

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

FAO-1406-2018 (O&M)
Date of Pronouncement: 29.04.2023

Cholamandlam MS General Insurance Co. Ltd.

...Appellant

Versus

Ram Shankar and others

...Respondents

(2)

FAO-1763-2018 (O&M)

Ram Shankar

...Appellant

Versus

Gurdat Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAN

Present: Mr. Punit Jain, Advocate for the appellant
in FAO-1406-2018 and for respondent No.3
in FAO-1763-2018.

Ms. Ekta Thakur, Advocate for the appellant
in FAO-1763-2018 and for respondent No.1
in FAO-1406-2018.

H.S. MADAN, J.

Briefly stated facts of the case are that petitioner/claimant Ram Shankar, aged about 18 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the Act’) against respondents i.e. Gurdat Singh-driver, Surender Kumar owner and Cholamandlam MS General Insurance Co. Ltd.-insurer of truck bearing registration No.HR-57A-7667 (for brevity ‘offending truck’) claiming

compensation on account of injuries suffered by him in a motor vehicular accident.

2. As per case of petitioner/claimant, on 27.09.2015, he was pillion riding Honda Activa Scooter bearing registration No.CH14(T) 1886 being driven by Tara son of Zahir Hussain going from Babu Dham Colony towards Grain Market, Sector 26, Chandigarh. The scooter was being driven on its correct left hand side at a normal speed. At about 10.30 PM, when they had reached near gate No.4 of Police Line, Sector 26, Chandigarh, in the meanwhile, a rehri came in front of the scooter all of sudden, hitting the scooter. Resultantly, both the riders of the scooter including the claimant fell on left hand side of the road. In the meanwhile, respondent No.1 Gurdat Singh driving the offending truck at a very high speed and in a rash and negligent manner hit the scooter, dragging it to a considerable distance. Ultimately, the tyre of the truck passed over the claimant causing multiple injuries to him. His left leg was crushed and it had to be amputated from left hip. The report regarding the accident was given to the police. The claimant was hospitalized. According to the claimant, he had spent a sum of Rs.2 lacs on his treatment after the accident. He was very experienced painter, however, on account of amputation of his left leg, he has become totally disabled to do the work of painting and polishing. He claimed compensation of Rs.50 lacs with interest and costs from all the three respondents.

3. Notice of the claim petition was given to the respondents. All the three respondents appeared and contested the claim petition.

Respondents No.1 and 2 in separate written statements filed by them had raised various legal objections. They denied that any such accident had taken place on 27.09.2015 with the offending truck being driven by respondent No.1 Gurdatt Singh. In the end they prayed for dismissal of the claim petition.

4. In the written statement filed by respondent No.3-insurance company, it also raised various preliminary objections to wit that the claim petition was not maintainable; petition was bad for non-joinder and mis-joinder of necessary parties; the accident in question had taken place due to sole negligence of driver of the scooter ; answering respondent further took up objections that the truck driver was not holding a valid license and truck was not having a valid road permit; further the truck was being driven in violation of terms & conditions of insurance policy; the truck was not involved in the accident at all; refuting the remaining assertions, such respondent also craved for dismissal of the claim petition.

5. From the pleadings of the parties, following issues were framed by the tribunal:-

1. Whether the accident in question resulting into the injuries on the person of Ram Shankar, has occurred due to rash and negligent driving of vehicle bearing No.HR-57A-7667 by respondent No.1? OPP.
2. If issue No.1 is proved in affirmative, whether the claimant is entitled for compensation, if so, how much and from whom? OPP.
3. Whether respondent No.1 was not having effective and valid driving license at the time of accident? OPR-3.

4. Whether there was no valid and effective route permit of the vehicle at the time of accident? OPR-3
5. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal') decided issue No.1 in favour of the claimant and against the respondents holding that the accident in which petitioner/claimant had suffered injuries had been caused due to rash and negligent driving of the offending truck by respondent No.1 Gurdatt Singh; issue No.2 was decided holding that the claimant was entitled to get compensation of Rs.27,92,593/- as per details below:-

Sr. No.	Head under which amount awarded	Amount
1	Loss of earning	Rs.25,92,000/-
2	Medical Expenses	Rs.60,593/-
3	Compensation on account of admission in hospital and pain and suffering	Rs.50,000/-
4	Expenses incurred on transportation	Rs.40,000/-
5	Expenses incurred on nutritious diet	Rs.25,000/-
6	Attendant charges	Rs.25,000/-
	Total	Rs.27,92,593/-

Issues No.3 and 4 were decided against respondent No.3. Resultantly, vide award dated 07.11.2017, the claim petition was accepted and compensation of Rs.27,92,593/- with interest @ 7.5% p.a was awarded to the claimant payable by all the three respondents jointly and

severally. It was directed that respondent No.3 being insurer of the offending truck shall indemnify the amount of compensation.

7. This award left the claimant as well as respondent No.3- insurance company aggrieved and both of them have filed separate appeals which are being disposed of, vide a single judgment since they arise out of the same accident.

8. I have heard learned counsel for the parties besides going through the record.

9. In this case, the tribunal on the basis of evidence brought on record by the claimant i.e. the claimant himself appearing as PW1, considering that formal FIR No.385 dated 28.09.2015 regarding the accident had been registered against respondent No.1 Gurdat Singh and further Gurdat Singh had not appeared to rebut the version of the claimant had returned a finding that respondent No.1 was author of the accident by his rash and negligent driving of the offending truck resulting in causing injuries to the claimant Ram Shankar. I do not see any reason to differ with such verdict given by the tribunal. Under the circumstances, the driver, owner and insurance company of the offending truck were certainly liable to pay compensation to the claimant.

