2023:PHHC:124152

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-588-1990 (O&M)
Date of Decision: September 20, 2023

Manoj Kumar

...Appellant

VERSUS

New India Assurance Company

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.B.R.Rana, Advocate
for the appellant.

Mr.R.K.Bashamboo, Advocate
for the respondent.

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ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant Manoj Kumar, thereby, seeking enhancement of the compensation, awarded to him, on account of injuries sustained by him, in a motor vehicular accident, which took place on 19.02.1987.

On appraisal of the evidence adduced, learned Tribunal had granted compensation to the extent of Rs.5,000/-, to the appellant-claimant, on account of injuries sustained by him. However, the said amount was stated to be recoverable from respondent-The New India Assurance Company, together with the interest @ 12% per annum.

So far as the fact of accident and the liability, so fastened upon

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the insurance company, as such, is concerned, it is pertinent to mention that no counter appeal has been filed by the insurance company or by Amrik Singh, who was driver-cum-owner of the offending car. As such, the findings, relating to the aforesaid issue has attained finality.

At the very outset, learned counsel for the insurance company has raised the question of maintainability of the appeal. He submits that even though, claim petition was filed under the provisions of Section 110-A of the old Motor Vehicles Act, but however, the appeal has been filed in the year 1990, under the new Motor Vehicles Act. In the light of the same, it is submitted that since the amount of compensation, so granted is less than, Rs.10,000/-, therefore, the appeal, as such, is not maintainable.

However, the aforesaid submission is bereft of merits. Firstly, it is pertinent to mention that since the Award had been passed under the old Act, therefore, even though, the nomenclature of the appeal mentions about the appeal having filed under the new Act, but however, this is a technical flaw. For all intents and purposes, the appeal in hand, is to be considered under the old Act only and considering it to be so and considering the amount of compensation, the appeal, as such, is maintainable. Not only this, even if, as submitted by learned counsel for the insurance company, it is taken to be appeal, required to be filed under the new Act also, then also, it cannot be held that appeal is not maintainable. Section 173 of the Motor Vehicles Act, states about, which reads as follows:-

> *'(1) ……*
> *(2) No appeal shall lie against any award of a Claim Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees.'*

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In the case under consideration, in the present appeal, at first instance, in the claim petition, the claimant had sought compensation, to the extent of Rs.2 lakh, but however, he was granted compensation, to the extent of Rs.5,000/-. Likewise, it is important to mention that even, the appellant has filed the present appeal, thereby, seeking enhancement of compensation, to the extent of Rs.2 lakh.

Considering the said amount, as so asserted, the appeal, as such, is maintainable. In this regard, reliance has been placed upon ***Pala Ram vs. Punjab Roadways & Anr., 2005(30) RCR (Civil) 144***. As such, the appeal in hand, is held to be maintainable.

In the given circumstances, there is no necessity to dilate on the facts of manner of taking place of the same. Suffice to consider the rashness and negligence, imputed upon Amrik Singh, who was driver-cum-owner of the offending car bearing registration No.PUR-4370.

It is categoric assertion of the appellant-claimant that on account of the accident in question, he had fractured his collar bone and received multiple injuries, which permanently, disabled him and he remained under treatment for two months and had spent Rs.2000/- on medicines. However, on the basis of the evidence adduced, learned Tribunal had rightly concluded about the version of the appellant having been belied by the medical evidence, produced by him. PW-1 Dr.B.N.Aggarwal, had radiologically examined the appellant-claimant and he found fracture of the right clavicle with the evidence of callus. He further deposed that fracture is of the duration of two weeks and it was not caused on 19.02.1987, as callus formation was there. There is an opinion dated 28.08.1987 by the Medical

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Officer, wherein, it is stated that the '*X-ray report suggests that the patient must have got fracture of clavicle more than three weeks, prior to his examination on 19.02.1987. So after going through X-ray report, injury No.1 is more than three weeks old; injury No.2 and 3 are within six hours and injury No.4 is complaint*'. Thus, on the basis of the opinion, so given, by the Medical Officer, when there is evidence, as such, coming on record, with regard to the callus formation, which suggests about fracture having taken place, about three weeks back prior to 19.02.1987, it cannot be concluded that this fracture co-relates to the injuries, sustained in the accident in question.

Even, appellant-claimant had not remained in hospital. Though, in the grounds of appeal, a faint attempt has been made to assert about the X-ray examination, having not been conducted, on the day of accident, as X-ray plates were not available, but to substantiate this version, no evidence, as such, has come on record. Also, it is nowhere pleaded or asserted by the appellant about the date and time, when the X-ray examination was got conducted. Therefore, the submissions, now made, with regard to the fracture having suffered, as the outcome of the injuries, sustained in the accident in question, does not stand established. In the given circumstances, learned Tribunal had rightly concluded about the claim for compensation having been highly exaggerated by the claimant and precisely, on this account, for the simple injuries sustained by the appellant, an amount of Rs.5,000/-, as granted by learned Tribunal, is just and appropriate compensation, while considering the aspect of pain and suffering.

Faced with the aforesaid conclusion, learned counsel for the

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insurance company has second string to the bow, on the basis whereof, it is contended that liability has been wrongly fastened, only upon the insurance company and Amrik Singh, driver-cum-owner of the offending car has not been made liable. Even if it be so, suffice to consider that car in question was duly insured with the insurance company, at the relevant time and in the given circumstances, the insurance company, as such, cannot back out from the liability, so fastened upon it. Even if, the insurance company had any grievance with regard to said Amrik Singh, having not been made liable, then also, the insurance company had the option to challenge the same, by way of filing of an appeal, but however, at the relevant time, the insurance company had chosen to remain silent and in these circumstances, the submission, now made, is bereft of merits.

In the light of the aforesaid observations, the impugned Award calls for no interference and as such, the present appeal is hereby dismissed.

September 20, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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

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