

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

FAO-2801-2020 (O&M)
Date of decision: 17.01.2023

HDFC ERGO GENERAL INSURANCE COMPANY LTD ...Appellant
VS
LOVEDEEP GARG AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sanjeev Goyal, Advocate,
For the appellant.

Mr. Ashe Kumar Goyal, Advocate and
Mr. Amit Bansal, Advocate,
For respondent No.1.

Ms. Mandeep Kaur, Advocate for
Mr. Aman Bansal, Advocate,
For respondents No.2 to 3.

ARUN MONGA, J.(ORAL)

Aggrieved with the award dated 02.03.2020 rendered by Motor Accidents Claims Tribunal, Sangrur (for brevity, Tribunal), Insurance Company has preferred the instant appeal.

2. Brief facts as per the claim petition are that on 23.07.2018, the claimant/injured (pillion rider) was coming back from Manikaran to Village Dirba with his friend Varinder Singh (driver) on motorcycle bearing registration No. PB-13AN-9133 as they both reached Bhumkpuli, Near Dharkanshi at about 3:15 p.m., Lovedeep Garg sensed to use the toilet and thus Varinder Singh stopped and parked the motorcycle on the side of the road and Lovedeep Garg after alighting from the aforesaid motorcycle went to the side of the road to ease himself. In the meantime, a vehicle (Maruti Alto Car) bearing registration No. HP-71-4203 came from Bilaspur side and

was going towards Swarghat and the same was being driven rashly, negligently and at a high speed and without blowing horn and caring for the passersby and hit the claimant, who was standing on the road side. Due to the impact the above said vehicle overturned and the driver ran away leaving behind the offending vehicle at the spot.

2.1. On the basis of statement of Varinder Singh, FIR No.59 dated 23.07.2018 under Sections 279, 337 IPC was lodged against unknown person at Police Station Swarghat, District Bilaspur (H.P.). During investigation the police came to know that respondent No.1 had caused the accident.

3. From pleadings of the parties, learned Tribunal framed following issues:

1. *“Whether the claimant Lovedeep Garg has sustained in a motor vehicular accident dated 23.07.2018 (wrongly mentioned as 08.11.2017 and corrected vide zimini order dated 02.03.2020) due to rash and negligent driving of vehicle i.e., Maruti Alto car bearing registration No. HP-71-4203 driven by respondent no.1 Joginder Singh? OPP*
2. *Whether the claimant is entitled for compensation as prayed for, if so to what extent and from whom?*
3. *Whether the claim petition is not maintainable in the present form? OPR*
4. *Relief.”*

4. On appraisal of evidence, the learned Tribunal decided issues No. 1 and 3 in favour of the claimant and against the respondents. On issues No. 2 and 4 it was held that the claimant is entitled to total compensation of Rs.82,17,456/- with interest @ 9% per annum from the date of institution of the claim petition till realization and that appellant Insurance Company alone shall be liable to pay the same since the offending vehicle had a valid registration certificate and the driver had a valid license and the vehicle was duly insured at the time of accident.

5. The Insurance Company, who was respondent No. 3 before the Tribunal, has come up in appeal.

6. Aggrieved against the award, Insurance Company is before this Court challenging the same primarily on two grounds; a) there was a contributory negligence on the part of the claimant which has not been factored by the Tribunal; and b) based on the solitary income tax return filed by the claimant for the assessment year 2018-19, that too after the accident, the compensation/calculations have been carried out by believing the income tax return to be correct.

7. I have heard rival contentions and shall proceed to render my opinion based on the discussion recorded hereinafter.

8. Adverting to the first ground of challenge *qua* the contributory negligence, having perused the record, I am in complete agreement with the reasons recorded by the learned Tribunal in negating the said objection. The reasoning of the Tribunal, being apposite, is reproduced herein below:

“The argument of learned counsel for the insurance company (respondent no.3) is that there was contributory negligence on the part of claimant. Here, it is pertinent to note that all the respondents have denied the taking place of accident with the offending vehicle whereas respondent no.3 on the one hand has taken a plea that no accident had taken place but on the other hand has taken a contradictory plea that if at all the accident took place then it was due to the negligence of the claimant who was crossing the road in violation of the Motor Vehicles Act. Therefore clearly it is not open for respondent no.3 to raise a plea of contributory negligence since firstly the factum of accident with the offending vehicle has been denied and secondly because no evidence has been led to prove the contributory negligence on part of the claimant. The suggestions of the Ld. Counsel for respondent no.3 to CW-2 and CW-6 are to the effect that the claimant was crossing the road without any Zebra crossing and that while crossing the road the accident took place. However, the statement of the claimant and the eye-witness and the FIR all reveal that the accident took place when the claimant was standing on the side of the road and not while crossing the road. So clearly no negligence can be imputed to the claimant in this case.”

9. Apart from what has been noted by the Tribunal, I am of the view that even if it is presumed that there is nothing to suggest on record in support thereof, but only for the sake of arguments it is being done in course of the argument, on a Court query, learned counsel for the appellant-Insurance Company was unable to answer as to where was the location of nearest zebra crossing which claimant was supposed to have used for crossing the road since it is over vehement argument that he committed a violation of the traffic rules while crossing the road at a non-zebra crossing.

