

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 1548/2019 (O&M)

Date of decision: 31/01/2023

New India Assurance Company Limited.

.....Appellant

Vs.

Satwant Singh deceased through his LRs and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Aseem Aggarwal, Advocate for the appellant-Ins.Co.
 Mr.Vivek Suri, Advocate for respondent no.1.

Nidhi Gupta, J.

Present appeal has been filed by the Insurance Company against the Award dated 3.12.2018 passed by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.44,37,456/- has been granted to the respondent/ injured-claimant in MACP No.17/2017 filed u/s 166 of the Motor Vehicles Act.

Brief facts of the case as pleaded by the respondent-claimant before the learned Tribunal are that on 18.11.2013 the claimant was going to his village on the Ambala-Jagadhri Road on his motorcycle bearing

registration number HR-04-B-0214 and was driving on the correct left hand side of the road at moderate speed. When he reached Rurki turn, an Alto Car bearing registration NO. HR-01-U-1454 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.2 herein, in a rash and negligent manner and at a very high speed came from the opposite side on the extreme left side of the road and hit the motorcycle of the claimant. As a result of the impact, the claimant fell on the road and received severe head injuries, and remained hospitalized thereafter for a considerable period.

The learned Tribunal on appraisal of all the pleadings and evidence placed before it concluded that the claimant had been injured in the said roadside motor-vehicular accident that took place on 18.11.2013 due to the rash and negligent driving of the offending vehicle by respondent No. 2, which vehicle is owned by respondent no.3 herein, and insured by the appellant Insurance Company. The learned Tribunal concluded that the offending vehicle hit the motorcycle of the claimant from front by coming on the wrong side of the road. Accordingly, the learned Tribunal assessed the compensation payable to the claimant to be Rs.44,37,456/- along with interest at the rate of 7.5% per annum from the date of institution of the petition till realization. Further, the Tribunal held the appellant Insurance Company along with the respondents No. 2 and 3 herein to be jointly and severally liable to pay the compensation.

To assail the Award, it is submitted by the learned counsel for the Appellant Insurance Company that the claimant is an Army personnel who was injured in the accident in question. However, the learned Tribunal lost sight of the fact that the respondent driver has been acquitted by the Criminal Court. It is submitted that this proves that there was no rashness or negligence

on the part of the respondent driver and therefore, no liability could have been fastened upon the appellant.

It is further submitted that the quantum of compensation is exorbitant in the facts of the case. It is stated that the learned Tribunal was in error in taking the disability of the claimant to be 60% as, the claimant had not produced, nor proved any disability certificate issued by any reliable Civil Hospital, nor had he examined any doctor in this regard. It is submitted that in such circumstances, the learned Tribunal was in error in taking the disability of the claimant to be 60% and awarding compensation on such basis.

It is submitted that when the claimant was invalidated from service he was produced before the Release Medical Board (hereinafter referred to as 'the RMB') constituted by the Army Authorities, which had declared that the appellant was permanently disabled to the extent of 60%. It is submitted that the Tribunal has blindly relied upon the report of the RMB, however, the Id. Tribunal has failed to appreciate that the disability certificate issued by the RMB of Army authorities is for the purpose of army disability pension only and involves different standards of assessment, keeping in view peculiar nature of duty that an army man has to perform. It is submitted that the same cannot be held to be applicable for purposes of civil life or the Motor Vehicle Act.

It is further submitted that the disability certificate issued by the RMB was not admissible also in view of the fact that the appellant was given no opportunity whatsoever, to cross examine the Doctors of the RMB who had opined regarding the disability of the claimant. It is submitted that in these circumstances the Tribunal was in error in relying upon the evidence of the RMB. It is stated that the said disability certificate had not been proved

in accordance with law, and thus, the Tribunal was in error in placing reliance upon the same for assessing the compensation. It is vehemently submitted that in order to derive any benefit from the disability certificate the claimant was required to prove the same.

