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

FAO NO. 1929 OF 2017

DATE OF DECISION: 01.02.2023

**Cholamandalam M/S General Insurance Company
Limited**

...Appellant

Versus

Jaipal Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Punit Jain, Advocate,
For the appellant.

None for the respondents.

ARUN MONGA, J. (ORAL)

Appellant-Insurance Company is in appeal before this Court against Award dated 23.12.2016 passed by learned Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal') whereby in a claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988, compensation of Rs.1,91,321/- was awarded on account of injuries received by claimant/respondent No.1 Jai Pal in a motor vehicular accident.

2. Succinct facts are that on 22.12.2014 at about 8:30 a.m., injured/claimant Jaipal Singh was going on his motorcycle Discover bearing registration No. HR-05-AL-4394. Since he was an employee of M/s Ganesh Rice Mills, Panoari, he was going to attend his duty on the fateful day. When he reached near M/s Vikas Rice Mills, Panoari, one canter bearing registration No. HR-45-A-6745, being driven in rash/negligent manner, came from opposite side and struck against the

motorcycle of claimant. Resultantly, he fell on road and suffered multiple injuries, including fracture of right leg. The driver of offending canter escaped from the place of occurrence. Injured was taken to Virk Hospital, Karnal, where his right leg was operated upon. The said accident was witnessed by one Raj Pal, who was present at the place of occurrence. Formal FIR No. 685 dated 27.12.2014 under Sections 279, 338 IPC was also registered at Police Station, Gharaunda, Karnal. On these facts, claim petition was preferred before learned Tribunal.

3. In joint written statement filed by respondents No.2 and 3 herein i.e., driver and owner of offending canter respectively, the factum of accident was denied. It was also denied that claimant received any injuries in the alleged accident.

3.1 Appellant-Insurance company also filed separate written statement taking preliminary objections regarding maintainability and claim petition being bad for mis-joinder and non-joinder of necessary parties. It was further averred that driver of the offending vehicle was not holding a valid and effective driving license at the time of alleged accident and therefore, insurance company is not liable to pay anything.

4. From the pleadings of the parties, following issues were framed:

- 1) *Whether the accident in question took place due to rash and negligent driving of Canter No.HR-45-A-6745 by respondent No.1 resulting in injuries to claimant, as alleged? OPP*
- 2) *If Issue No.1 is proved, whether petitioner is entitled to any compensation. If so, how much and from whom? OPP*
- 3) *Whether the respondent No.1 was not having a valid and effective driving license at the time of the alleged accident and the offending vehicle was being plied in*

violation of the terms and conditions of the Insurance Policy, if so, to what effect? OPR

4) *Whether the claim petition is not maintainable? OPR*

5) *Relief.*

5. Based on respective evidence adduced by parties, learned Tribunal decided issues No.1 to 3 in favour of claimant/respondent No.1 herein. Issue No.4 was decided against appellant and respondents No.2 and 3 herein. Vide impugned Award, claimant Jai Pal was held entitled to compensation of Rs.1,91,321/- along with interest @ 9% per annum from the date of filing of claim petition till realization and insurance company (appellant herein) being insurer of offending vehicle was directed to indemnify the insured. However, all the respondents were held jointly and severally liable to pay the compensation amount.

6. Aggrieved, Insurance Company is in appeal before this Court.

7. Learned counsel for appellant/insurance company submits that exaggerated amount has been awarded in favour of claimant and the entire approach of learned Tribunal in deciding the question of quantum of compensation is erroneous. It is further contended that driver of alleged offending canter procured his driving license from DTO Tuensang (Nagaland). As per information under RTI (Ex.R-7) received from DTO, Tuensang, duly proved by RW-1 Mr. R.N. Sharma, Investigator of insurance company, no record of said driving license was found. Learned Tribunal fell in error in not appreciating the cogent evidence adduced by appellant-Insurance Company and in deciding issue of liability of appellant.

8. Having perused the record and heard learned counsel for appellant, I am of the opinion that learned Tribunal has recorded sound and valid reasons for its findings/conclusions on all the issues and the same do not call for any interference in this appeal. Para Nos.27, 29 and 30 of impugned Award, being apposite, are reproduced herein below:

““xxx

27. Now, to see whether the respondent no.1 was having a valid and effective driving licence at the time of the accident or not and whether the insured has violated the terms and conditions of the insurance policy or not. The onus to prove this issue was on the respondent no.3. In order to prove this issue the respondent No.3 examined Shri R. N. Sharma, Investigator of the company as RW1 who has deposed that as per the information received from the Licensing Authority, Tiesang, Nagaland, no record has been found/available in respect of driving licence 47240/T.V/T/2013 (Ex.R13) in the name of Harjeet (respondent no.1) vide verification report Ex.R2. The learned counsel for the respondent no.3 has submitted that in view of verification report Ex.R2 in respect of the driving licence of respondent No.1, the driving licence placed on record by respondent No.1 is fake one as no record has been found/available in the record of the Licensing Authority, Tiesang, Nagaland. This submission of the learned counsel for respondent No.3 is without any merit in it because as per the verification report Ex.R2 allegedly issued by the Licensing Authority, Tiesang, Nagaland, no record has been found/available in the office of the said Licensing Authority but is no-where mentioned in the said report that the driving licence No.47240/T.V/T/2013 (Ex.R13) in the name of Harjeet (respondent no.1) has not been issued by the said authority and that the same is fake. Admittedly the respondent No.3 has not produced any evidence to prove that the driving licence of respondent No.1-driver of the offending vehicle was not valid. Merely production of a report to the effect that no record has been found/available in the office of the Licensing authority, cannot be read as evidence as the owner and the driver as well as the claimant had no opportunity to test the veracity of the same by conducting cross-examination on the person who prepared this report. Therefore, it cannot be said that the driving licence Ex.R13 issued by the Licensing Authority, Tiesang, Nagaland is fake. A perusal of the driving licence

