

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

103+276

CM-5641-CII-2022 in
CM-6941-CII-2022 in/and
FAO No.772 of 2021 (O&M)
DATE OF DECISION : 20th FEBRUARY, 2023

New India Assurance Company Ltd.

.... Appellant

Versus

Anil Kumar and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harsh Aggarwal, Advocate and
Mr. Aseem Aggarwal, Advocate,
for the appellant.

Mr. Rahul Sharma, Advocate,
for respondent No.1.

Mr. U.M. Khan, Advocate for
Mr. Anupam Singla, Advocate,
for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

CM-5641-CII-2022

This is an application for preponement of the application for stay, as well as, the main case to an early date.

Since, the main case itself is being decided today, therefore, the present application has been rendered infructuous and is disposed of as such.

CM-6940-CII-2021

Allowed, as prayed for.

Main Appeal

The present appeal has been filed by the appellant-Insurance Company against the award dated 03.12.2020 passed by the Motor Accident Claims Tribunal, Panchkula (for short, the Tribunal), whereby an amount of ₹1,59,68,300/- along with interest has been awarded as compensation to the claimant Anil Kumar on account of injuries suffered by him in a motor vehicle accident.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts of this case, as mentioned in the file are; that on 18.11.2016, the claimant Anil Kumar was returning to his home in his car bearing registration No.HR-32-E-0427 after finishing his work from the factory at Barwala and he himself was driving the said car; on the correct left hand side of the road at a moderate speed. When he reached near Stylam Company on Barwala-Panchkula Highway, Tehsil and District Panchkula, then at about 9.00 PM, a swift car bearing registration No.HR-03-E-0024 (hereinafter referred to as the 'offending vehicle') came from Ramgarh side, which was being driven by respondent No.1 at a high speed and in a rash and negligent manner. The said car directly hit the car of the claimant on the front side; after coming on the wrong side. Both the cars were badly damaged and the occupants of both the cars suffered injuries. After the accident, the claimant was taken to General Hospital, Sector-6, Panchkula, from where he was referred to PGI, Chandigarh. But later on he was shifted to Fortis Hospital, Mohali where he was treated. In the said accident, the claimant suffered several injuries

on eye, chest, abdomen and also suffered fractures of right femur, tibia, fibula, patella and fractures of ribs of right side, right thigh, right knee and right ankle. For treatment, he remained in Fortis Hospital from 18.11.2016 to 29.12.2016. During this admission period of about 42 days in critical care centre, he was operated upon and implants were inserted in the body. The claimant was still under treatment. Regarding the said accident, an FIR No.299 dated 23.11.2016 under Sections 279, 337, 427 IPC at Police Station Chandimandir was also registered.

Asserting these facts, the claim petition was filed by the claimant; claiming therein that the he was a businessman and running a small scale industry at Plot No.79, HSIIDC, Alipur, Barwala and had employed four employees to which he was paying about ₹50,000/- per month as salary. Due to the injuries suffered by the claimant, he had become permanent disabled and paralysed. The claimant spent about an amount of ₹50,00,000/- on his treatment, medicines, transportation, special diet etc. Accordingly the claimant claimed an amount of ₹5.00 Crores as compensation on account of the said injuries.

Upon notice respondent No.1 filed written statement asserting therein that there was no proof that the claimaint was earning ₹50,000/- per month. No accident had taken place at the time and place mentioned by the claimant. The FIR had been got registered just to grab the compensation amount from the respondent. In any case, the offending car was insured with the respondent-insurance company. Therefore, he was not liable for any payment of compensation. The respondent-insurance company filed separate written statement asserting therein that the claim petition itself was not maintainable being vague. No such

accident had taken place with the offending vehicle bearing registration No.HR-03-E-0024. Even if, any accident had taken place, that had happened only because of the negligence of the claimant himself. Moreover, the driver of the alleged offending vehicle was not having a valid and effective driving licence at the time of accident.

To substantiate his assertions, the claimant examined as many as eight witnesses, including the treating doctor, the doctor who prepared the disability certificate, as well as, the persons who were working with the claimant as his employees. On the other hand, respondent No.1 tendered documents Ex.R-4 and R-5 and closed his evidence. The respondent-insurance company tendered documents i.e. Ex.R-1 to Ex. R-3 and closed the evidence by making separate statement.

After appreciating the evidence on file and after hearing the counsel for the parties, the Tribunal has granted an amount of ₹1,59,68,300/-. This amount included an amount of ₹62,35,600/- towards loss of income, ₹20,40,000/- as attendant charges, ₹1,20,000/- towards permanent physical disability, ₹3,00,000/- towards pain & suffering, ₹5,00,000/- for future treatment, ₹53,900/- for transportation charges, ₹66,68,800/- for medical and ₹50,000/- for nutritious diet. While awarding the above said compensation, the Tribunal has taken the income of the claimant at ₹3,66,800/- per annum. Multiplier of 17 has been applied.

Arguing the case, learned counsel for the appellant has submitted that the claimant himself was negligent in driving his car; because he was found drunk at the time of the accident when he was first taken to the hospital. The MLR shows this fact as such. Therefore, the

claimant himself being negligent, was not entitled to any compensation. No other evidence has been led by the claimant to show that the driver of the offending vehicle was negligent. The counsel has further submitted that the claimant did not even know the name of the driver of the offending vehicle nor he knew the width of the road where he was driving. Moreover, for the same accident, undisputably, even an FIR was got registered against the respondent No.1, however, while appearing in the criminal trial even the witness of the claimant has submitted that it was the claimant who himself was negligent. The counsel has further submitted that the Tribunal has wrong in law in awarding the amount for physical disability and loss of income separately. Moreover, even the income has wrongly been assessed by taking the functional disability of the claimant to be 100% despite the fact that the physical disability was 60%.