It is further submitted that in any event, even as per the RMB, the injuries suffered by the claimant would affect only his Army life and not his civil life, and it had also been noted by the RMB that the said permanent disability will not affect the life of the claimant in routine. Learned counsel for the appellant Insurance Company also refers to the Disability Pension Claim Certificate wherein it has been recorded by the President of the Medical Board that the assessment of disability of the claimant is only recommendatory in nature and subject to review/revision by the competent medical authority. To support his contentions, Learned counsel relies upon **A.P.S.R.T.C. v P. Thirupal Reddy, Law Finder Doc Id # 195529; Pinder Singh v Devinder Singh and others, Law Finder Doc Id # 130185; and Ramandeep v Karamjit Singh and others, Law Finder Doc Id # 833784.**

In response, learned counsel for the injured-claimant Satwant Singh inter-alia submitted that the claimant has expired during the pendency of the present Appeal, and it is his Legal Representatives who are now before this Court. Learned counsel, very ably and persuasively took me through the extensive medical record produced by the claimant before the Tribunal to demonstrate that the findings of the RMB are unimpeachable having been given by High-ranking Officers of the Army after conducting due investigation / inquiry into the case, and after following stringent due process. It is submitted by the learned counsel for the claimant/respondent no.1 that in fact, this Court under Order 41 Rule 33 CPC can take judicial notice of the

fact that Tribunal has assessed the monthly loss of income of the claimant as only 60% in view of the 60% disability, and therefore, enhance the compensation on this ground as permanent disability of the claimant had been assessed as 80%. It is further pointed out that vide order dated 16.12.2019 this Court had stayed the entire amount of Award, and the respondents had received nothing till date.

I have heard learned counsel for the parties and gone through the record in detail with their able assistance and have given thoughtful consideration to the rival contentions advanced by both the parties. I find myself in agreement with the submissions made on behalf of the counsel for respondent no.1/claimant.

The accident and severe head injury suffered by the claimant are not disputed. The only challenge in this Appeal is to the quantum of compensation awarded to the claimant.

A perusal of the record of the case establishes without doubt that the claimant had suffered “*severe head injury*” and had remained admitted in Command Hospital, Chandimandir from 18.11.2013 to 3.12.2013 (Discharge Slip Ex. P-2); from 17.12.2013 to 21.12.2013 (Discharge Slip Ex.P3); and from 1.2.2014 to 26.2.2014 (Discharge Slip Ex.P5). It is also not in dispute that the Medical Board, at page 101 of the LCR, had opined that the claimant had suffered functional disability to the extent of 60% for life.

In my view, it will be helpful at this stage to refer the record in detail in order to appraise the process and procedure adopted by the RMB and the Army Authorities to arrive at the above said findings which have been relied upon by the Tribunal in determining the compensation.

Ex.P1, at page 45 of the LCR, is the ‘Summons to Witness’ issued by an Officer of the Rank of Colonel whereby PW3 Lance Naik Ashish Kumar was deputed to attend to the present case before the Tribunal and who had produced the entire hospital record Ex. P4/1 of the treatment undergone by the claimant. Thus, a senior officer of the army had deputed PW3 to produce the record, some of which is mentioned hereinbelow, before the Tribunal.

Ex.I from page 55 to 69 of the LCR, is the Report of the ‘Court of Inquiry’ which was constituted to investigate into the circumstances under which the claimant had got ‘Severe Head Injury’. The Presiding Officer of said Court of Inquiry was a Captain of the Indian Army, and a Subedar and Naib Subedar were Members of the said Court of Inquiry. After conducting an inquiry into the incident, the said Court of Inquiry returned the finding (at page 65 of the LCR), that the claimant had *“met with an accident as a speeding vehicle hit his motorbike. He was admitted to MH Ambala from where he was referred to CH (WC) Chandimandir on 18th November 2013. The individual’s head got operated and he proceeded on 42 days of sick leave.”* The report of injury sustained by the claimant were also attached. Further, though the claimant had sustained the injuries during casual leave yet, vide Opinion of the Court of Inquiry at page 67 of the LCR, the injuries suffered by the claimant were held attributable to military service. This report of the Court of Inquiry was duly signed by the members of the Court of Inquiry, which as stated above were of the rank of Captain, Subedar and Naib Subedar. Further, this Report / Opinion of the Court of Inquiry was also endorsed by the Commanding Officer vide remarks dated 10.9.2014 recorded at page 69 of the LCR.

