IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.10657/2018 (O&M) and

FAO 7454/2018 (O&M)

Date of decision:21/02/2023

Mahabir Sharma ………………Appellant

Vs.

Furkan Ali and another …………Respondents.

FAO 7454/2018

Shri RAM General Insurance Co. Ltd. …….Appellant.

Vs.

Mahabir Sharma and another ……………….Respondent.

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Lekh Raj Sharma, Advocate for the claimant/appellant.

Mr.Anil Ghanghas, Advocate for respondent no.1-Driver.

Mr. Rajbir Singh, Advocate for the respondent no.2-Insu.Co.

Nidhi Gupta, J.

This common order shall dispose of the aforesaid two cross-appeals, the same being FAO 7454/2018 filed by the Insurance Company; and FAO 10657/2018 by the sole claimant; both Appeals having arisen out of common Award dated 1.8.2018 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') passed in MVA Petition No.40/2015 filed u/s 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Facts being common in both the appeals-having arisen out of common Award- with the consent of ld. Counsel for the parties, are being noticed in FAO 10657/2018.

Brief facts of the case are that ld. Tribunal on the basis of pleadings and evidence led before it, held that the injured claimant/ appellant in this appeal-Mahabir Sharma was injured in a motor vehicular accident that took place on the intervening night of 9/10.8.2014 due to the rash and negligent driving of truck bearing registration NO. UK-08-CA-2401 (hereinafter referred to as 'the offending vehicle') owned and driven by respondent no.1, and insured by respondent no.2 herein. In view of the above, ld. Tribunal awarded a compensation of Rs.21,14,059/- along with interest @ 7.5% per annum from the date of filing of claim petition till realization. The respondents were held jointly and severally liable to pay the compensation.

Arguments on behalf of Insurance Company:

Learned counsel for the Insurance Company assails the impugned Award, in particular, quantum of compensation, primarily on the ground that the permanent disability of the claimant was assessed as 79%, however, the exorbitant amount of Rs. 19,55,100/- awarded towards loss of future earning is not justified. It is submitted that as per judgment of the Hon'ble Supreme Court in **Raj Kumar v Ajay Kumar and another, Law Finder Doc Id @ 238216,** in which the permanent disability of the claimant therein had been assessed as 45%, Hon'ble Supreme Court assessed the functional disability as 25% and loss of future earning capacity was taken as only 20%. It is submitted that however, in the present case the ld. Tribunal has assessed the loss of future earning capacity of the injured as 70% which is very much on the higher side. It is submitted that considering the avocation of the claimant, that he ran a Poultry Farm and a Dhaba, therefore, functional disability/ loss of future earning ought not to have been assessed as 70% and should have been taken as 40%. It is submitted that disability of the claimant is not functional disability, earning of the claimant as a business man running a Poultry Farm and Dhaba, would not be affected. It is submitted that for this type of profession there is no loss of income either from Dhaba or from Poultry Farm and income would remain same irrespective of the alleged disability.

It is further submitted that the ld. Tribunal has assessed the income of the claimant by relying upon the Income Tax Returns filed by the claimant. However, the same were not proved in accordance with law and therefore, the impugned Award deserves to be set aside on this ground as well.

Arguments on behalf of claimant/appellant:

In response, it is submitted by the learned counsel for the appellant/claimant that the claimant has suffered head injury which was duly proved by Disability Certificate Ex.P122 and Ex.P143. It is submitted that in actual fact the claimant had spent more than Rs.5 lacs on his treatment, however, as he was grievously injured in the accident, he could not retain the medical expenses bills. It is stated that no evidence in rebuttal has been led by the Insurance Company, therefore, the findings of the ld. Tribunal cannot be challenged now. It is further submitted that Income Tax Returns produced by the claimant are statutory documents the veracity of which cannot be doubted, especially in view of the fact that no evidence in rebuttal was led by the Insurance Company.

