

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(227) CM-19082-CII-2016 ;
CM-19083-CII-2016 ;
CM-19084-CII-2016 in/and
FAO-5572-2016
Date of Decision : 07.02.2023

Suresh Kumar

...Appellant

Versus

United India Insurance Company Ltd. and others

...Respondent

(227/2) FAO-5138-2016
Date of Decision : 07.02.2023

Raj Kumar

...Appellant

Versus

Suresh Kumar and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vishwajeet Singh, Advocate for the appellant
in FAO-5572-2016.

Mr. Amarjit Singh Virk, Advocate for the appellant
in FAO-5138-2016.

Mr. V. Ramswaroop, Advocate for the respondent-Insurance
Company.

Harsimran Singh Sethi J. (Oral)

CM-19082-CII-2016 in FAO-5572-2016

Present application has been filed seeking condonation of delay
of 54 days in filing the FAO No. 5572 of 2016.

Keeping in view the averments made in the application, which

is duly supported by an affidavit, the same is allowed and delay of 54 days in filing the FAO No. 5572 of 2016 is condoned.

FAO-5572-2016 and 5138-2016

By this order, two above mentioned appeals are being decided arising out of the same Award of the Motor Accident Claims Tribunal, Kurukshetra dated 17.03.2016.

FAO No. 5572 of 2016 has been filed by the driver to contend that the finding recorded by the Tribunal that he did not had a valid driving license, is incorrect as, there was a license, which was being held by the appellant though issued by the State of Nagaland. Learned counsel for the appellant submits that nothing has come on record that the said license was fake.

Learned counsel for the respondent-Insurance Company argues that keeping in view the facts and circumstances mentioned in paragraph 45 of the Award, it has rightly been held by the Motor Accident Claims Tribunal, Kurukshetra that keeping in view the facts and circumstances mentioned in the said paragraph, the driving license of the appellant was fake.

Learned counsel for the appellant has not been able to disprove any of the facts mentioned in paragraph 45 of the Award passed by the Tribunal. Once, a finding has been recorded on the basis of the evidence and while it was found that the driving license of appellant-respondent no. 1 is fake and due facts and reasons have been given in that regard, which could not be controverted by the learned counsel for the appellant in FAO No. 5572 of 2016, the finding recorded by the Tribunal need no amendment in the present first appeal.

No other point was raised by the learned counsel appearing in FAO No. 5572 of 2016.

As no perversity has been pointed out by the appellant in the Award dated 17.03.206 passed by the Motor Accident Claims Tribunal, Kurukshetra, the FAO No. 5572 of 2016 is dismissed.

FAO-5138-2016 has been filed by the claimant raising a grievance that disability of the claimant has not been assessed keeping in view the injuries, which were suffered by him in the accident.

Learned counsel for the appellant-claimant argues that the disability of the victim has been assessed by the medical board at 15% in total whereas, as per the medical report, the elbow, where the injury was suffered by the victim, disability is to the tune of 70% qua the loss of elbow movement. Learned counsel for the appellant-claimant argues that the disability certificate given by the doctor concerned also described 31% total disability but still the total disability has been taken into account as 15% while calculating the compensation, which is totally arbitrary and illegal.

Learned counsel for the respondent-Insurance Company submits that in the cross-examination, the doctor, who had assessed the victim and described the total disability at 31% conceded that in case, the disability of the total body is to be seen and not of a particular part of the body, where the injury was suffered, the same will be approximately 20%. Learned counsel submits that once the word 'approximately' has been described by the doctor himself, the grant of benefit by the Motor Accident Claims Tribunal, Kurukshetra by treating the total disability at 15% cannot be considered to be arbitrary and illegal.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

Once, the doctor, who had given the disability certificate in his testimony, has conceded that the total body disability will be around 20%, giving the benefit of 15% disability by the Tribunal, cannot be treated as arbitrary as nothing has come on record that the appellant-claimant suffered total body disability more than the said percentage. As far as the contention of the learned counsel for the appellant that even in the cross-examination, the doctor stated the total disability as 20%, the said argument cannot be accepted as the witness himself was not sure of even 20% of total disability being suffered by the victim as the witness concerned stated that disability was 20% approximately.

Keeping in view the said fact, the assessment of total disability of the victim at 15% cannot be treated as arbitrary by the Motor Accident Claims Tribunal so as to award compensation.

No other argument has been raised.

Keeping in view the above, no ground is made out for interference by this Court in the present FAO No. 5138 of 2016 and the same is hereby dismissed.

CM-19083-CII-2016 and CM-19084-CII-2016 in FAO-5572-2016

As the main appeal has been dismissed, the present applications also stand dismissed.

A photocopy of this order be placed on the file of connected case.

February 07, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No