Thereafter, a Medical Board was constituted, the proceedings of which are recorded as Ex.II at page 71 of the LCR, wherein in Column No.14 the fitness of the claimant prior to present Medical Board is recorded as ‘Shape I’ which signifies excellent physical fitness. However, after the accident in Column No.15, as well as in column of ‘Diagnosis’, it has been recorded that the claimant has suffered severe head injury which has been operated upon as a result of which he has now been placed in ‘Low Medical Category’, signifying very low or negligible fitness.

A perusal of Ex. P6 at page 123 of the LCR, which is the Hospital Discharge Slip dated 26.2.2014, shows that it has been recommended therein that after discharge the claimant had been advised to ‘*avoid prolonged standing and back care and lumbar spinal exercise and avoid bending forward and lifting heavy weight*’. A perusal of Ex. P7 at page 125 of the LCR, which is also part of the Medical Board proceedings, shows that in Column No.20 the percentage of disability suffered by the claimant has been recorded as ‘permanent disability of 80%.’

Further, a perusal of one of the ‘List of Documents filed before the Id. Tribunal’ on 26.2.2018 is available at page 121 of the LCR, which shows that the claimant had remained hospitalized and had undergone treatment for years after the accident. Said list is reproduced hereinbelow:

IN THE COURT OF SH. VIKRAM AGGARWAL, MACT AMBALA		
SATWANT SINGH V SUNIL KUMAR		
DOCUMENTS FILED ON 26.02.2018		
S.No.	Detail	Period

1	Hospital Discharge Slip	01/02/2014 to 26.2.2014
02.	Medical Board Proceedings	
03	FIR	
04	MH Ramgarh Cantt. Discharge Slip	15/09/2014 to 23/09/2014
05	Eden Critical Care Hospital Discharge Summary	08/06/2017 to 27/06/2017
06	Grecian Super-Speciality Hospital discharge slip	05/10/2016 to 08/10/2016
07	Eden Critical Care Hospital Discharge Summary	18/01/2017 to 24/01/2017
08	Command Hospital (CC)Lucknow Discharge Slip	17/8/2014 to 28/8/2014
09	MH Ramgarh Cantt. Discharge Slip	5/8/2014 to 16/8/2014
10	Report on Accident	
11	CH(WC) Chandimandir Medical Case Sheet	9/8/2014 to 13/9/2014
12	Medical Case Sheet	

Thus, from the above facts it is evident that extensive detailed medical record running into over 50 pages was presented and proved before the Tribunal, which was duly endorsed by Senior Army Officers. In my view, from the above noted facts it stands established that the Medical Board had given findings regarding the condition of the claimant only after considering

the case of the claimant in great and minute detail. Thus, the credentials of the Medical Board instituted by the Senior Officers of the Army Authorities including a Captain, Lieutenant Colonel, and President of the said Medical Board being of the rank of Colonel, cannot be impugned or doubted. I have considered the said record in great detail and gone through every page and it is clear that the opinion contained therein cannot be doubted.

Learned counsel for the appellant has placed great reliance upon the “Civil employment certificate” given to the claimant wherein it has been recorded that the injury suffered by the claimant “*will not interfere with the performance of sedentary or suitable civil employment*” at page 107 of the LCR. However, learned counsel is unable to refute or controvert the deposition of wife of the claimant PW1 who has stated that mental condition of the claimant was that of children of 5-6 years old and that she was not in a position to leave the claimant alone as he would pick a fight even with their 8-year old son. Moreover, it is also a fact that the claimant was categorized as ‘low medical category’; and has been advised to ‘avoid prolonged standing and back care and lumbar spinal exercise and avoid bending forward and lifting heavy weight’; and as per Ex.P7 permanent disability has been recorded to the extent of 80%.