It is submitted that in fact, compensation deserves to be enhanced, as despite the fact that the claimant/appellant was seriously injured in the accident, Tribunal has awarded mere compensation as under: -

Sr.No.	Head under which amount awarded	Amount (in rupees)
1	Loss of future income	19,55,100/-
2	Compensation on account of expenditure incurred on medicine and treatment	58,959/-
3	Compensation on account of pain and suffering	50,000/-
4	Compensation on account of nutritious diet	25,000/-
5	Compensation on account of transportation charges	25,000/-
6	Total	21,14,059/-

It is reiterated that claimant/appellant had spent Rs.5 lacs on his treatment, however, bills could not be produced in respect of medical expenses incurred as claimant was grievously injured. It is submitted that on account of disability suffered by the claimant, he is unable to do any job and his disability ought to have been taken as 100%. It is further submitted that the amounts awarded on account of nutritious diet, transportation etc., are also on the lower side.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Perusal of the record of the case shows that as per deposition of PW 10 Dr. Alok Jain, Medical Superintendent, Civil Hospital, Panipat, a Board of Doctors consisting of Dr. Neeru Suneja as Chairman, Dr. Sandeep Kumar Goel as Orthopedic Specialist, and Dr. Alok Jain himself as Member of the Medical Board issued disability certificate Ex.P122 in respect of disability suffered by the claimant. PW-10 deposed that as per said disability certificate, injured claimant was stated to have suffered 79% permanent disability '*with head injury with severe ataxia with borderline intellectual functioning*'. PW-10 proved attested copy Ex.P 122 and also proved disability certificate issued by PGIMS Rohtak Ex.P143. PW-10 further stated that Ex.P122 had been issued on the basis of Ex.P143 which was letter No. PGIMS/MB/15/2702 dated 21.4.2015 whereby the claimant had been diagnosed with 79% permanent disability.

Admittedly, the claimant had suffered multiple grievous injuries including head injury pursuant to which he had undergone treatment at various Hospitals in Chandigarh, Sonipat and Panipat. It has also come on record that as a result of the said injury/ disability suffered by the claimant he is now confined to bed and is unable to do his daily jobs properly. Further, due to the severe ataxia with borderline intellectual functioning, claimant/appellant is unable to co-ordinate his muscles and as such, is not able to supervise his business. Accordingly, in view of the above said unrefuted findings, the loss of earning capacity of 70% as assessed by the Tribunal is just and fair in the circumstances of the case. Further, this medical condition of the claimant has remained unrebutted by the Insurance Company; as duly noticed by the ld. Tribunal in para 6 of the impugned Award wherein it has been noted that "*on the other side, no oral evidence has been led on behalf of the respondents*".

As regards the argument of the ld. Counsel for the Insurance Company that Income Tax Returns of the claimant could not have been relied upon in assessing his income, the said argument does not stand scrutiny in view of judgment of Hon'ble Supreme Court rendered in **Smt. Anjali & Ors. v Lokendra Rathod & Ors, Law Finder Doc Id # 2081014** wherein their

Lordships of the Supreme Court while placing reliance on **Malarvizhi v. United India Insurance CO. Ltd. (2020) 4 SCC 228** held that "*we are in agreement with the High Court that determination must proceed on the basis of Income Tax Returns where available. The Income Tax Return is a statutory document on which reliance may be placed to determine annual income of the deceased".*

In view of the undisputed factual and legal position as noticed above, the appeal bearing FAO NO.7454/2018 filed by the Insurance Company stands dismissed.

As regards the argument of the learned counsel for the appellant/claimant seeking enhancement of compensation on the ground that he has spent Rs.5 lacs on his treatment, admittedly, no bills have been produced in support of the said assertion. Even no witness has been examined to suggest that the claimant had spent this amount as alleged. Admittedly, the ld. Tribunal has granted all the amounts in respect of which bills were produced by the claimant for the medical expenses incurred by him for his treatment. I further find that the amounts granted by the ld. Tribunal towards special diet and nutrition, and transport, are just and fair.

Accordingly, finding no merit in the appeal filed by the claimant/appellant being FAO 10657 of 2018, the same is also dismissed.

A copy of this order be placed on the file of connected FAO No.7454/2018.

21/02/2023 **(Nidhi Gupta)**
Joshi **Judge**

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