

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.

FAO-8136-2016 (O&M)
Reserved on 5.7.2023
Date of Decision: 26.9.2023

Gurmukh Singh

....Appellant

VERSUS

Santokh Singh @ S.S.Grover and others

....Respondents

II.

FAO-375-2017 (O&M)

United India Insurance Company Limited

....Appellant

VERSUS

Gurmukh Singh and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Ashwani Arora, Advocate, for the appellant-claimant in
FAO-8136-2016 and respondent No.1 in FAO-375-2017.

Mr. Shubham Jain, Advocate, for the appellant-Insurance
Co. in FAO-375-2017 and respondent No.3 in FAO-8136-2016.

KARAMJIT SINGH, J.

1. This order will dispose of the aforesaid two appeals, one filed by claimant for enhancement of the amount of compensation (FAO-8136-2016) and another filed by insurance company for setting aside of the award dated 5.9.2016 passed by Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal'). For convenience, the facts are taken from FAO-8136-2016.

2. Brief facts of the case of the claimant are that on 5.7.2015 at about 1:30 p.m., claimant-Gurmukh Singh was going on his scooter from

Sector 32, Chandigarh to his house in Dhanas. His helper Ankit was sitting on the pillion seat. After crossing round about of Sector 23/24 and 36/37, Chandigarh, when he was going towards round about of Sector 24/37, Chandigarh, one side of the road was found to be closed due to some construction work and the entire traffic was diverted to the opposite lane. In the meantime, a car No.PB01-A-3402 which was driven at a very fast speed came from the side of light points of Sector 36/37, Chandigarh (in short 'GMSH-16, Chandigarh') and rammed into the scooter of the claimant, as a result of which, the claimant and the pillion rider fell on the road and sustained injuries. The claimant was taken to Government Multi-Speciality Hospital, Sector 16, Chandigarh by the police. The offending car was driven in rash and negligent manner by respondent No.1-Santokh Singh and was owned by respondent No.2 and was insured with respondent No.3; that the claimant is an electrical contractor by profession and was earning ₹ 30,000/- per month at the time of accident. The claimant suffered fracture of left ankle and other multiple injuries and was operated thrice and he spent a sum of ₹ 1 lakh on his medical treatment. The claimant suffered permanent physical disability due to fracture of left ankle and as such, unable to do his work properly and prayed for grant of compensation worth ₹ 50 lakh.

3. The claim petition was contested by the respondents. Respondents No.1 and 2 filed joint written statement wherein it was pleaded that the accident in question took place due to negligence of the claimant who was driving his scooter at a very high speed and hit the same against a car being driven by respondent No.1.

4. Respondent No.3 filed separate written statement taking preliminary objections that the insured had violated the terms and conditions

of the insurance policy and that the driver of the car in question was not holding a valid and effective driving licence and that the claim petition has been filed by the claimant in collusion with respondents No.1 and 2. The other averments of the claim petition were denied being wrong.

5. On the pleadings of the parties, the following issues were framed in the case : -

1. Whether accident dated 5.7.2015, resulting in injuries to Gurmukh Singh, occurred on account of rash and negligent driving of car No.PB-01-A-3402 by respondent No.1? OPP
2. Whether the petitioner is entitled to compensation for the injuries suffered by him, if so, to what extent? OPP
3. Whether the driver of offending vehicle was not holding a valid and effective driving licence on the date of accident and the vehicle was being driven in violation of terms and conditions of the insurance policy? OPR-3.
4. Relief.

6. The claimant himself appeared in the witness box as PW1 and also examined Dr. Neeraj Gupta as PW2 who proved medical treatment record of the claimant. The claimant also produced medical bills Ex.P15 to Ex.P128 worth ₹68,440/- and other medical treatment record Ex.P1 to Ex.P9.

7. On the other hand, the respondents tendered into evidence copies of driving licence Ex.R1, registration certificate Ex.R2, tax receipt Ex.R3, insurance policy Ex.R4 and permit as Ex.R5.

8. After hearing counsel for the parties, the Tribunal decided issue No.1 in favour of the claimant and while deciding issue No.2, assessed

monthly income of the claimant as ₹ 18,150/- and held that the functional disability of the claimant was 40% and taking into consideration the fact that the claimant was 54 years of age, awarded compensation worth ₹10,61,660/- along with interest @ 9% per annum from the date of accident and all the respondents were held jointly and severally liable to pay the amount of compensation.