In this regard the findings of the learned Tribunal are extracted hereinbelow: -

“17. It is an admitted fact that the claimant suffered a very serious accident. It is also an admitted fact that he was employed with the Indian Army at the time of the accident. PW1 Jaswinder Kaur is the wife of the claimant, who has deposed about the accident and the treatment given to her husband while he remained in the hospital. She also stated that mental condition of the claimant was

equivalent to that of a child of 5/6 years and that it was not possible to leave him alone at home as he would pick up a fight with his minor son aged about 08 years. In the cross-examination, she has admitted that her husband was getting 23,000/- per month as pension and that he had got 20,00,000/- from the Army authorities also. PW3 L/Nk Ashish Kumar deposed about the admission of the claimant in Command Hospital, Chandimandir from 18.11.2013 to 03.12.2013 with severe head injury. He proved the discharge slip Ex.P2. He further deposed that thereafter the claimant remained admitted in the hospital from 17.12.2013 to 21.12.2013 and proved the discharge slip Ex.P3. He also produced the entire record of category and treatment as Ex.P4. He further deposed that the claimant was again admitted in the Command Hospital on 01.02.2014 and was discharged on 26.02.2014. He proved the discharge slip Ex.P5. All the documents were objected to on the mode of proof. The objection is devoid of merit and is rejected since in the case under the M.V. Act, strict rules of evidence do not apply and it is more in the nature of an inquiry. This Court/Tribunal absolutely has no reason to disbelieve the statement of PW3 L/Nk Ashish Kumar and the record produced by him. It has to be borne in mind that he is an Army personnel duly authorised by the Army authorities and therefore, there is no occasion for this Court/Tribunal to disbelieve his statement. Still further, PW4 Hav. Parbhjot Singh who produced the record from the Sikh Regiment which is running into 32 pages pages alongwith authorization letter Ex. PW4/1. Ex.PW4/1 stated that prior to the discharge of the claimant from the service, the claimant was brought before a duly constituted Release Medical Board at Command Hospital Western Command, Chandimandir, where his disability was assessed at 60% for life as attributable to military service. He proved the proceedings as

Ex.P5 alongwith the record produced by him. This letter Ex.PW4/1 was issued by the concerned Lt. Col. who was the Chief Record Officer. Under the circumstances, the non-examination of a doctor from the Medical Board would not affect the case of the claimant. No doubt, it is settled law that to prove the disability, a doctor, who was a member of the Board which assessed the disability, should be examined. However, once the record has been produced by the Army authorities, as discussed earlier also, this Court would have absolutely no hesitation in believing the same”.

Accordingly, in view of the above findings, I reiterate my agreement with the observations of the learned Tribunal that there is no occasion to doubt the medical record Ex.P4 produced by Lance Naik Ashish Kumar PW-3 as he is an Army personnel duly authorized by Senior Army Authorities.

Even otherwise, the objections made on behalf of the counsel for the appellant regarding the inadmissibility of the said medical record produced by the claimant are to be rejected in view of the fact that it was open to the appellant to have summoned the Doctors or any other Member of the Medical Board. There was nothing forbidding the appellant Insurance Company to summon any of the Doctors from the Medical Board to verify or discard the evidence produced by the claimants. Therefore, it does not lie in the mouth of counsel for the appellant-Insurance Company to submit that the said record is not reliable. In the present case responsible Doctors and other Senior Officers of the Army have given medical opinion regarding the injuries suffered by the claimant and I find that no cogent reasons have been given by the appellant Insurance Company to merit rejection of the same.

Even otherwise it is well established position in law that Motor Vehicles Act is a beneficial legislation and cases thereunder are to be decided on preponderance of probabilities and strict rules of criminal trial are not applicable thereto. The judgments relied upon by the learned counsel for the appellant Insurance Company are distinguishable as the facts and circumstances of the relied upon cases are diametrically different from the facts and circumstances of the present case.

For the reasons stated above, I find no merit in this Appeal, and the same is hereby dismissed.

31/01/2023	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No