IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2618-2023 (O&M)
Reserved on:- 12.10.2023
Pronounced on:- 09.11.2023

Bajaj Allianz General Insurance Co. Ltd. ...Appellant

Versus

Mohammad Rafiq @ Mohammad Rafi and Others ...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ashwani Talwar, Advocate
for the appellant-insurance company.

Mr. Kapil K.Gupta, Advocate
for respondent No.1.

Mr. Sohan Singh Rana, Advocate
for respondent Nos.2 & 3.

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AMARJOT BHATTI, J.

1. The appellant – Bajaj Allianz General Insurance Co. Ltd. has filed present appeal against impugned Award dated 16.02.2023 passed by learned Motor Accident Claims Tribunal, Chandigarh vide which the claim petition filed by the claimant/respondent No. 1 seeking compensation on account of injuries received in a motor vehicular accident under Section 166 of Motor Vehicles Act, 1988 was allowed and the claimant was granted compensation to the tune of Rs. 89,48,406/- along with interest at the rate of 8% per annum from the date of filing of the petition till actual realization.

2. Mohammad Rafiq @ Mohammad Rafi through his wife

Musammat Mani Bibi has filed claim petition under Section 166 of Motor Vehicles Act, 1988 for grant of compensation on account of injuries suffered by him in a motor vehicular accident which took place on 04.08.2017. At the time of accident, Mohammad Rafiq @ Mohammad Rafi was 50 years old. He was a tailor by profession. He was running his workshop in Booth No.136, Basement, Phase-7, Mohali and was earning Rs.50,000/- per month. On the fateful day of 04.08.2017, Mohammad Rafiq @ Mohammad Rafi was going from his workshop to Chandigarh for his personal work on scooter bearing registration No.PB-65-G-7104 at a moderate speed. At about 11:30 AM when he was near the round about of YPS School, the offending Swift car colour red bearing registration No.PB-65-D-3022 driven by respondent No.1 came at a very high speed in a rash and negligent manner from the side of YPS school and hit the scooter of claimant. This accident was witnessed by Hussain Noor. The claimant was seriously injured and he was taken to GMCH, Sector 32, Chandigarh. The driver of the offending car disclosed his name as Arvinder Singh. It is alleged that the accident took place due to rash and negligent driving of respondent No.1. He had promised to provide financial help to the claimant and his family but he did not fulfill that promise and ultimately FIR No.125 dated 16.08.2017 under Sections 279, 337, 338 of IPC was registered at Police Station Mataur, District Mohali. It is alleged that the claimant suffered 100% permanent disability qua his brain and he even cannot speak. The family of claimant had spent huge amount on his treatment. He was sole bread winner of the family. The claimant claimed compensation of Rs.1 crore along with interest @ 18% per annum from the date of claim petition till realization of the amount.

3. The claim petition was contested by the respondents. The respondents No.1 and 2 filed their joint written statement taking preliminary objections that the claim petition is based on fake and fictitious ground as no accident ever took place. The other facts were denied for want of knowledge. The registration of FIR was admitted but it was alleged that it was a false FIR. The car No.PB-65-D-3022 is admittedly owned by respondent No.2 and respondent No.1 was driver of the said car. The copy of driving license, registration certificate were also placed on record. It was duly insured with Bajaj Allianz General Insurance Co. Ltd.-respondent No.3. The copy of insurance cover note was also produced. It was alleged that claim for compensation was highly excessive and the claim petition may kindly be dismissed.

4. The insurance company also appeared in this case and filed written statement taking preliminary objections that the claim petition is bad for mis-joinder and non-joinder of necessary party. The facts stated in the claim petition were denied. There is delay in lodging the FIR. In fact the said vehicle i.e. car No.PB-65-D-3022 was never involved in the accident. The insurance company took the objection that respondent No.1 was not holding a valid and effective driving license and it was being driven in violation of terms and conditions of the insurance policy. On merits, the facts were denied for want of knowledge. It is further denied that the claimant suffered 100% disability. A false FIR has been registered in order to get compensation. It was prayed that the claim petition may kindly be dismissed qua the insurance company.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 14.11.2019 **:-**

(1) Whether Mohammad Rafiq @ Mohammad Rafi suffered injuries in road accident on 04.08.2017 due to rash and negligent driving of car bearing No.PB-65-D-3022 by respondent No.1? OPP

(2) Whether the claimant is entitled to compensation, if yes what amount and from whom? OPP

(3) Whether the claim petition is not maintainable? OPR

(4) Whether driver of the offending vehicle was not holding a valid and effective driving license at the time of accident? OPR3

(5) Whether the offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy? OPR3

(6) Relief.

6. In order to prove the claim petition, the petitioner/claimant examined Musammat Mani Bibi as PW1, Dr. Arvind Malhotra as PW-2 and Ram Singh Yadav as PW-3 and closed the evidence.