9. Being aggrieved, the claimant has filed FAO-8136-2016 while the insurance company has filed FAO-375-2017.

10. Counsel for the claimant has contended that the award passed by the Tribunal is on lower side; that the Tribunal assessed permanent physical disability of the claimant as 40% relating to left ankle. It has been further contended that the claimant was doing work of electrical contractor and the claimant produced his income tax returns Ex.P11 to Ex.P13 for the period from 2013-14 to 2015-16; that as per last income tax return Ex.P13 for the year 2015-16 which was filed just after one month of the accident, the annual income of the claimant was ₹2,46,300/-; that however, the said income tax return Ex.P13 was not taken into consideration by the Tribunal while assessing the monthly income of the claimant as ₹18,150/-. Counsel for the claimant has further submitted that the income tax return Ex.P13 which is relating to the period prior to the accident requires to be taken into consideration to assess the income of the claimant as ₹2,46,300/- per annum at the time of the accident. In support of his contentions the counsel for the claimant has placed reliance upon the decision of Hon'ble Supreme Court in **Rukmani Jethani and Ors. vs. Gopal Singh and Ors. 2021 ACJ 2683**, wherein it was held that the income tax return could not be ignored just on the ground that it was filed after the death of the deceased.

11. Counsel for the claimant has further contended that as per law laid down by Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi and others (2017) 16 SCC 680**, the claimant is also entitled to addition of another 10% on account of future prospects. It has been further contended that as a result of permanent disability of left ankle, the earning capacity of the claimant has been reduced and he is not able to lead normal life; that the concerned doctor while appearing in the witness box as PW2 admitted that the claimant is having difficulty in climbing stairs, running and prolong standing. Counsel for the claimant has further contended that even after discharge from the hospital, the claimant remained bed ridden for about 5-6 months on account of which, the claimant suffered loss of income; that however, all these aspects were not taken into consideration by the Tribunal while passing the impugned award; that even the compensation awarded under the heads of pain and sufferings and transportation charges requires to be enhanced and the claimant is also entitled to get additional amount as compensation under the head of attendant charges.

12. On the other hand, counsel for the insurance company has submitted that the Tribunal rightly assessed the income of the claimant; that income tax return Ex.P13 filed by the claimant after the accident had taken place, could not be taken into consideration to assess the income of the claimant. So, Ex.P13 was rightly ignored by the Tribunal while passing the impugned award.

13. Counsel for the insurance company has further contended that no cogent evidence was led by the claimant to show that after the accident he is unable to do his regular work of electrical contractor due to injuries

sustained by him in the accident in question. Thus claimant has failed to prove that he has suffered loss of future earnings on account of the injuries sustained by him. The counsel for the insurance company further submits that functional disability of the claimant is much lesser than 40% as has been assessed by the Tribunal. Further, the claimant is entitled to get interest from the date of filing of the claim petition and not from the date of accident as has been granted by the Tribunal. The counsel for the insurance company has further contended that the compensation awarded by the Tribunal is highly excessive and deserves to be reduced.

14. I have considered the submissions made by the counsel for the parties.

15. The findings of the learned Tribunal with regard to issue No.1 are not challenged by the insurance company and consequently it stands proved that claimant-Gurmukh Singh suffered injuries on his left ankle due to motor vehicle accident which was caused by respondent No.1 while driving No. PB01-A-3402 in rash and negligent manner on 5.7.2015. Immediately after the accident, the claimant was admitted to GMSH-16, Chandigarh. From the perusal of the testimony of PW-2 Dr. Neeraj Gupta coupled with discharge certificate Ex.P1, CT Scan report Ex.P2, it is evident that the claimant remained admitted in GMSH-16, Chandigarh from 5.7.2015 and was discharged on 31.7.2015 and he suffered comminuted fracture of distal end of tibia with disruption of the articular surface, fracture of distal end of fibula with displaced ends and small subchondral fracture of the postero-lateral part talus for which the claimant was operated thrice which included major surgery on 7.7.2015 followed by two minor procedures and initially external fixator was applied on 7.7.2015, which was later on

removed and plaster of paris was applied on 21.12.2015 and plaster of paris was removed on 26.3.2016. PW-2 also proved the disability certificate Ex.P133 of the claimant as the same was issued under his signatures, he being the member of the board which medically examined the claimant to assess his physical disability. As per the testimony of PW-2 coupled with Ex.P133 the claimant suffered 40% permanent physical disability (PPD) in relation to left lower limb. The claimant also produced medical bills (Ex.P15 to Ex.P128) worth ₹68,440/-.

