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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1746-2023 (O&M)
Date of decision: April 17, 2023

Reliance General Insurance Co.

….Appellant

versus

Ashok Kumar and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sunil Kumar, Advocate for appellant.

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ARUN MONGA, J. (ORAL)

Appellant before this Court is Insurance Company challenging impugned Award dated 05.01.2023 rendered by learned Motor Accidents Claims Tribunal, Hisar (for brevity, 'Tribunal') whereby, claimant was granted compensation of Rs.18,10,846/- for injuries sustained by him, along with interest @ 9% per annum from the date of filing of claim petition till its realization.

2. Succinct facts, as noted by learned Tribunal, are as below:

> *"2. The facts necessary for the disposal of this petition as averred by the petitioner in the present petition are that on 19.03.2019 petitioner was going from Barwala to Hisar on his motorcycle bearing registration No. HR-21H-3722 and at about 3-00 p.m. when he reached near canal of village Talwandi Rana, offending Mahendra Pick-up bearing registration No. HR-62-8530 came from opposite side, which was being driven by respondent No.1 at a very high speed, in a rash and negligent manner and while coming on wrong side, hit into the motor cycle of petitioner. Due to the said impact, the petitioner fell down on the road and sustained multiple serious injuries on his person. After the accident, driver of offending vehicle stopped the offending vehicle but after seeing the critical condition of injured-petitioner, he fled away alongwith offending vehicle. Thereafter, some passers-bye shifted the petitioner to CMC Hospital, Hisar where he was medico-legally examined. The matter was reported to the police and FIR No.188 dated 07.04.2019 under sections 279 and 337 IPC was registered at police station Barwala on the statement of injured-petitioner Ashok.*
> *xx xx xx"*

3. Upon notice, respondents No.2 and 3 herein filed joint written statement raising preliminary objections regarding maintainability, cause of action etc.

3.1. On merits, it was averred that no accident as alleged ever took place. A false FIR was registered by claimant against respondent No.2 in collusion with the local police. The alleged offending vehicle was duly insured with appellant-Insurance Company and respondent No.2 was having a legal and valid driving licence to drive the vehicle in question at the time of accident. Refuting all other averments made in the petition, prayer for dismissal of the claim petition was made.

3.2. Appellant-Insurance Company filed its separate written statement raising preliminary objections regarding petition being not maintainable; claimant having no locus standi & cause of action to file petition and petition was bad for mis-joinder & non-joinder of necessary parties.

3.3. On merits, the factum of accident, age, income of injured and the amount spent on the treatment of injured were denied, as alleged by claimant. The alleged FIR was stated based on false and frivolous facts and the same was lodged with ulterior motive. Claimant had filed petition in collusion with respondents No.2 and 3 herein just to extort money from appellant-insurance company. Driver of the offending vehicle was not holding a valid and effective driving licence at the time of alleged accident and insured had contravened the terms and conditions of the insurance policy. Rest of the pleas were denied and lastly, dismissal of the claim petition was prayed.

4. Learned Tribunal framed the following issues:

> "*1. Whether the accident in issue took place on 19.03.2019 due to rash and negligent driving of vehicle Mahendra Pick up bearing registration No. HR62-8530 by respondent No.1? OPP?*
> *2. If issue No.1 is proved, whether the petitioner is entitled for the compensation on account of injuries received by him in the abovesaid accident. If so to what amount and from whom? OPP*
> *3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR3*
> *4. Whether the insured has violated the terms and conditions of the insurance policy?OPR*
> *5. Relief.*"

5. On appraisal of record/evidence, learned Tribunal decided issues No.1& 2 in favour of claimants. Issues No.3 and 4 were disposed of in favour of appellant-

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I attest to the accuracy and
integrity of this order/ judgment

insurance company. Consequently, claim petition was allowed and claimant was granted compensation of Rs.18,10,846/- for injuries sustained by him, along with interest @ 9% per annum from the date of filing of claim petition till its realization. The amount of compensation along with interest was ordered to be initially paid by appellant to claimant/respondent No.1 herein and thereafter appellant-insurance company was held entitled to recover the amount so paid by it to claimant along with interest accrued thereupon from respondents No.2 and 3 herein (driver and owner of offending vehicle), by way of execution as per law.

6. Learned counsel for appellant-Insurance Company would contend that driver of offending vehicle was not holding a valid and effective driving licence at the time of alleged accident and insured contravened the terms and conditions of Insurance Policy. Therefore, liability can't be fastened upon Insurance Company. He further contends that disability sustained by claimant was not more than 35%. Learned Tribunal ignored medical documents, as injured sustained 72% disability, but same was *qua* particular limb and to assess compensation Tribunal ought to have checked functional disability *qua* whole body and which in the instant case, is not more than 35%. Also contends that the compensation awarded and interest granted @ 9% per annum are on higher side.

7. I have heard learned counsel for appellant and perused the record.

8. Impugned Award dated 05.01.2023 passed by learned Tribunal is premised, *inter alia*, on the following reasoning:

> "*18. In issue No.1, it is proved that in the accident in question, the petitioner-claimant received multiple grievous injuries on his person. PW5 injured Ashok while stepping into the witness box has deposed by way of his affidavit Ex.PW5/A that after the accident he was shifted to CMC Hospital, Hisar where he remained admitted from 19.03.2019 and discharged on 07.04.2019 and after-that he remained admitted in Aarogya Hospital, Hisar on 17.04.2019 and discharged on 23.04.2019 and spent more than Rs.7 lacs on his treatment. To prove the expenses incurred on his treatment, the petitioner got examined PW1 Dr. Jagdish Sethi, Medical Officer, CMC Hospital, Hisar, who deposed that on 19.03.2019 patient Ashok was admitted in CMC Hospital, with alleged history of road side accident. Patient Ashok was having several fractures and treated for the injuries sustained in the accident and he was*