7. In order to rebut the evidence led by the petitioner/claimant, counsel for respondents No. 1 and 2 tendered documents i.e. old driving license as Ex.R2, old RC as Ex.R3, old insurance policy as Ex.R4, renew license as Ex.R5, renew RC as Ex.R6, renew insurance policy as Ex.R7 and closed evidence on behalf of respondents No.1 and 2.

Learned counsel for respondent No.3 tendered copy of judgment dated 05.04.2021 titled "State Vs. Arvinder Singh" as Ex.R8, certified copy of statement of Hussain Noor Jaman as Ex.R9, copy of policy as Ex.R10.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimant was allowed by passing Award dated 16.02.2023 vide which compensation to the tune of

Rs. 89,48,406/- along with interest at the rate of 8% per annum, was granted in favour of petitioner/claimant, to be paid jointly and severally by the respondents, as detailed therein. Feeling aggrieved of this Award, the present appeal has been preferred by appellant – Bajaj Allianz General Insurance Co. Ltd.

9. I have heard the arguments of learned counsel for the appellant-insurance company on the one hand and learned counsel respondent No.2 and 3 representing the driver and owner of the offending car as well as learned counsel for respondent No.1 on the other hand.

The learned counsel for the insurance company raised the issue that the learned Motor Accident Claims Tribunal, Chandigarh has wrongly awarded compensation of Rs.89,48,406/- in favour of the claimant along with interest @ 18% per annum from the date of filing of claim petition till realization of the amount as detailed therein. The evidence led by the claimants before the learned Motor Accident Claims Tribunal, Chandigarh cannot be safely relied upon. There is delay in lodging the FIR. There is nothing on record to show that talk regarding compromise was going on. As per the facts of the case, FIR was registered on the statement of Hussain Noor who never stepped into the witness box before the learned Motor Accident Claims Tribunal, Chandigarh. In fact he did not support the facts regarding accident before the learned Magistrate. As a result Arvinder Singh the alleged driver was acquitted of the charge framed against him in the criminal case. The copy of statement of Hussain Noor is placed on record as Ex.R-9 and the copy of judgment in Police Challan No.RT/6 dated 06.08.2018 decided on 05.04.2021 titled as State vs. Arvinder Singh is Ex.R8. The claimant examined Ram Singh

Yadav as PW-3 to prove the accident. In fact he is a procured witness as he was not present at the time of accident. There is nothing on record to show that his statement was recorded by the police. The learned Motor Accident Claims Tribunal has failed to consider these facts and wrongly came to the conclusion that the alleged accident had taken place due to rash and negligent driving of respondent No.1 Arvinder Singh. At the most it can be considered as a case of contributory negligence.

The learned counsel for the insurance company further raised the issue that compensation awarded by the claimants is highly excessive and without justification. The claimants cannot be unduly enriched. The learned Motor Accident Claims Tribunal has wrongly assumed the income of claimant to the tune of Rs.35,000/- per month by taking into account that the children of claimant were going to different colleges or the fact that claimant was making payment of rent of the basement of booth No.136, Phase-7, Mohali to the tune of Rs.11,000/- per month. There is nothing on record to show that Mohammad Rafiq @ Mohammad Rafi was income tax payee. At the most considering Mohammad Rafiq @ Mohammad Rafi as a skilled tailor his income should have been assessed accordingly by the learned Motor Accident Claims Tribunal. The learned counsel for the insurance company further pointed out that the learned Motor Accident Claims Tribunal has wrongly granted Rs.15,60,000/- as damages for future medical expenses being attendant charges. The compensation awarded for special diet to the tune of Rs.50,000/- is also excessive. The claimant is further granted Rs.2,00,000/- each for damages for suffering and mental agony and for loss of amenities. It cannot be more than Rs.55 lacs. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal may be reduced accordingly by accepting the present appeal.

10. On the other hand, the learned counsel representing respondents No.2 and 3 pointed out that no accident took place due to rash and negligent driving of Arvinder Singh. Even otherwise, Arvinder Singh was holding valid driving license which are tendered into evidence as Ex.R2 and Ex.R5. The copy of registration certificate is Ex.R3/R6 and copy of insurance policy is Ex.R4/R7. The Swift car was duly insured with the insurance company. Therefore, in case any compensation is awarded in favour of claimant then it is the insurance company which is liable to pay the same.