16. In the light of the aforesaid medical evidence, it stands proved that the claimant suffered injuries on his left ankle, which includes 3 different fractures as are detailed above and for his treatment the claimant remained admitted in GMSH-16, Chandigarh from 5.7.2015 to 31.7.2015 and during this period his left ankle was operated and fixator was applied and even after his discharge the claimant used to appear in OPD of the hospital for follow up treatment and fixator was removed on 21.12.2015 and plaster of paris was removed on 26.3.2016. Thus making it clear that for the period from 5.7.2015 to 26.3.2016, the claimant was unable to do his normal work of electrical contractor and as such suffered financial loss during the said period.

17. It is the plea of the claimant that he was doing the work of electrical contractor and electric repair. In order to prove his monthly income, the claimant produced income tax returns Ex.P11 to Ex.P13 for the period from 2013-14 to 2015-16. Admittedly claimant suffered accidental injuries on 5.7.2015 and thereafter remained admitted in hospital till 31.7.2015. In the given circumstances, no ground is made out to discard income tax return Ex.P13, which was for the period from 1.4.2014 to

31.3.2015 i.e. the period prior to accident in question. As per income tax return Ex.P13, the annual income of the claimant at the relevant time was ₹2,46,300/-. In the given circumstances, no ground is made out to disbelieve the income tax return Ex.P13, thus the annual income of the claimant at the time of accident comes out to be ₹2,46,300/- and accordingly his monthly income is assessed as ₹20,525/-.

18. It has come on the record that the claimant remained admitted in hospital from 5.7.2015 to 31.7.2015 and even thereafter plaster of paris was removed from his left ankle on 26.3.2016, so during the aforesaid period, the claimant was unable to do his normal work and as such suffered financial loss on account of the same and the same is assessed as ₹1,19,245/-.

19. As per Ex.P133, the permanent physical disability with regard to left lower limb of claimant was assessed as 40%. PW-2 the concerned doctor while appearing in the witness box stated that on account of the said permanent physical disability the claimant will have problem in prolong standing, running, squatting and climbing stairs. The claimant is doing work of electrical contractor, in the given circumstances, the functional disability of the claimant is assessed as 25% in place of the 40% as has been assessed by the Tribunal. Thus loss of future earnings on account of aforesaid permanent disability, is hereby assessed by applying multiplier of 11 (age of claimant being 54 years) as ₹6,77,325/-.

20. Taking into consideration the fact that at the time of accident the claimant suffered 3 fractures of left lower limb, for which he had undergone 1 major surgery and 2 minor surgeries and remained admitted in hospital for about 25 days, damages on account of pain and sufferings are

hereby assessed as ₹75,000/- in place of ₹15,000/- as assessed by the

Tribunal. During the recuperation period, the claimant may have been prescribed special diet and on account of the same, the claimant is entitled to get compensation worth ₹15,000/- in place of ₹10,000/- as assessed by the Tribunal. Furthermore, someone must be attending the claimant during the recuperation period and as such the claimant is also entitled to get ₹11,650/- as attendant charges. The Tribunal rightly assessed transportation charges as ₹10,000/-.

21. On account of permanent physical disability of left lower limb, the claimant is unable to lead normal life as he is having problem in running, prolong standing and climbing stairs. On account of loss of aforesaid amenities of life, the claimant is entitled to get additional amount of compensation worth ₹85,000/-

22. The accident took place on 5.7.2015 and claim petition was filed on 14.1.2016 and the claimant was granted interest from the date after 30 days of the injury by the Tribunal in the light of the decisions in **National Insurance Company Ltd. vs. Manphool Singh and Ors., 2009 PLR 706** and **Sadhu Ram vs. Dakshin Haryana Bijli Vitran Nigam, 2014(4) RCR (Civil)**. In the light of the circumstances as discussed above, no ground is made out to interfere in the interest component of the impugned award.

23. In the light of the above discussion and the reasons stated above, no ground is made out to interfere with the compensation worth ₹10,61,660/- along with interest awarded by the Tribunal. Consequently, FAO-8136-2016 filed by the claimant and FAO-375-2017 filed by Insurance Company are hereby dismissed being devoid of merits.

September 26, 2023

(KARAMJIT SINGH)
JUDGE

Paritosh Kumar/Gaurav Sorot