

In the High Court of Punjab and Haryana, at Chandigarh

1. First Appeal Order No. 5831 of 2019 (O&M)

Oriental Insurance Company Limited

... Appellant(s)

Versus

Surender and Others

... Respondent(s)

AND

2. First Appeal Order No. 5846 of 2019 (O&M)

Oriental Insurance Company Limited

... Appellant(s)

Versus

Manish Kumar and Others

... Respondent(s)

DATE OF DECISION: 24.11.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Madhu Sharma, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-19575-CII-2019 In FAO-5831-2019

1. For the reasons stated in the application, the same is allowed and delay of 34 days in filing the appeal is condoned.

CM-19576-CII-2019 In FAO-5831-2019

2. For the reasons stated in the application, the same is allowed and delay of 73 days in refiling the appeal is condoned.

CM-19607-CII-2019 In FAO-5846-2019

3. For the reasons stated in the application, the same is allowed

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and delay of 30 days in filing the appeal is condoned.

CM-19608-CII-2019 In FAO-5846-2019

4. For the reasons stated in the application, the same is allowed and delay of 69 days in refiling the appeal is condoned.

FAO-5831-2019 And FAO-5846-2019

5. Two connected appeals filed to challenge the correctness of a common award passed by the Motor Accidents Claims Tribunal, Jhajjar (hereinafter referred to as “the Tribunal”) by the insurance company have come up for hearing.

6. As per the case of the claimants, an accident took place between the two motorcycles which were coming from the opposite directions. One motorcycle was driven by Manish Kumar, aged 19 years, whereas another was driven by Surender. On occurrence of the accident, both the motorcyclists fell down resulting into injuries to them. Two different claim petitions were filed by Manish Kumar and Surender against each other.

7. The claim petition filed by Manish Kumar was allowed while assessing the compensation amount of ₹15,33,242/-, as he suffered permanent visual disability in his right eye to the extent of 20%. On account of the treatment charges, he has been held entitled to ₹8,79,242/- which is included in the total compensation of ₹15,33,242/-.

8. In the case filed by Surender, he has been held entitled to recover ₹1,00,000/- from the insurance company.

9. Heard the learned counsel representing the appellant at length and with her able assistance, perused the paper-book.

10. The learned counsel representing the appellant contends that the award passed by the Tribunal is liable to be set aside as the Tribunal has overlooked that the drivers of both the vehicles were contributory negligent because the accident took place head-on in the middle of the road. She submits that the Tribunal has erred in making the insurance company liable

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to pay ₹1,00,000/-, to Surrender as he was not the owner-cum-driver. She further submits that the Tribunal has also erred in assessing the compensation of ₹15,33,242/-, payable to Manish Kumar.

11. This Court has considered the submissions of the learned counsel representing the appellant. On a Court question with respect to the evidence led by the Insurance company to prove that it was the case of contributory negligence, the learned counsel representing the appellant has stated that the insurance company has not led any evidence in that regard. However, she submits that since the accident took place head-on in the middle of the road, therefore, the Court must assume that both the drivers were contributory negligent.

12. This Court has considered the submission. The insurance company has not led any evidence except the site plan. The Appellate court is not expected to interfere unless its attention is drawn to the evidence supporting the argument of the learned counsel.

13. The next argument of the learned counsel is with respect to the liability of ₹1,00,000/- which is payable to Surrender. The motorcycle driven by Manish Kumar was not insured, however, the motorcycle driven by Surrender was insured. The aforesaid motorcycle is owned by Subhash who has paid the additional premium amount for insuring the driver-cum-owner. The learned counsel submits that Surrender was not the owner, therefore, he cannot be reimbursed. This Court made a request to the learned counsel to produce the insurance policy, however, she submits that the insurance policy is not in her possession. In the absence of the terms and conditions of the insurance policy, this Court does not find it appropriate to interfere.

14. The last submission of the learned counsel is with regard to the quantum of assessment of compensation payable to Manish Kumar. The Tribunal has assessed the compensation under the following heads:-

Medical Expenses	:	Rs.8,79,242/-
Pain and Suffering	:	Rs.1,00,000/-
Special Diet	:	Rs.40,000/-
Transportation	:	Rs.20,000/-

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Loss of Future Income	:	Rs.4,32,000/-
Loss and amenities	:	Rs.40,000/-
Loss of Income	:	Rs.12,000/-
Total	:	Rs.15,33,242/-

It is evident that Manish Kumar has been reimbursed for medical expenses to the extent of ₹8,79,242/-. He was a young boy of 19 years when the accident occurred. The Tribunal has assessed his income @ ₹8,000/- per month. He has suffered permanent visual disability to the extent of 20% in his right eye. The accident took place in the year 2015. The income assessed by the Tribunal with respect to Manish Kumar is not excessive.

15. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned award passed by the Tribunal. Hence, both the appeals are dismissed.

16. The miscellaneous application(s) pending, if any, in both the appeals, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 24, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No