

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
209 **FAO-1853-2013 (O&M)**
Date of decision: 24.04.2023

The New India Assurance Co. Ltd.

...Appellant(s)

Vs.

Buta Masih & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. R.C. Gupta, Advocate
for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the appellant/Insurance Company seeking setting aside of Award dated 10.01.2013 passed by Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as "the learned Tribunal") in MACT Case No.06/2007 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that injured-claimant/respondent No.1 had suffered injuries in a motor vehicular accident that took place on 03.10.2006 due to rash and negligent driving of bus bearing registration No.PB-06F-9219 (hereinafter referred to as "the offending vehicle") being driven by respondent No.2, owned by respondent No.3 and insured by the appellant. Thus, Learned Tribunal awarded compensation of Rs.1,42,000/- along with interest @ 6% per annum from the date of filing the petition till realisation. Respondents No.2 & 3 and appellant

were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellant assails the impugned Award, inter alia on the following grounds:

a) that in pursuance to the accident in question, no FIR was registered by injured-claimant/respondent No.1. It is submitted that even no independent witness was examined by the appellant except CW2, who is the son of the appellant/claimant and, as the only witness was son of the claimant, hence, version of the claimant would not be relied upon;

b) that claimant produced no medical record in support of his case and therefore, compensation awarded by the learned Tribunal is unsustainable.

4. No other argument is raised on behalf of the appellant.

5. I have heard learned counsel for the appellant.

6. As respondent No.1 was proceeded against ex parte vide order dated 21.08.2013; respondent No.2 was proceeded against ex parte vide order dated 13.11.2014; and respondent No.3 herein was proceeded against ex parte vide order dated 02.11.2015, accordingly, matter is being heard and decided in their absence.

7. Perusal of record of the case shows that it was the claimant's case that he remained hospitalised from 03.10.2006 to 05.10.2006. The claimant produced medical bills (Exhibit C1 to Exhibit C23) amounting to a sum of Rs.1,26,768/- rounded off to Rs.1,27,000/-

which amount was reimbursed by the learned Tribunal. However, learned Tribunal lost sight of the fact that no witness was produced by the claimant to prove the above medical bills except CW2 who is his son. Accordingly, veracity/authenticity of the medical bills produced by the appellant could not be held to be proven on record. Learned Tribunal has further granted Rs.5,000/- each for special diet, pain & suffering and transport charges, coming to a total compensation of Rs.1,42,000/-. However, record further reveals that learned Tribunal vide order dated 26.03.2009 has dismissed the claim petition against driver of the offending vehicle. Further, neither any criminal case was registered by the appellant against the driver of the offending vehicle nor accident was proved by any independent witness except statement of CW2. Neither any medical document nor doctor or official of the concerned hospital was examined to prove the injuries suffered by the claimant in the accident in question. In my considered opinion, in view of the above facts, appellant was not entitled to the compensation as granted by the learned Tribunal.

8. Accordingly, present appeal stands **allowed**.

9. Pending application(s) if any also stand(s) disposed of.

24.04.2023
Sunena

(Nidhi Gupta)
Judge

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