However, I find that the compensation awarded by the tribunal to the claimant is on higher side. As it comes out from the record on account of the accident, left leg of claimant got crushed and had to be amputated from hip. The claimant had got his disability assessed from a medical board and as per the disability certificate proved by PW-2 Dr. Sudesh Pebam, Addl. Professor, Department of Orthopedics Surgery, the

disability was assessed as 90% but the tribunal committed a grave error in taking it to be 100% when it was not so. Though, unfortunately, the claimant had lost his left leg in the accident but his other limbs and remaining body was intact. Furthermore, a perusal of the disability certificate proved in evidence Ex.P40 goes to show that the disability was with regard to left lower limb only. This fact was clarified by PW-2 Dr. Sudesh Pebam when in his examination in chief itself he stated that disability assessed to the tune of 90% is qua left lower limb. Although, he had stated that the claimant would have difficulty in climbing, running standing, lifting weight etc., however, in his cross-examination, he clarified that the disability assessed is qua lower limb only. The tribunal clearly misread the evidence in coming to the conclusion that the disability was 100%. With disability having been found to be 90% qua left limb only, the next question to be determined is the functional disability.

10. The main thing to be seen is as to whether the claimant has been rendered a cripple unable to do any work or he can do some other work with such a handicap though suffering loss in earning. There cannot be any dispute that the claimant cannot possibly perform the work, which a normal person can do and his working and earning capacity has been greatly reduced but then he can certainly do some other work and earn money. In my considered view, it would be proper and appropriate to take the functional disability to be 50% of disability detected as 90% qua the left limb i.e. 45% qua the whole body.

11. Learned counsel for the appellant-insurance company has

argued that the claimant happened to be a native of U.P., therefore, minimum wages prevalent in the State of UP at the relevant time should have been taken into consideration, rather than, minimum wages payable in Chandigarh. Although, learned counsel for the claimant has submitted that the claimant had been staying and working at Chandigarh, therefore, the tribunal was justified in taking the minimum wages payable to the workers at Chandigarh, however, I find merit in the arguments advanced by learned counsel for the appellant-insurance company. In the claim petition, the claimant has given his address of U.P. Similarly, while appearing as PW1, the address being given is that of UP. He has nowhere mentioned that he had been residing and working at Chandigarh, may be temporarily, no document in that regard like Aadhaar card, ration card, voter card etc., have been proved in evidence to show that the claimant had been residing at Chandigarh. Therefore, minimum wages payable to workers in the State of UP should be considered. Although the claimant submits that he has been working as a trained painter but keeping in view his age given as 18 years, it is difficult to understand how as a teenager, has become a trained painter. No corroborative evidence in that regard much less documentary evidence is available on the record. The claimant has not examined any person who might have got done the work of painting and polishing done from him on payment of wages. Nevertheless, I find that it would be proper and appropriate to take minimum wages for a skilled worker prevalent in the State of UP at the relevant time as Rs.8298.63/- with functional disability of 45%.

12. Adding 40% towards future prospects, the monthly income is

assessed to be Rs.11,617. With functional disability of 45%, the loss of earning comes out to Rs.5227/-, annual loss $5227 \times 12 = 62,724/-$.

13. Keeping in view the age of claimant, applying multiplier of 18, the loss of earning capacity comes out to Rs.62,724 x 18 = 11,29,032/-.

14. The tribunal has awarded amount of Rs.27,92,593/- which is highly excessive and unseasonable. The amount is reduced to Rs. 11,29,032/-. The tribunal has awarded a sum of Rs.60,593/- to claimant towards medical expenses which is found to be proper and appropriate. Towards compensation on account of admission in hospital and pain and suffering, another sum of Rs.50,000/- has been awarded which cannot be said to be on higher side. Similarly the expenses awarded towards transportation to the tune of Rs.40,000/-, for nutritious diet to the tune of Rs.25,000/-, attendant charges as Rs.25,000/- need not be interfered.

15. However, the tribunal missed granting compensation under various other heads i.e. loss of future amenities and happiness. A sum of Rs.1 lakh is awarded to the claimant under that head, towards future medical expenses including getting an artificial leg etc., a sum of Rs.1.5 lacs is awarded to him. His marital prospects have been certainly affected on account of amputation of his left leg, a sum of Rs.3 lacs is awarded to him in that regard. Thus the total compensation comes out to Rs.18,79,625/-.

16. The tribunal has awarded a sum of Rs.27,92,593/-. Though, the claimant has filed appeal seeking enhancement of that compensation but in view of the discussion above since the compensation awarded has

been reduced, there is no occasion to enhance the same.

17. Accordingly, the appeal filed by the insurance company i.e. FAO-1406-2018 is partly allowed and compensation awarded to the claimant is reduced to Rs.18,79,625/- payable with interest @ 7.5% p.a., from the date of filing of claim petition till actual realization besides costs of the claim petition. The liability to pay this amount would be joint and several of all the respondents. The claimant is directed to return the excess amount received by him with with proportionate interest to the appellant-insurance company within two months from today, failing which the appellant-insurance company would be entitled to recover such amount from the claimant by filing execution petition.

Therefore, the appeal filed by the claimant i.e. FAO -1763-2018 stands dismissed.

29.04.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No