discharged on 07.04.2019. He has proved the bill of hospital Ex. P3 amounting to Rs.1,62,780/-. The petitioner further examined PW2 Ravi, Salesman of Raj Orthocare, Hisar, who produced the summoned record and proved copy of bill Ex. P4 amounting to Rs.28,350/-. PW3 Ved Parkash, Record Keeper of Aasogra hospital, Hisar has produced the summoned record and stated that as per hospital record, patient Ashok was admitted in their hospital on 17.04.2019 and discharged on 23.04.2019. He has proved copies of record of hospital Ex. P5 to Ex. P7 and proved bill of hospital Ex. P8 amounting to Rs.61,000/-. He has also proved bills of medicines Ex. P10 to Ex. P15 and bill of laboratory Ex. P16, amounting to Rs.37,657/-. PW4 Satyawan, Salesman of CMC Pharmacy, Hisar has produced the summoned record and proved the bills of medicines Ex. P17 to Ex. P36 amounting to Rs.2,63,759/-. PW6 Kuldeep Singh also proved the bill Ex. P4 which has been proved by PW2 Ravi Salesman. Learned counsel for petitioner has also tendered in evidence bills/receipts Ex. P41 to Ex. P48 amounting to Rs.98,660/-. The total of all the aforesaid bills comes to Rs.6,52,206/-. Learned counsel for insurance company has not raised any objection regarding authenticity of aforesaid bills of medical expenses incurred on the treatment of injured petitioner. So, an amount of Rs.6,53,000/-(in round figure) is awarded to petitioner Ashok in lieu of medical expenses.

***PAIN AND SUFFERING**:*

19. Petitioner-injured Ashok suffered multiple fractures in the accident and he remained admitted in CHC Hospital, Hisar and Aarogya Hospital, Hisar for a total period of 25 days and thereafter, he also remained under treatment. He also suffered permanent disability to the extent of 72% in the accident in question. He was not able to carry out of his daily chores, only a wearer knows where the shoe pinches. Accident is a great trauma in itself it sends the victim to pains and pangs. Melancholy and sufferings become the companion of the victim. So, the Compensation of Rs.30,000/- is allowed for pain and suffering

***ATTENDANT CHARGES AND SPECIAL DIET**:*

20. To prove the expenses of the attendant, the petitioner has failed to prove that actually he has spent any amount on attendant charges but it is a case of multiple grievous injuries. In the accident in question, petitioner Ashok has suffered permanent disability to the extent of 72%. So, he was not able to attend himself during his treatment and for that purpose he must have need some attendant to take care of him. Keeping in view of above mentioned circumstances, the petitioner is awarded Rs.15,000/- as attendant charges. The petitioner received multiple grievous injuries on his person in the accident in question and for healing the same he must require special diet and, therefore, a sum of Rs.15,000/- is awarded to the injured petitioner in lieu of special diet.

***TRANSPORTATION EXPENSES**:*

21. Though the petitioner has not led any evidence that how much amount he spent on transportation during the period of his treatment but the petitioner-injured Ashok is resident of village and after the accident he was taken to CMC Hospital Hisar, then he was shifted to Aarogya Hospital, Hisar, for sufficient long period and after the final

> *discharge from the hospital, he must have visited the hospital for follow up treatment. Both the aforesaid hospitals are situated at a considerable distance from his residence. So, keeping in view of above mentioned circumstances, the petitioner is awarded Rs.10,000/- for transportation expenses.*
>
> ***LOSS OF FUTURE INCOME DUE TO PERMANENT DISABILITY**:*
>
> *22. Petitioner-injured Ashok suffered permanent disability to the extent of 72% vide disability certificate Ex.P40 duly issued by the Medical Board of General Hospital, Hisar. Learned counsel for the insurance company has argued that 72% disability shown in the disability certificate Ex.P40 is not for whole body but on a particular limbs. This argument of learned counsel for the insurance company is not sustainable because in the accident in question petitioner has suffered permanent disability to the extent of 72% in relation to his right Leg, Shoulder, right Arm and Hand fingers. Moreover, to prove this arguments, learned counsel for insurance-company has not led any evidence whereas PW7 Dr. Suresh Kumar Kaushik while appearing in the witness box has categorically stated that injured-claimant suffered permanent disability to the extent of 72%. Learned counsel for the petitioner has further argued that prior to the accident, the petitioner was working as Photographer and was earning Rs.20,000/- per month but due to injuries sustained in the accident he had become permanently disabled to the extent of 72% and therefore, his income may be assessed at Rs.20,000/- per month and compensation qua the permanent disability be assessed by applying the appropriate multiplier as per the age of the petitioner in view of the latest law of the Hon'ble Supreme Court.*"

9. In my opinion, the learned Tribunal rightly concluded that petitioner has suffered disability to the extent of 72%. Hence, he is entitled 72% of Rs.15,12,000/- i.e., Rs.10,88,640/- for loss of future income due to permanent disability. Having heard arguments of learned counsel for appellant, there is no room for interference in the aforesaid valid reasons recorded by learned Tribunal.

10. Apart therefrom, merely on the basis of bald argument that disability of 72% could not have been believed by learned Tribunal, I am unable to interfere with the cogent reasons given for its conclusion same particularly in the absence of appellant-Insurance Company having adduced any evidence to the contrary. Furthermore, even expert physician, who had given medical certificate, was also summoned in the witness-box and was cross-examined. His testimony *qua* the extent of disability certificate remained unimpeached.

11. No material irregularity in law or procedure has been committed by learned Tribunal.

12. In the premise, instant appeal is dismissed.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 17, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No