

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

**FAO-4457-2019 (O&M)
Reserved on:08.05.2023
Date of decision:11.05.23**

IFFCO-TOKIO General Insurance Company Ltd. ... Appellant

Vs.

Satish Kumar & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Yogesh Gupta, Advocate for the appellant.

Mr. B.S. Bairagi, Advocate for respondent No.1.

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SUKHVINDER KAUR, J.

1. By way of this appeal, appellant/insurance company seeks modification/setting aside of award dated 01.05.2019 in MACT Case No.118 of 2017 vide which the Tribunal has granted a total compensation of Rs.1,45,288/- on account of injuries received by the claimant/injured Satish Kumar in the accident in the question along with interest @ 7% per annum from the date of the filing of the claim petition till realization.

2. Brief facts of the case are that on 28.08.2016, claimant-Satish Kumar was returning to Barwala from village Nangly on motorcycle bearing registration No.HR-80-7396 which was being driven by one Vijender Singh, and was the pillion rider. When they reached near Jain Ganesh Brick Kiln near Village Bidhmara on Tohana-Hisar Road then a truck bearing registration No.HR39C/4432 (hereinafter to be referred to as 'the offending vehicle') bearing driven by its driver/Ramesh Kumar in a rash and negligent manner came from the opposite side and struck against the motorcycle after

coming on the wrong side. Due to the impact, both of them (the claimant and Vijender Singh, since deceased) fell down from the motorcycle and received multiple and grievous injuries. Both of them were shifted to Civil Hospital, Tohana by some passerby, but Vijender Singh died due to the injuries sustained in that accident. The accident had been caused by respondent No.1-Ramesh Kumar by driving the offending vehicle in a rash and negligent manner.

3. In this connection, FIR No.201, dated 29.08.2016, under Sections 279/337/304-A/427 IPC was registered against respondent No.1.

4. Claimant/injured was firstly shifted to Civil Hospital, Tohana but due to his serious condition, he was admitted and treated at Sarvodya Multi Speciality Hospital, Hisar. He remained admitted there for more than 10 days and spent Rs.5 lakhs on his treatment and still he is under treatment and more money will be required for further treatment.

Claimant was an agriculturalist and was running a milk dairy and used to earn more than Rs.50,000/- per month. Now he is confined to bed. As agriculture work requires hard work, so now it is not possible for him to indulge in cultivation. As such he is entitled to receive a sum of Rs.20 lakhs as compensation from the respondents along with interest at the rate of 18% per annum from the date of accident till realization.

5. After notice, respondent Nos.1 and 2 appeared (owner and driver respectively) and filed joint written statement denying the factum of the accident in question and submitted that a false case was registered

against respondent No.1. It has been alleged that respondent No.1-driver was having a valid and effective driving license at the time of the alleged accident. Therefore, respondents No.1 and 2 are not liable to pay any compensation to the claimant. Rest of the contents of the claim petition were also denied and a prayer for dismissal of the claim petition was raised.

6. A separate reply was filed by respondent No.3/insurance company, taking preliminary objections therein, that respondent No.1 was not holding a valid driving license while driving the offending vehicle and the claim petition has been filed in contravention of the provisions of the Motor Vehicles Act. On merits, it was pleaded that respondent No.1/driver of the offending vehicle had not given any intimation of the alleged accident to respondent No.3. So, there is no liability of respondent No.3/insurance company to pay any compensation. It was further averred that no accident had taken place with the offending vehicle owned by respondent No.2 by the respondent No.1 and a false case has been registered. All other pleas taken in the claim petition were denied.

7. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

8. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.1,45,288/- as compensation to the claimant alongwith interest at the rate of 7% per annum from the date of filing of the petition till realization to be paid by respondent No.3.

9. Feeling dissatisfied with the award dated 01.05.2019, the appellant-insurance company has preferred the instant appeal.