On the other hand, the counsel for the respondent-claimant has submitted that the compensation has rightly been awarded by the Tribunal. Rather the same deserves to be enhanced; keeping in view the persistent and continued requirement of treatment by the claimant. The counsel has further submitted that the argument of the counsel for the appellant qua the claimant being negligent is not supported by any material. Even the consuming of any liquor by the claimant at the time of accident as such is not proved on record; by any means. Even the alleged MLR is not forming part of the record before the Tribunal. Hence, all the arguments raised by the counsel for the appellant in that regard are totally non-sustainable. The counsel has further submitted that the claimant, while driving on road, is not supposed to know the exact width of the

road. Otherwise also, this fact is totally irrelevant so far as the claim petition is concerned. Any aspect of criminal case is not relevant for decision of claim petition. The claim petition is to be decided as per the evidence led before the Tribunal. As reply to the argument of the counsel for the appellant qua functional disability, learned counsel for the respondent has submitted that since the claimant cannot even stand on his own, therefore, he is totally disabled and bed ridden. Hence, the Tribunal has rightly taken the functional disability of the claimant to be 100%.

Having heard the counsel for the parties, this Court does not find any substance in the arguments raised by the counsel for the appellant. The first argument raised by the counsel for the appellant is qua the claimant being in a drunken condition at the time of the accident. However, no such material has been placed before the Tribunal. Not only that, when the claimant appeared as a witness before the Tribunal, even that question was not directly put to him. Rather, in answer to the another question put in cross-examination, the claimant has even deposed that he never consumes liquor. Therefore, the assertion of the counsel for the appellant that the claimant was drunk at the time of the accident is not substantiated from any material on record. The alleged MLR is not even led in evidence before the Tribunal. Therefore, the argument of the counsel for the appellant, in that regard, is liable to be noted only to be rejected.

So far as the argument of the counsel for the appellant qua quantum is concerned, it need no emphasis that Hon'ble the Supreme Court has already held in the case of ***Raj Kumar Versus Ajay Kumar, (2010) 12 Scale 265***, that in injury case, the claimant would be entitled to

compensation on both the counts, namely, physical disability of the body, as well as, for loss of income arising therefrom. Therefore, on that count, this Court does not find any illegality in the award passed by the Tribunal. So far as the degree of disability of the claimant is concerned, undisputably, it is 60% loco-motor disability. However, it has come in evidence from the treating doctor, as well as, in the evidence of the doctor who issued the disability certificate that the claimant would not be able to live the normal life and he would need an attendant throughout his life. Once a person cannot live a normal life and he cannot do anything without an attendant, then in the opinion of this Court as well, the disability of the claimant has rightly been taken as 100% functional disability. No interference on that count is also called for; on the part of this Court.

The last argument of the counsel for the appellant qua negligence of claimant also does not merit acceptance for the reason that no evidence has been led on file to show that it was the claimant who himself was negligent. The claimant has duly appeared as a witness before the Tribunal and deposed that the accident had happened on account of negligence on the part of the driver of the offending vehicle. He has faced a lengthy cross-examination. Despite that nothing could be extracted in his testimony to impeach his deposition as to negligence of the respondent No.1. On the other hand, neither the driver of the offending vehicle has stepped into the witness box nor has the insurance company produced any other person; so as to face cross-examination on the part of the claimant qua negligence involved in the matter. Therefore, this argument is also liable to be rejected. So far as the argument of the

counsel for the appellant being not in knowledge of the name of the driver of the offending vehicle and not knowing the exact width of the road is concerned, this Court finds both the aspects to be totally irrelevant. When the accident has taken place with an unknown vehicle, the claimant was not required to have any prior knowledge of the name of the driver. Not knowing the road width, by any means, is altogether an irrelevant fact and does not even deserve to be noticed.

Although the counsel for the appellant has emphasized the fact that even the person who was examined as witness by the claimant in claim petition, while appearing as witness in the criminal case, has deposed that the driver of the offending vehicle was not negligent, rather it was the claimant himself who was negligent, however, this is of no help to the case of the appellant. This Court has already held in the case of ***United India Insurance Company Limited, Panipat Versus Mamta and others, FAO No.5296 of 2022, decided on 06.01.2023***, that even registration of criminal case is not *sine qua non* for maintaining claim petition. The criminal case is relevant in claim petition only as a collateral fact to corroborate the factum of accident. Beyond that the criminal case or any aspect of the same is totally irrelevant. Moreover, the claimant has no say in the criminal case. The prosecution is managed and controlled by the police and the prosecution, who may not necessarily, present the facts in the criminal case as was stated to them by the claimant. Even the witness can be won-over by the accused to secure his acquittal in the criminal case. However, that could not be any ground to defeat the claim petition. Hence even this argument of the counsel for the appellant does not have any force.

No other argument was raised.

In view of the above, finding no merit in the present appeal,
the same is dismissed.

All pending miscellaneous application(s) stands disposed of
as such.

20th FEBRUARY, 2023
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>