10. Being so, it emerges that Insurance Company itself is not aware as to where was the zebra crossing and because it was a stretch of merely 6 metres on road, assuming the zebra crossing is a few kilometres away, it is preposterous and unacceptable to common sense that a person ought to walk a few kilometres to cross a stretch of 6 meters. Furthermore, there is nothing on record to even suggest that being a State highway, which was being used at the relevant time by the claimant to travel from Bilaspur towards Swarghat (H.P.), there was not any occasion for him to cross the road. In fact, the case pleaded is that while going on highway on a motorcycle, they had stopped enroute to attend the call of nature and when he came back, the offending vehicle being allegedly driven in a negligent manner hit the claimant resulting in grievous injuries and ultimately amputation of left leg below the knee rendering him 70% disabled for rest of his life. In any case, there is nothing on record to suggest as if the Insurance Company had planted an eyewitness to take such an affirmative stand before the Tribunal and also raise the similar arguments being canvassed before this Court that the claimant was negligent in crossing the road, that too not from a zebra crossing.

10.1. The said assertion is simply imaginary, without there being any supporting material or any witness. In the premise, there is no ground to interfere in the impugned Award on that score.

11. As regards, the second objection of the Income Tax Return having been accepted by the Tribunal, on the first flush, it does appear that the return had since been filed after the date of accident i.e. 20.09.2018 as against the date of accident i.e. on 23.07.2018 and therefore, the Tribunal should have not entertained the income tax return as a proof of income of the claimant. True petition was filed on 13.09.2018, one month and a half later then the return was filed. By sheer coincidence, it may have so happened that the claimant was hit with misfortune of the accident being such that when his return was due to be filed. Trite it is to say that income tax returns are filed only on expiry of financial year as per the closure dates notified by the income tax department. It is not the case of the Insurance Company that the filing of return was purposely delayed and it was filed as an afterthought after the due date of filing of return had gone far. Merely because for the previous year, no return was filed as has been argued by the learned counsel for the appellant to say on that basis that the return in hand i.e. Ex CW-6/B should not have been accepted, seems to be too far fetched. What has to be seen are the contents of the income tax return whether the same inspire any confidence or not. Being apposite, computation of income are reproduced herein below:

1.	Gross Total Income	3,55,266
2.	Deductions under Chapter-VI A	6,902
3.	Total Income	3,48,360
	A Current Year Loss, if any	0
4.	Net Tax Payable	2,491
5.	Interest and Fee payable	0
6.	Total Tax, Interest and Fee payable	0
7.	Taxes paid	2,491

12. A perusal of the computation of the income as per the figures of income tax return reproduced hereinabove clearly shows that turnover of the

claimant from his Kiryana shop for the relevant assessment year was Rs.17,01,250/-. As per the turn over the actual profit has been calculated @ 20% of the turnover amounting to Rs.3,40,450/-. While the deemed profit as per the income tax provisions is to be calculated @ 8% of the turnover which comes to Rs.1,36,100/-. While filing the return higher of the two figures of profits was taken i.e., 20% of the turnover and annual income was accordingly assessed as Rs.3,40,450/-. Based thereon net taxable income of the claimant was calculated as Rs.3,83,350/- which is what the Tribunal has considered at the time of making the computation as per the Apex Court judgment rendered in “*National Insurance Company Limited Versus Pranay Sethi and others*”. I see no ground to interfere in the same.

13. In the parting, I may also hasten to add that reliance of the learned counsel for the appellant on the Apex Court’s judgment rendered in “*V. Subbulakshmi and others Vs. S. Lakshmi and another*” is of no help to appellant, since in the said case, return was filed by the claimants on behalf of the deceased after his death and perhaps a presumption was drawn that since the deceased himself was not available to file the return and there was a possibility of income having been inflated by the claimants in order to prove *bonafide* while seeking the compensation on account of his death. Here the claimant himself is injured and is 70% disabled and has lost his leg below the knee. The argument of learned counsel for appellant that claimant was fully conscious, mentally agile enough to file an income tax return, at the relevant time he was suffering from minor injuries and could have personally filed the same, is being noted only to be rejected.

14. As regards the argument of learned counsel for the appellant, which was addressed at the fag end after the aforesaid judgment/order was dictated, that disability ought to have been calculated less than 70%, I find no

ground to interfere. Same is based on the cogent evidence which was threadbare gone into by the learned Tribunal and based on the expert opinion of the doctors. It was open to the Insurance Company to have demolished the testimony of the doctors but it utterly failed to do so. Having seen discussion on the same, I see no grounds to interfere on that either.

15. The amount deposited before the Tribunal during pendency of the present proceedings be disbursed to the claimant within a period of 30 days on an application being moved by the claimant for the purpose. The balance amount, which is payable as per the computation made in the award under challenge, be disbursed to the claimant within a period of 60 days from today along with interest as already awarded by the Tribunal. It is however, made clear that if amount is not deposited within 60 days then additional penal interest @ 3% per annum shall be leviable from the filing of the claim petition till the actual realization.

16. Since the main case is disposed of, no separate orders are required to be passed in the application bearing CM No.5491-CII-2022.

17. All pending application(s) shall also stand disposed of.

(ARUN MONGA)
JUDGE

17.01.2023
Vandana

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