

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3569-2017 (O&M)

Date of decision: February 03, 2023

Ishwar Chand

....Appellant

versus

Ashok Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Hardeep Singh Dhillon, Advocate for the appellant.

Mr. Mayank Mathur, Advocate
for the respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Aggrieved by award dated 30.01.2017 rendered by learned Motor Accidents Claims Tribunal, Kurukshetra (for brevity, Tribunal), appellant/claimant is before this Court seeking enhancement of compensation.

2. Succinct facts, as noted by the Tribunal, are as below:

"Briefly stated, the claim petition has been filed on the averments that on 25.11.2015 claimant Ishwar Chand was going from his village to Ismailabad on motorcycle make Hero Delux of black colour without registration number as the same was new one on normal speed and on his correct left hand side of the road. The claimant was followed by his nephew Balram on his separate motorcycle. When the claimant reached ahead of Classic Farm, village Chammu Kalan at about 09.30a.m., in the meantime offending Canter bearing registration No.HR-38Q-6939 driven by the respondent No.1 rashly and negligently and at high speed came from behind and struck against the motorcycle of the claimant due to which the claimant fell down alongwith his motorcycle and received multiple, serious and grievous injuries on various parts of his body including multiple fractures on left leg. After the accident, the respondent No.1 stopped his vehicle. When Balram was taking care of claimant,

the respondent No.1 ran away while leaving the canter at the spot. The claimant was shifted to Sarwal Hospital, Ambala City, where he was treated and operated upon and remained admitted for many days.FIR No.165 dated 26.11.2015 under sections 279, 337 and 338 of the IPC was registered against the respondent No.1 in Police Station Ismailabad. The claimant is aged about 60 years and was earningRs.20,000/- per month by doing the agricultural work. The claimant has become permanently disabled due to the injuries suffered in the accident. The respondent No.1 being the driver, the respondent No.2 being the owner and the respondent No.3 being the insurer of the canter at the time of the accident are jointly and severally liable to pay the amount of compensation. Therefore, compensation of Rs.10 lacs with costs and interest at the, rate of 12% per annum from the date of accident till realization may be awarded to the claimant.”

3. Upon notice, respondents No.1 & 2 contested the petition raising preliminary objections *inter alia* regarding claim petition being not maintainable, being false and frivolous and no cause of action. On merits, respondents No.1 and 2 denied the material averments made in the claim petition and pleaded that there was no fault on the part of respondent No.1 at the time of the accident. It was stated that false criminal case was registered against respondent No.1. They prayed for dismissal of the claim petition with special costs.

4. Insurer/respondent No.3 contested the claim petition raising preliminary objections regarding mis-joinder, non-joinder of parties, *locus standi*, cause of action, respondent No.1 not holding valid and effective driving licence, breach of terms and conditions of insurance policy and respondent No.3 being not liable to indemnify for payment of compensation in the eventuality of claim petition being allowed.

4.1. On merits, material allegations made in the claim petition were denied. It was stated that no such accident took place and there

was no fault on the part of driver of offending vehicle. Further averred that claim petition has been filed in collusion with respondents No.1&2. False FIR was got registered in connivance with the police. Driver-claimant was driving the motorcycle in question at the relevant time under influence of liquor and rashly and negligently. Further, it was pleaded that accident took place due to contributory negligence on the part of claimant and respondent No.1. Respondent No.3 prayed for dismissal of the petition with heavy costs.

5. Learned Tribunal framed the following issues:

- “1. *Whether claimant Ishwar Chand suffered injuries due to the accident caused on 25.11.2015 by rash and negligent driving of Canter bearing registration No.HR-38Q-6939 by the respondent No.1 as alleged? OPP*
2. *Whether the claimant in the present claim petition is entitled to compensation, if so how much and from whom? OPP*
3. *Whether the respondent No.1 did not have valid and effective driving license at the time of accident, if so to what effect? OPR-3*
4. *Whether the respondent No.2 has violated the terms and conditions of the insurance policy, if so to what effect?OPR-3*
5. *Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1& 2in favour of the claimant and decided issues No.3 & 4 in favour of respondent No.3 and against respondents No.1 and 2.Consequently, the claim petition filed by appellant/claimant was allowed. A compensation of Rs.2,21,334/- was awarded to claimant payable by respondents No.1 and 2 jointly and severally along with

interest at the rate of 9% per annum from the date of institution of petition till realization. Respondent No.3 was directed to first pay aforesaid compensation and then recover the same from respondents No.1 and 2.

7. By way of CM-11511-CII-2017, appellant-claimant is seeking to place on record additional evidence i.e., releasing order/ discharge order dated 07.02.2008 (Annexure A-1) from Uttar Haryana Bijli Vitran Nigam stating that appellant-claimant was aged about 62½ years at the time when accident in question took place i.e., on 25.11.2015, but inadvertently, said document could not be brought on record before learned Tribunal at the time of leading affirmative evidence.

8. Learned counsel for respondent No.3-Insurance Company argues that additional evidence sought to be produced at this stage, is not permissible as there are no pleadings *qua* the same in the claim petition filed by appellant-claimant before learned Tribunal.

9. Confronted with the aforesaid averment, learned counsel for appellant-claimant seeks to amend his claim petition, at this stage, in the instant appellate proceedings.

10. In the premise, I am of the view that in case, such a course is to be adopted, matter needs to be remanded back to learned Tribunal for re-trial on the question of enhancement of compensation and if enhanced then to that extent existing award would stand modified. Accordingly, it is remanded back to MACT with liberty to appellant-claimant to file an application under Order VI Rule 17 of Code of Civil Procedure, 1908 to do the needful. On a Court query, it transpires that

compensation awarded by learned Tribunal has already been paid. It is contended by learned counsel for appellant that no prejudice, therefore, would be caused to either side *qua* additional evidence sought to be adduced after the amendment is carried out in the claim petition. The appellant may, if so advised, raise this plea appropriately before the learned Tribunal.

- 11. Ordered accordingly.
- 12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 03, 2023
mahavir

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