IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-6167-2023 (O&M)
Date of Decision: 20.11.2023

Reliance General Insurance Company Limited

....Appellant

VERSUS

Tarif @ Rihan and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Sanjeev Kodan, Advocate,
for the appellant.

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KARAMJIT SINGH, J.

This appeal has been filed by the appellant insurance company against the award dated 18.8.2023 passed by MACT, Nuh whereby award of ₹ 20,51,240/- along with interest @ 6% p.a. from the date of institution till its realization has been passed in favour of the claimant-respondent No.1 and against the appellant insurance company and respondents No.2 and 3 who are held jointly and severally liable to make payment of said award.

2. Brief facts of the case are that the claimant was working as a cleaner with the offending vehicle i.e. truck No.HR38-X-7045 which was driven by respondent No.2-Sareef and was owned by respondent No.3-Kanhaiya R Mishra and was insured with the appellant insurance company. The said truck met with an accident on 23.8.2021 in the area of village Jhadwasa, District Ajmer, Rajasthan due to rash and negligent driving of respondent No.2. The claimant sustained multiple injuries including fracture of left leg in the said accident and firstly, he was taken to Community Health Centre, Nasirabad and then was referred to SMS Hospital, Jaipur and thereafter, the claimant remained admitted in SHKM< Nalhar and one

hospital in Faridabad. On account of the injury sustained by the claimant on his left lower limb, his left leg was amputated and amount of ₹ 6 lakh was spent on his medical treatment including transportation charges and the claimant is still undergoing treatment; that FIR No.235 dated 14.9.2021 was registered against respondent No.2 for causing aforesaid accident. The claimant was 29 years of age at the time of the accident and his monthly earnings were ₹ 20,000/- prior to the accident as, he was working as a cleaner with the offending truck. The claimant filed claim petition for grant of compensation worth ₹ 50 lakh against the owner, driver and insurer of the offending truck.

3. On notice of the claim petition, the owner and driver failed to appear and accordingly, they were proceeded against *ex parte* in the claim petition.

4. The appellant insurance company appeared and filed written statement contesting the claim of the claimant on different counts.

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

1. Whether the accident resulting into injuries to petitioner Tarif @ Rihan son of Usman, took place on 23.08.2021, in the area of Police Station Nasirabad, on account of rash and negligent driving of respondent No.1 while driving vehicle Truck bearing registration No.HR-38-X-7045? OPP
2. If issue o.1 is proved, to what amount of compensation petitioner is entitled to and from whom? OPP.
3. Whether the respondent No.2 has violated the terms and conditions of the insurance policy as respondent No.1, driver

was not holding a valid and effective driving license, if so, to what effect? OPR-3.

4. Relief.

6. In order to prove his case, the claimant appeared in the witness box as PW1 and also examined PW2-Dr.Naseem Ahmed and the claimant also produced record with regard to his medical treatment including medical bills Ex.P18 to Ex.P56 amounting to ₹ 42,184/-.

7. On the other hand, counsel for the insurance company tendered copy of driving license of the driver as Ex.R1.

8. After hearing counsel for the parties, the Tribunal decided the claim petition in favour of the claimant and awarded compensation worth ₹ 20,51,250/- along with interest as has been detailed above.

9. The present appeal has been filed by the appellant insurance company being aggrieved by the impugned award.

10. Counsel for the appellant insurance company submits that exorbitant amount has been awarded by way of compensation to the claimant by the Tribunal and the same deserves to be reduced. Counsel for the appellant, while referring to the impugned order, submits that no doubt, left leg of the claimant was amputated. Still amount of ₹ 54000/- awarded on account of transportation charges, ₹ 2 lakh as attendant charges and ₹ 1 lakh on account of pain and suffering is quite unreasonable. It is further contended that the functional disability of the claimant was wrongly assessed as 60%. It is further contended that the same also requires reduction in light of law laid down by Hon'ble Supreme Court in **Raj Kumar** v. **Ajay Kumar and another,** (2011) 1 SCC 343. It is further contended that monthly wages of the claimant were also assessed as ₹

9,000/- per month which are also excessive.

11. I have considered the submission made by the counsel for the appellant insurance company.

12. There is no doubt that the claimant suffered accidental injuries on account of rash and negligent driving of truck No.HR38-X-7045 by respondent No.2 and as a result of the same, left leg of the claimant was amputated and he also remained admitted in different hospitals for his medical treatment. As per the averments made in the claim petition at the time of accident, the claimant was working as a cleaner on the aforesaid truck. So, it could be easily made out that on account of amputation of his left leg, he is unable to follow said avocation. The Tribunal assessed the monthly wages of the claimant as ₹ 9,000/- per month. In the given circumstances, the claimant suffered financial loss and the total loss of income is assessed by the Tribunal as ₹ 15,42,240/- by applying the multiplier of 17. The transportation charges worth ₹ 54,000/- are reasonable. The compensation awarded by the Tribunal on account of pain and suffering worth ₹ 1 lakh in case of amputation seems to be on lower side but the same could be adjusted in the amount of ₹ 2 lakh which has been awarded as attendant charges. The functional disability assessed as 60% is also reasonable as the claimant has lost his livelihood on account of amputation of his left leg and as such, is unable to do normal work and lead normal life and has become dependent on other members of his family.

13. In view of above, pecuniary damages (special damages) being expenses relating to treatment/hospitalization, medicines, transportation, nourishing food, loss of future earning, loss of earning during the period of treatment and non-pecuniary damages (general damages) relating to pain,

suffering, loss of amenities etc. which have been awarded by the Tribunal are reasonable.

14. In light of above, no interference is called for and the appeal lacks merit. Consequently, the appeal is hereby dismissed. The aforesaid observations are made only for the purpose of disposal of the present appeal filed by the appellant insurance company. It is further made clear that any of the observations made hereinabove would be having no bearing on the appeal, if any, filed by the claimant seeking enhancement of the amount of compensation.

(KARAMJIT SINGH)
JUDGE

November 20, 2023
Paritosh Kumar

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