateful day, i.e. 11.10.2013, she was pillion riding an Activa scooter bearing registration number HR03-K-2409 when at about 6:00 p.m. the offending truck bearing registration number HR-37-2258 came from behind in a rash and negligent manner driven by respondent No.2 Swami Nath and collided with their scooter. As a result of the collision, the injured claimant fell down and received multiple injuries on her person. An FIR dated 12.10.2013 (Ex.P1) was also got registered.

Learned counsel for the appellant Insurance Company has vehemently argued that the driver of the offending vehicle was not holding a valid and effective driving license, route permit etc. and since he was plying the offending vehicle in contravention of the provisions of the Motor Vehicles Act, 1988, the Insurance Company could not have been fastened with the liability to indemnify the insured. Learned counsel has submitted that it was evidently also a case of false

implication as no convincing evidence was led in support of the offending vehicle being involved in the accident in question.

Learned counsel for the appellant Insurance Company has further submitted that the claimant was duly registered under Employees' State Insurance Act (hereinafter referred to as, 'ESI') and had also received compensation under the said Act, therefore, she was barred from claiming any compensation qua the injuries and permanent disability suffered by her in the accident in question, from the Motor Accident Claims Tribunal. In support, learned counsel has placed reliance upon **'National Insurance Company Ltd. vs. Hamida Khatoon'** 2009(13) SCC 361. He has further submitted that the Tribunal had fallen into an error in awarding 50% towards future prospects instead of 40% as per the ratio of law laid down in **'Sarla Verma & others v. Delhi Transport Corporation & another'** 2009(6) SCC 121; **'Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & others'** 2018(4) RCR (Civil) 333; and **'National Insurance Co. vs. Pranay Sethi'** 2017 SCC 270.

Per contra, learned counsel for the respondent/claimant has vehemently opposed the prayer and submissions made by the counsel opposite. She has urged that the injured claimant was an unmarried girl aged about 29 years and on account of the accident in question, which had taken place due to rash and negligent driving of the offending vehicle, she had suffered 15% permanent disability on her left ankle.

Learned counsel has further submitted that on account of the permanent

disability, she would continue to face difficulty while doing her daily chores including climbing stairs and squatting which finds due corroboration from the opinion of the doctor, hence it would be an obstacle for the rest of her life. Learned counsel has also submitted that the compensation, which had been claimed and received by the injured claimant under the ESI Act, would in no manner come in her way from claiming compensation from the Motor Accident Claims Tribunal precisely for the reason that firstly the accident in question had not taken place at the work place of the injured claimant or even during her working hours, but had admittedly taken place when she was returning home after her work hours. Learned counsel has thus submitted that since it was not an injury received by the claimant during the course of her employment, it would not bar her from filing a claim petition under the Motor Vehicles Act, 1988. In support of her submissions, learned counsel has placed reliance upon '**Mobin Khan vs. Neeraj Kumar**' **2013(8) SCT 484**.

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

This Court does not find any merit in the submissions made by the learned counsel for the appellant Insurance Company that the offending vehicle had been falsely planted to extract compensation. This Court also does not find any force in the submissions made by the learned counsel for the appellant Insurance Company qua the offending vehicle plying in contravention of the provisions of the Motor Vehicles

Act, 1988, as admittedly no cogent evidence was brought to the notice of this Court, in support thereof, by the learned counsel.

This Court, however, finds merit in the submissions of the learned counsel for the appellant that the Tribunal had fallen into an error in awarding 50% towards future prospects instead of 40% as per the settled law. The compensation with respect to the future prospects would thus, stand scaled down to 40%.

The submissions made by learned counsel for the appellant Insurance Company that since the injured claimant had been compensated under the ESI Act, and hence, she did not deserve to be compensated before the Motor Accident Claims Tribunal, is devoid of any merit. It is a matter of record that the accident in question occurred while the injured claimant was on her way back home after her office hours and further the injured claimant had not even made any claim against the employer in the claim petition. In the circumstances, the accident did not take place during the course of her employment. The bar under Section 53 of the ESI Act would only operate when compensation is claimed against the employer of the injured claimant. The injured claimant was therefore entitled to seek a claim under the Motor Vehicles Act, 1988.

A Co-ordinate Bench of this Court, in '**Nanku Ram vs. Mohan Singh & others**' 2014 (3) PLR 453, held as under:-

"2. I had the assistance of the counsel for the appellant and also Mr. Amit Rawal, Senior Advocate, as

Amicus Curiae. Both the counsel have brought to my attention the decisions of the Supreme Court and other High Courts.

The Supreme Court in its decision in Western India Plywood Limited v. P. Ashokan-1997 (7) SCC 638 held that the object of Section 53 of the Act was to save the employer from facing more than one claim in relation to the same accident. The Supreme Court left the question open of what would happen if the claim is not made against the employer but was made against the tortfeasor of a vehicle who had caused the accident that resulted in disability. In paragraph 14 of the judgment, the Supreme Court left the issue open since the Supreme Court was considering a claim where the claim was not against a third party but against the employer himself. That marked, according to the counsel for the appellant, the difference from this case and which has been considered in a Division Bench of the Karnataka High Court in Shridevi v. S. Sarojini-2011 ACJ 161 and yet another Division Bench of the Kerala High Court in K.P. Kuriakose v. G. Santhosh Kumar and others-2010 ACJ 662. In both the decisions, the respective Benches have held that an injured receiving disablement benefits under the ESI Act would be barred from making a claim against his employer in respect of the same injury before the MV Act but a claim for compensation in tort against a stranger can coexist with claims for benefits under the ESI Act. This court itself had taken a similar view but without reference to the said two decisions stated

before me now in Mobin Khan v. Neeraj Kumar-2013(2) PLR 56 that Section 53 stipulated a bar to an employee only in case of employment injury and the plea that the claim (sic claimant) would be barred from prosecuting a petition under the MV Act was rejected. I am in respectful agreement with the view taken by the Division Benches and hold that the petition was not barred."

The case law relied upon by learned counsel for the appellant could not come to his rescue as the injury in the present case was not caused during the course of employment and thus, it cannot be termed as employment injury.

As a sequel to the above, the compensation awarded by the Tribunal is reassessed as under:

Sr. No.	Head		Amount
1.	Loss of future income (₹ 6,21,180/-)	Monthly income	₹ 14,500/-
		Annual income	₹ 1,74,000/-
		Addition of 40% for future prospects (69,600 + 1,74,000)	₹ 2,43,600/-
		Multiplier (2,43,600 x 17)	₹ 41,41,200/-
		Functional disability	15%
		Total loss of income	₹ 6,21,180/-
2.	Special diet & attendant charges		₹ 30,000/-
3.	Transport charges		₹ 15,000/-
4.	Pain and suffering		₹ 50,000/-
	Total compensation		₹ 7,16,180/-

The claimant/respondent No.1 is, therefore, entitled to a total compensation of ₹ 7,16,180/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

With these modifications, the instant appeal stands disposed of.

(MANJARI NEHRU KAUL)
JUDGE

November 30, 2022
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No