10. I have heard learned counsel for the parties and have also perused the relevant record.

11. Learned counsel for the appellant/Insurance company has contended that the alleged offending vehicle was not involved in the accident and the said vehicle has been implanted by the claimant in collusion with the owner and alleged driver of the alleged offending vehicle and the police. He has contended that the deceased while driving his motorcycle met with an accident with some unknown vehicle and FIR was lodged on the next day against the unknown driver of the unknown vehicle, but later on after 25 days of the alleged accident, the alleged offending vehicle was falsely involved on false statement of the injured. He has further contended that the claim petition was filed by the claimant for getting undue compensation from the appellant/insurance company. Tribunal has wrongly held that the alleged offending vehicle was involved in the accident in question and its alleged driver who was negligent and has wrongly affixed the liability upon the appellant/insurance company. By relying upon the decision of this Court in **Udham Singh Vs. Satya Dev passed in FAO-3595-2012**, decided on 29.11.2016, he has contended that in order to succeed in the claim petition, the claimant is required to establish the involvement of the vehicle and the negligence on the part of the driver which is not established in the present case. He has also argued that the Tribunal also fell in error by allowing excessive amount for medical bills, mental pain and agony, special diet and loss of work without any evidence on record. He

has argued that the Tribunal has misread, mis-interpret and mis-construed the proposition of law and facts on the file and as such the impugned award is not sustainable in the eyes of law and is liable to be set aside.

12. On the other hand, learned counsel for respondent No.1/injured/claimant Satish Kumar has contended that the offending vehicle was actually involved in the accident and the same has not been implanted to seek compensation wrongly. It has been further contended that the FIR in question was registered without any inordinate delay on the next day and it is containing the details regarding happening of the accident in question and it has also been mentioned therein when both the injured Vijender Singh and Satish Kumar were shifted to Civil Hospital, Tohana. Vijender Singh was declared dead and injured Satish Kumar was referred to Sarvodya Hospital for better treatment. He has further contended that the injured had received multiple and grievous injuries on his head and remained admitted in the hospital for more than 10 days. Prior to the accident, he was hale and hearty and was running a milk dairy and was also earning by cultivating the land and his earnings from the same were Rs.50,000/- per month, so, he is entitled to a compensation of Rs.20 lakhs. He has contended that as such the compensation that has been granted by the Tribunal is on the much lower side and is required to be enhanced.

13. This Court does not feel inclined to accept this contention of the learned counsel for the appellant that offending vehicle has been falsely involved in this case. The Tribunal has rightly held that it is at all not necessary that the injured or the eye witness may remember the registration number of the offending vehicle. The description of the vehicle and

attributes of the driver of the vehicle given by the injured and the eye witness help the investigation agency to trace out the offending vehicle. As there was no delay in lodging of the FIR, so it cannot be said that vehicle of respondent No.2 was implanted in the present case, to get the false claim. Otherwise also, there is no denial to the fact that respondent No.1 was facing trial on the allegations of rash and negligent driving. Besides that the injured Satish Kumar has stepped into the witness box as PW1 and has deposed in detail about the manner of happening of the accident and regarding his sustaining of serious injuries in the said accident. No complaint was filed by owner of the offending vehicle regarding false implication of his vehicle before any authority. So, finding of the Tribunal on issue No.1 does not call for any interference.

14. In order to prove the injuries sustained in the accident and the treatment, the claimant injured has examined PW2 Dr. Ashish Jain, Neuro Surgeon, Sarvodya Hospital, Hisar, who brought the record of medical treatment given to injured Satish Kumar. He has deposed that Satish Kumar was admitted in his hospital on 29.08.2016 with severe head injury with fracture left orbital wall and was discharged on 04.09.2016. The hospital charged Rs.54,000/- for the treatment of the patient and has proved on record the bill Ex.P4 regarding the same. He has also proved the bills of investigation and medicines as Ex.P5 to P21 and has also proved the Discharge card Ex.P22. The Tribunal has rightly held that the amount of said bills comes to Rs.80,288/- and has rightly granted a sum of Rs.80,288/- on account of medical bills and treatment. A sum of Rs.25,000/- that has been given on account of mental pain and agony by the Tribunal, also seems to be

appropriate and is maintained. Similarly sum of Rs.15,000/- that has granted on account of special diet expenses also appears to be just and fair and the same is also maintained. As is evident from the record, the injured-Satish Kumar had suffered head injury and other injuries upon his body and he remained admitted in the hospital from 29.08.2016 to 04.09.2016 and thereafter also remained under treatment, so he must not have been able to do the work which he was doing, so, Rs.25,000/- have also been rightly granted by the Tribunal on account of loss of work due to injuries. Thus, total amount of Rs.1,45,288/- that had been granted by the Tribunal to the injured/claimant-Satish Kumnar along with interest at the rate of 7% per annum from the date of filing of the claim petition till actual date of realization is fair and just and does not call for any interference. So, the instant appeal i.e. FAO-4457-2019 is bereft of any merit and the same is accordingly dismissed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

11.05.2023

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |