2024:PHHC:018513

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-418-2000 (O&M)
Date of Decision: February 08, 2024

National Insurance Company Limited
...Appellant

VERSUS

Ramesh Kumar and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Mayank Gupta, Advocate for
Mr.Vinod Gupta, Advocate
for the appellant.

Mr.Hari Om Sharma and Ms.Roop Rekha, Advocates
for respondent No.1.

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ARCHANA PURI, J.

The present appeal has been filed by the National Insurance Company Limited, to assail the Award dated 10.09.1999 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to Ramesh Kumar, on account of the injuries, suffered by him, in a motor vehicular accident.

For the convenience of discussion, the parties are referred to as making appearance before learned Tribunal.

The fact germane, to be noticed, are as follows:-

That, on 01.02.1997, claimant-Ramesh Kumar @ Ramesh Chand had purchased a ticket for travelling in bus bearing registration No.DL-1P-8301, from Amritsar to Delhi, along with Gulzar Singh. They boarded the bus. The claimant was sitting on seat no.10, whereas, Gulzar Singh was sitting on seat no.9 of the bus in question. The said bus was being driven rashly, negligently and at a very high speed by its driver Kuldeep Raj, who was respondent No.1, before learned Tribunal. At about 3.00 a.m., on 02.02.1997, when the said bus reached near village Dappar and was about 2 kms. towards Ambala from link road of village Dehar, on Ambala-Chandigarh road, in the meantime, a truck, came from the opposite direction, on its correct left hand side, at a normal speed. The bus driver went on the wrong side of the road, on account of rash and negligent driving and struck against the truck and caused the accident in question, wherein, claimant Ramesh Kumar had sustained multiple injuries, including compound fracture of right arm, head injury, total loss of vision of right eye and partial loss of vision of left eye.

The claim petition was contested by respondents No.2 to 5, wherein, respondent No.2-registered owner of the bus, denied about the involvement of the bus in question, in the accident. Even, remaining respondents denied the averments of the manner of taking place of the accident.

Respondent No.5-insurance company, in its separate reply, had also denied the accident and further pleaded that if at all, the accident is proved, in that event, the accident had taken place due to rash and negligent driving of the truck, which has not been impleaded as a party, in the present petition.

On appraisal of the evidence, brought on record, vide impugned Award, learned Tribunal had granted compensation to the extent of

Rs.3,67,000/- together with interest component to the claimant. The liability of respondents No.1, 2 and 5 was held to be joint and several. However, respondents No.3 and 4 were held to be not liable to pay any compensation.

Being aggrieved, the insurance company has filed the present appeal, mainly on the quantum of compensation. Besides the same, also challenged the finding of learned Tribunal, with regard to driving licence of Kuldeep Raj to be valid, on account of which, insurance company was also saddled with the liability, together with respondents-driver and owner of the bus in question.

Learned counsel for the parties heard.

So far as, the factum and manner of the accident is concerned, suffice to consider that besides insurance company, none of the other persons, who were so held liable, have filed any appeal. As such, finding so recorded by learned Tribunal, on this aspect, as such, warrants no scrutiny.

Firstly, coming to the quantum of compensation. It has been assiduously submitted by learned counsel for the insurance company that compensation, so worked upon by learned Tribunal, does not commensurate with the kind of injuries, sustained by Ramesh Kumar, in the accident in question. It is an exorbitant amount, so granted. As such, a prayer has been made for reduction of the amount of compensation.

In this regard, reference is now made to the testimony of Ramesh Kumar-claimant, who had stepped into witness box as PW-3. He has categorically stated therein, about the manner of taking place of the accident and further deposed about having sustained injuries in the accident in question. He deposed that he suffered three fractures of right arm and had suffered head injury as well as injury on eye. He further deposed that he was firstly taken to the Civil Hospital, Ambala Cantt., where from, he was referred to PGI, where, he remained admitted for 17 days. He also categorically deposed that his right arm was operated and wounds on the head were stitched. Fixator was applied on right arm, which continued for three months. Thereafter, his right arm was plastered for six times in PGI. Furthermore, he also deposed that he had also undergone treatment for an eye injury. He further deposed that he has become totally disabled to do any work, on account of the injuries sustained. Further, he deposed about assessment of the disability, on account of the said injuries. PW-4 Gulzar Singh, who was accompanying the deceased, has also deposed about the injuries sustained by the claimant, in the accident in question.

Besides the aforesaid, the claimant also examined PW-1 Lajja Ram, who had brought the bed head ticket of Ramesh Kumar, which is Ex.PA. PW-2 Dr.R.C.Jindal, Orthpaedic Surgeon of Civil Hospital, Ambala, has also deposed about examination of Ramesh Kumar by the medical board on 16.09.1998 and then, for assessment of disability on 09.12.1998. He also deposed that injured was found to be having physical disability to the extent of 55%, due to the ankylosis of right elbow, radio ulna joint and non-union of fracture right humerous and his visual disability was 30% and total disability was 85%, compared to a normal man. He proved the disability certificate, which is Ex.PB.

Besides the aforesaid evidence, various bills and record of treatment of the injured was also tendered into evidence, which are Ex.P2 to Ex.P6. Ex.P2 is the discharge card of PGI, which clearly reveals about the patient to have been diagnosed to be the case of "*# Right humerous gr.III compound width # Both bone forearm (Right) with Head Injury". The surgical procedure done was "Debridement and external fixation for # humerous and # radius/Intermediary*". It also shows that claimant remained admitted in PGI for a couple of days. Furthermore, the discharg card also reveals about the detail of the treatment given to the claimant, which also included surgical intervention and it also states about PoP having applied multiple times. Besides the same, various other bills have also been produced, which are in the name of the claimant.

In the light of the aforesaid evidence, it is pertinent to mention that specific assertion of the claimant was that he had spent a sum of Rs.2 lakh on his treatment, cost of medicines, special diet, transportation and learned Tribunal had granted Rs.1.25 lakh on all the aforesaid counts i.e. expenditure on medical treatment, cost of medicines, special diet and transportation. Learned Tribunal also took into consideration that Ramesh Kumar was doing private job with one Paramjit Kaur of Amritsar and was residing in rented accommodation at Delhi. He also deposed that he was drawing salary of Rs.2,500/- per month. But in any case, learned Tribunal had considered the earnings of the deceased as Rs.2,000/- per month.

It is evident that the claimant was 27 years old, at the relevant time. As per the disability certificate, proved in evidence, the disability on account of non-union of humerous fracture right side was assessed to be 55% and permanent visual disability was assessed to be 30%. In total, it was assessed to be 85%.

It is submitted by learned counsel for the appellant-insurance company that this assessment of 85% disability, relates to different body parts and it is not total disability of the body. But in any case, it matters not much, as learned Tribunal, while considering the earnings of the injured-claimant to be Rs.2,000/- per month, had worked upon the loss of earnings, while taking it to be Rs.1,000/-, which amounts to taking into consideration, the half of the total earnings i.e. 50% and for intents and purposes, in view of the same, the extent of disability has been impliedly scaled down to 50%. The claimant is 27 years old. In the light of the same, the loss worked upon, for a period of 16 years, as done by learned Tribunal, is just and reasonable and working upon the same, on the count of 'loss of earnings', the compensation has been assessed as 1000x12x16=Rs.1,92,000/-. Thus, total amount of compensation was worked upon was Rs.3,67,000/-. In any case, the compensation, so worked upon by learned Tribunal, is the bare minimum and in any case, cannot be said to be exorbitant, which calls for intervention by this Court.

Besides the quantum, the insurance company has also disputed the findings recorded by learned Tribunal about respondent No.1-Kuldeep Raj, to be having valid driving licence, at the time of accident, on account of which, the liability has been fastened upon the insurance company jointly and severally, together with other respondents. However, on this count also, the submission, so made, is bereft of merits.

Very true, as so pointed by learned counsel for the insurance company that respondent No.1-Kuldeep Raj was given up by the claimants. From the summoned record, it is evident that on 18.03.1998, counsel representing the claimant had given up Kuldeep Raj-respondent No.1, who was driver of the offending vehicle, as unnecessary, because he was not being served despite best efforts. Thus, it is evident that under constrained circumstances, learned counsel for the claimant had given up said witness.

In the light of the same, furthermore, it should also be noticed that on 13.08.1998, statement of learned counsel, who represented respondents No.2, 3 and 4, was recorded, which for the purpose of making reference, is reproduced, as herein given:-

> *"Since driver Kuldip Raj has left service and his whereabouts were not known, I cannot give any D.L. to the Insurance Company. Moreover, Kuldip Raj, has been given up by the claimants on 18.03.1998."*

On account of statement made aforesaid, it has been assiduously submitted by learned counsel for the insurance company that the copy of the driving licence, as such, has not been produced by the owner of the vehicle in question and therefore, the finding, ought not to have been recorded by learned Tribunal, about the driver of the offending vehicle, to be holding valid driving licence. However, this submission is not tenable.

It should be noted that respondent No.2-Sukhdev Singh, who is registered owner of the offending bus, had stepped into witness box as RW-1. In his examination-in-chief, he had stated about Kuldeep Raj to be the driver on his bus and he was employed much prior to day of accident. He also deposed that Kuldeep Raj was having valid driving licence for driving Heavy Transport Vehicle, including Bus. Furthermore, he had deposed that after the accident, Kuldeep Raj-respondent No.1, had left his services. While facing cross-examination, the said witness further stated that Kuldeep Raj took his licence with him, when he left the service and even, photocopy of the licence is not in his custody.

In the light of the same, it is further pertinent to mention that RW-1 Sukhdev Singh stated that he had checked the driving licence of Kuldeep Raj and he was satisfied that the same was valid and correct. Not only this, he further deposed that at the time of settling the claim qua damages, the insurance company had seen the driving licence. Though now, as pleaded in the grounds of appeal, it is submitted by learned counsel for the insurance company that it was own damage claim relating to some other accident, which had taken place in Delhi, but however, no evidence, regarding this assertion has, as such, come on record. No suggestion relating to the same has been given to the witness Sukhdev Singh.

Such being the evidence, coming on record, about the non-availability of the driving licence of Kuldeep Raj with Sukhdev Singh, it was required, on the part of the insurance company to have led adequate evidence to seek procurement of the driving licence. In this regard, it was most convenient for the insurance company to have summoned the Kuldeep Raj-driver, as a witness, which would have straightened the things to a great extent. But however, no such steps had been taken. Also, no steps had been taken to establish about the own damage claim, to be relating to some other accident, wherein, driving licence of Kuldeep Raj was seen by the insurance company, as stated by Sukhdev Singh.

In the light of the same, the finding that the driver of the vehicle was having valid licence, as such, does not call for any further interference and learned Tribunal had rightly reached the appropriate conclusion, by holding that the driver of the offending bus was holding a valid driving licence, on the date of accident.

Such being the fact situation, the liability has been rightly fastened upon the insurance company, together with other respondents as joint and several.

In view of the aforesaid discussion, the appeal sans merit and the same is hereby dismissed.

February 08, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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