11. The learned counsel for claimant/respondent No.1 argued that the facts of the case are duly proved on record by leading oral evidence as well as by producing the documents. Musammat Mani Bibi the wife of injured has stepped into the witness box as PW-1 to prove the entire case. She has produced on record the rent agreement Ex.P-132 to establish that her husband was paying monthly rent of Rs.11,000/- for running tailor workshop in Booth No.136 basement, Phase-7, Mohali. He had employed two persons in the workshop. Her husband was having flourishing business and was earning Rs.50,000/- per month. She has placed on record the admission letter, fee receipts of her children to show that both her sons Musharap Rehman and Manohar Rehman and daughter Roshnara Khatoon were going to prestigious colleges. She has also placed on record copy of bank passbook Ex.P-131. Considering the aforesaid record, the learned Motor Accident Claims Tribunal rightly considered the monthly income of claimant as Rs.35,000/- per month. The disability certificate is proved on

file by Dr. Arvind Malhotra PW-2, according to which the claimant suffered 100% permanent disability on account of Post Traumatic Brain injury with severe speech disability and impaired memory. The said disability certificate is Ex.P-5. The entire family has suffered great loss on account of the injuries suffered by the claimant in motor vehicular accident. It is argued that the quantum of compensation awarded by the learned Motor Accident Claims Tribunal does not require any interference.

The learned counsel for respondent No.1/claimant further pointed out that the accident is proved on file from the testimony of Ram Singh Yadav PW-3 who was also present at the time of accident. The facts regarding accident are confirmed by Hussain Noor when he stepped into the witness box in the criminal case but during cross-examination, he turned hostile. The examination-in-chief clearly indicates that he had fully supported the facts regarding accident as well as identity of driver of offending car. It is argued that the factum of accident as well as rash and negligent driving on the part of Arvinder Singh-respondent No.2 is not disputed. Arvinder Singh never stepped into the witness box to deny the factum of accident or rash and negligent driving on his part. Therefore, it was rightly held by the learned Motor Accident Claims Tribunal that the accident had taken place due to rash and negligent driving of respondent No.1 and the findings given by the learned Motor Accident Claims Tribunal pertaining to issue No.1 does not require any interference. The appeal preferred by the insurance company may kindly be dismissed.

12. I have considered the arguments advanced before me. In the case in hand, accident took place on 04.08.2017 at about 11.30 A.M. when Mohammad Rafiq @ Mohammad Rafi was going on his scooter No.PB-

65-G-7104 and when he was crossing the round about of YPS School, the offending Swift car bearing registration No.PB-65-D-3022 came from the side of YPS School, driven rashly and negligently at a high speed by Arvinder Singh, hit the scooter of claimant. As a result of which he received serious injuries including head injury and was taken to Government Medical College and Hospital, Sector 32, Chandigarh where he remained under treatment. The learned counsel for the appellant-insurance company has disputed the findings given by the learned Motor Accident Claims Tribunal, Chandigarh pertaining to issue No.1 holding that the accident had taken place due to rash and negligent driving of Arvinder Singh driver of aforesaid car. It cannot be ignored that no cross-objections or appeal has been preferred by Arvinder Singh or Jatinder Kaur respondents No.1 and 2. The learned counsel for the insurance company took the objection that there is delay in lodging the FIR and secondly the author of the FIR did not stepped into the witness box. It is further pointed out that said complainant - Hussain Noor author of the FIR turned hostile during the proceedings of criminal trial in the aforesaid FIR and ultimately, Arvinder Singh the driver of said Swift car was acquitted. The learned counsel for the appellant-insurance company has placed on record the copy of statement of Hussain Noor recorded in the criminal case Ex.R9 and copy of judgment of acquittal dated 05.04.2021 is Ex.R-8**.**

I have considered the aforesaid stand taken by the learned counsel for the appellant-insurance company. In the case in hand, the claimant had examined Ram Singh Yadav, eye-witness to the accident as PW-3 who has supported the facts regarding accident as detailed in the claim petition. I have also gone through the statement of Hussain Noor recorded in the criminal trial (Ex.R-9) which further shows that in the examination-in-chief, Hussain Noor had fully supported the facts regarding manner of accident as well as identity of Arvinder Singh as driver of the offending car and when he was called upon for cross-examination after a gap of about two months, he resiled and did not support the prosecution case. The aforesaid facts clearly indicate that during this gap of two months, the said witness Hussain Noor was won over, as a result he did not support the prosecution version during cross-examination. The delay in lodging the FIR is also well explained by the claimant. It is categorically stated that talk regarding compromise was going on but when it could not materialize ultimately, the FIR was lodged on 16.08.2017. The statement of Ram Singh Yadav PW-3 has remained un-rebuted. Arvinder Singh, the respondent No.1 in the Motor Accident Claims Tribunal case being driver of the offending car never stepped into the witness box to prove his own version. Therefore, there is no reason to disbelieve the contents of the FIR duly supported by examining Ram Singh Yadav as PW-3. In view of my above discussion, the finding given by the learned Motor Accident Claims Tribunal pertaining to issue No.1 does not require any interference.

