

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.125

Case No. : FAO-6022-2023 (O&M)

Date of Decision : November 17, 2023

Kotak Mahindra General Insurance Co. Ltd. Appellant
vs.

Pinki and others Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr.Vishal Aggarwal, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. The present appeal has been filed by Kotak Mahindra General Insurance Co. Ltd. (for short – the Insurance Company) against the Award dated 24.08.2023, passed by the learned Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as – the Tribunal), whereby the claim petition filed by respondent no.1 - Pinki was partly allowed. All the respondents were held liable to make payment of amount of compensation jointly and severally, which was to be mainly indemnified by the appellant-Insurance Company and the appellant-Insurance Company was directed to deposit the compensation amount of Rs.34,917/- directly in claimant's bank account.

2. The brief facts of the case, as culled out from the paper book, are that on 31.03.2018, claimant Pinki (respondent no.1) along with her brother-in-law namely Suraj, was going to Jhajjar on a Bajaj Discover motorcycle bearing registration No.HR-77-1461. The said motorcycle was

being driven by Suraj. On the way, when they reached in front of Girawar Road, S.R. Bhatta Girawar, Jhajjar, a tractor trolley bearing registration No.HR-13-M-3348 (hereinafter referred to as – the offending vehicle), being driven by Pardeep Kumar (respondent no.2) in rash and negligent manner and at a very high speed, came from opposite side and without giving any indication or blowing horn, struck against their motorcycle. Due to the accident, claimant Pinki and her brother-in-law Suraj both received multiple grievous injuries. The driver of the tractor trolley fled from the spot. The family members of both injured, after getting information, reached the spot and shifted them to the hospital. During treatment, Suraj succumbed to his injuries. FIR was lodged by claimant herself against an unknown vehicle. The accident was solely caused due to rash and negligent driving of respondent no.2.

3. Claim petition was filed by claimant Pinki, submitting therein that she received multiple grievous injuries in the accident including thigh deformity. It was further submitted in the petition that she had to spend Rs.10,00,000/- on her treatment and was still under treatment. So, it was prayed to grant compensation to the tune of Rs.20,00,000/- along with interest.

4. After appreciating the evidence on record, the claim petition was partly allowed. An amount of Rs.34,917/- was awarded in favour of the claimant along with interest @ 9% per annum from the date of filing of claim petition till actual realization of the awarded amount. All the respondents i.e. driver, owner and Insurance Company of the offending vehicle were held liable jointly and severally to make the payment of

compensation, which was mainly to be indemnified by the Insurance Company.

4. Feeling aggrieved against the aforesaid Award, the present appeal has been filed by the Insurance Company i.e. insurer of the offending vehicle.

5. Learned counsel for the appellant Insurance Company vehemently contended that from the contents of FIR itself and claim petition, it is clear that there is nothing on record to show that there was any negligence on the part of the offending vehicle and the same has been wrongly involved just to get compensation. Since the FIR was lodged against an unknown vehicle, there is no evidence of the offending vehicle being involved in the accident. Even the claimant is not sure about the involvement of the vehicle in question. So, when the claimant herself has failed to prove the involvement of offending vehicle, the claim petition deserved dismissal. It has further been averred that the compensation awarded is highly excessive and not in accordance with the settled law as the claimant has not proved on record any loss of earning. There is nothing on record to show that the claimant was working. So, there is no question of loss of income. Moreover, the disability, as alleged by the claimant, is temporary disability of 5.9% which would go with the passage of time. No permanent disability has been proved on record. So, prayer for setting aside the impugned Award has been made.

6. I have heard learned counsel for the appellant Insurance Company and also perused the case file.

7. The claimant has duly proved that the accident was caused by

respondent no.2 while driving the tractor in a rash and negligent manner. The FIR was registered and thereafter, on the basis of investigation conducted by the police, challan under Section 173 Cr.P.C. was filed. The Tribunal prima facie framed charge against the accused. Copy of charge-sheet was proved as Ex.P-9 before the Tribunal. Respondent no.2 is facing trial for causing the accident in rash and negligent manner and for causing injuries to the claimant as well as for death of Suraj, while driving the tractor in rash and negligent manner. Respondent no.2 did not step into the witness-box. There is no rebuttal to the said evidence. This Court has observed in case Bhagwani Devi vs. Krishan Kumar Saini and others reported as 1986 Accidents Claims Journal 321 that if a driver does not come to the witness-box to depose regarding the accident, adverse inference can be drawn against him and if the driver keeps away from the witness-box without any sound reasons, it must indeed be construed as a telling circumstance against him. In case Raju vs. Sukhwinder Singh and other reported as 2006 (4) RCR (Civil) 82, it is also held by this Court that if driver of the offending vehicle does not come forward to deny the negligence, then adverse inference would be drawn against the driver of the offending vehicle. The claimant has stood the test of cross-examination and there is no ground to disbelieve her version. The learned Tribunal has rightly held that accident was caused by respondent no.2 while driving the tractor in rash and negligent manner and caused injuries to the claimant. The learned Tribunal awarded compensation as under :-

Pain and suffering	Rs.5,000/-
Special Diet	Rs.5,000/-

Medical Expenses	Rs.10,917/-
Transportation	Rs.2,000/-
Attendant charges	Rs.2,000/-
Loss of Income	Rs.10,000/-
<u>TOTAL</u>	<u>Rs.34,917/-</u>

8. The claimant remained admitted in hospital for many days i.e. from 01.04.2018 to 05.04.2018 and fro, 21.04.2018 to 13.05.2018. It is not possible to keep and maintain record of each and every expenditure when a person is admitted in the hospital. Keeping in view that the assessed disability was temporary, no compensation has been granted under the ‘loss of future income’.

9. In view of the foregoing discussion, I do not find that the compensation awarded in this case is on higher side. There is no ground to interfere in the Award dated 24.08.2023 passed by learned Tribunal. So, the present appeal is without any merit and the same is accordingly dismissed.

10. Pending applications, if any, shall stand disposed of along with this judgment.

November 17, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.