Ex.R13 issued by the Licensing Authority, Tuesang, Nagaland reveals that vide the said driving licence, the respondent No.1 has been authorized to drive M.C, LMV, LTV, HTV and HGV and this licence has been issued on 4.10.2013 and is valid upto 3.11.2017. Thus, as per driving Licence Ex.R13 of the respondent No.1, he was having a valid and effective driving licence at the time of accident and as per Insurance Policy Ex.R12, the offending vehicle was insured with the respondent no.3- Cholla Mandalam General Insurance company for the period from 16.9.2014 to 15.9.2015. The accident in issue took place on 22.12.2014. To rebut it, the respondent No.3 has not led any evidence. Therefore, in the absence of any evidence on behalf of respondent no.3 in rebut to the evidence of the respondents No.1 & 2, it is held that the respondent No.1 was having a valid and effective driving licence at the time of the alleged accident and that the insured has not violated any terms and conditions of the insurance policy.”

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29. It has been proved on the record that the petitioner received the injuries in this accident and was hospitalized and has undergone treatment in different hospitals. Ex.PW3/A is the copy of the MLR of petitioner Jaipal Singh dated 22.12.2014 conducted by the doctor of Virk Hospital, Karnal. Ex.PW3/B is the discharge summary of the petitioner. The petitioner has also placed on record his disability certificate as Ex.PW4/A which has been duly proved by PW-5 Dr. Vinod Kumar, Orthopedic Surgeon, KCGMCH, Karnal vide which disability to the extent of 12% was found on the person of the petitioner and as admitted by PW-6 in his cross-examination, if the disability is calculated qua the whole body, it will come down to 6% approximately. Therefore, the disability on the person of the petitioner is to be considered as 6% to assess the amount of compensation.

*30. Since the petitioner received the injuries in this accident and undergone treatment and incurred expenditures during his hospitalization and the medical/medicine bills are Ex.PW3/C, Ex.PW3/F, Ex.PW5/B, Ex.C-1 to Ex.C-61 to Ex.P31, total amounting to Rs.1,18,321/-, therefore, the petitioner is awarded a sum of **Rs.1,18,321/-** as medical expenses. As stated above, the petitioner suffered disability due to the fracture sustained by him in the accident vide disability certificate Ex.PW6/A and disability to the extent of 6% is to be taken into consideration to assess the amount of compensation in this regard. Therefore, the petitioner is awarded a sum of **Rs.12,000/-** on account of permanent disability. As per the medical records placed on record by the petitioner, he was taken to Virk Hospital, Karnal on*

*22.12.2014 and as per the discharge summary Ex.PW3/B, he remained admitted in the said hospital from 22.12.2014 to 26.12.2014 and thereafter, from 2.10.2015 to 5.10.2015 as per discharge summary Ex.PW3/C and the petitioner also remained admitted in Saket Hospital, Panchkula from 4.7.2016 to 25.7.2016 as per discharge-card Ex.PW5/A duly proved by PW-5 Dr. D. K. Pathak, therefore, the petitioner is awarded a sum of **Rs.31,000/-** for hospitalization. The petitioner is also awarded a sum of **Rs.30,000/-** on account of pain and sufferings. The petitioner is thus awarded a total sum of **Rs.1,91,321/- (Rs.1,18,321/- on account of purchase of medicines, hospital bills and Doctor's charges + Rs.31,000/- for hospitalization in the hospitals, Rs.12,000/- on account of permanent disability and Rs.30,000/- on account of pain and sufferings)** and respondents No.1 to 3 being the driver, owner and insurer of the offending vehicle bearing registration No. HR-45-A-6745 are jointly and severally liable to pay this compensation to the petitioner. Hence, these issues are decided accordingly.*

(Emphasis supplied by Tribunal)

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9. Perusal of above clearly reflects that before the learned Tribunal, neither factum of accident was disputed, nor even otherwise injuries suffered by claimant. For expenses borne *qua* the same documentary evidence has been placed on record, which has remained unimpeached in course of evidence. I am of the opinion that the learned Tribunal has rendered its findings on the basis of cogent and reasoned evidence on all the issues.

10. In the premise, no ground for interference is made out.

11. Dismissed.

12. Pending application(s), if any, shall also stand disposed of.

FEBRUARY 01, 2023
Shalini

(ARUN MONGA)
JUDGE

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