13. The learned counsel for the appellant-insurance company has also disputed the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Chandigarh vide award dated 16.02.2023. In order to prove the quantum of compensation Musammat Mani Bibi wife of injured stepped into the witness box as PW-1. She categorically stated that her husband received serious injuries in the motor vehicular accident, as a result of which, he suffered 100% permanent disability. The treatment

record of Government Medical College and Hospital, Sector-32, Chandigarh is Annexure P-4 and the bills regarding purchase of medicines are also produced on the file. The said treatment record and the bills regarding purchase of medicines are not disputed by learned counsel for the appellant-insurance company. The disability certificate is proved on record by Dr. Arvind Malhotra of Government Medical College and Hospital, Sector 32, Chandigarh as PW-2 which is Ex.P-5. The total disability is assessed as 100% as Post Traumatic Brain injury with severe speech disability and impaired memory. The reassessment of the disability is recommended after five years. It has come in the statement of Dr. Arvind Malhotra PW-2 that another surgery had taken place on 16.11.2017 and he was discharged on 20.11.2017. During cross-examination the doctor further clarified that functional disability is 100%. In order to assess the quantum of compensation, the learned Motor Accident Claims Tribunal has assumed the income of claimant as Rs.35,000/- per month. It is alleged by the claimant that the injured was a tailor by profession and was running his workshop in Booth No.136 Basement, Phase 7, Mohali. The said premises were taken on rent. The copy of rent agreement dated 03.02.2016 is Ex.132. Musammat Mani Bibi as PW-1 further stated that her husband had hired two persons who were working in the said workshop. Husain Noor the author of FIR was his worker. It has further come on record that the injured was father of two sons and a daughter. The daughter was doing BBA from Chandigarh University, one of his son was doing course of Hotel Management whereas the other son was doing 10+2. To establish this fact, the learned counsel for the claimant had placed on record the admission form, identity card, original receipts regarding payment of fee.

As per the arguments advanced by learned counsel for the appellant-insurance company the income of injured was assessed towards the higher side. No doubt, there is no income tax return or direct evidence to prove the financial status of the injured. Therefore, the learned Motor Accident Claims Tribunal while assessing the income of injured has taken into consideration the rent agreement, the tailor shop run by him as well as the fact that all the children were going to different institutes and they were studying when their father met with an accident. I have also taken into account the bank passbook placed on record Ex.P-131 which further shows the financial transactions which took place from time to time. Therefore, considering the aforesaid record the income of claimant injured was rightly assessed to the tune of Rs.35,000/- per month and it does not require any interference.

Thereafter, by taking 100% functional disability, the learned Motor Accident Claims Tribunal has rightly assessed the quantum of compensation on account of injuries suffered by the claimant to the tune to Rs.68,25,000/-. The claimant was further granted expenditure of the hospital as well as the bills regarding purchase of medicines to the tune of Rs.88,406/- which does not require any interference. He has been disabled for the rest of his life, therefore, quantum of compensation awarded to the tune of Rs.2,00,000/- each under the head of pain and suffering, mental agony as well as loss of amenities further do not require any interference. Considering the total period of treatment coupled with 100% functional disability the compensation awarded under the head of special diet as well as transportation charges granted to the tune of Rs.50,000/- and

Rs.25,000/- further do not require any interference. The learned counsel for the appellant-insurance company disputed the quantum of compensation awarded under the head of damages for future medical expenditure, being attendant charges to the tune of Rs.15,60,000/- I have considered the objections raised by learned counsel for the insurance company. The learned Motor Accident Claims Tribunal considered that claimant will require services of two attendants at least for a period of 13 years and by calculating this amount he considered that each attendant will charge Rs.5,000/- per month thus total amount is Rs.10,000/- for two attendants which the injured will require for another period of 13 years and calculated the same as Rs.15,60,000/- It cannot be ignored that injured was hail and hearty when he met with an accident. He suffered 100% functional disability when the entire family consisting of his wife and three children were totally dependent upon him. Now on account of injury suffered by him he is unable to look after himself nor he can carry out any work. The disability certificate shows that he suffered brain injury with severe speech disability and impaired memory. Considering the nature of ailment the injured will require attendant for whole of the time. Therefore, considering the aforesaid facts in my opinion the compensation awarded to the claimant under the head of future medical expenses and attendant charges to the tune of Rs.15,60,000/- is neither excessive nor unjustified.

`In view of my above discussion, I do not find any reason to interfere in the quantum of compensation awarded in favour of the claimant/injured. Resultantly, the appeal preferred by the appellant-insurance company is accordingly declined.

Pending application(s), if any, shall stands disposed of.

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

09.11.2023 **(AMARJOT BHATTI)**
Sunil Devi **JUDGE**

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