



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO No.2553 of 2024 (O&M)
Date of Decision: 11.07.2024

Go Digit General Insurance Limited
...Appellant

Versus

Mustaak @ Mustak and another
...Respondents

CORAM: *HON’BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Sanjeev Kodan, Advocate
 for the appellant-Insurance Company.

MEENAKSHI I. MEHTA, J. (Oral)

Feeling aggrieved by the order passed by the Commissioner (for short ‘the Competent Authority’) under the Employee’s Compensation Act, 1923 (for short ‘the Act’) at Gurugram on 29.03.2024, whereby respondent No.1-claimant has been awarded compensation to the tune of Rs.19,16,923/-, along-with interest thereon @ 12% per annum from the date of accident till the date of the above-mentioned order, the appellant-insurer (here-in-after to be referred as ‘the insurer’) has chosen to prefer the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the file and resulting in the filing of the present appeal, are that the claimant filed the Claim Application for seeking compensation from respondent No.2-employer (here-in-after to be referred as ‘the employer’) and the insurer, while averring that he had been working with the employer as



Driver on the vehicle bearing registration No.NL-01-Q-8443. On 10.04.2023, he had transported seven cars and one motor-cycle from Mumbai to Gurugram in the afore-mentioned vehicle and when the cars were being unloaded from this vehicle, one car fell on him and he suffered the fractures on his both legs. The employer and insurer filed their separate written-statements, contesting the claim of the claimant therein on various grounds. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence adduced by them on the record and hearing their respective counsel, the Competent Authority allowed the Claim Application vide the impugned order and awarded compensation to the claimant, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellant-insurer in the instant appeal, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the insurer contends that the claimant had suffered 58% disability but the Competent Authority has wrongly calculated and granted the compensation to him (claimant) by considering his disability as 100% and thus, it is explicit that the amount of compensation, awarded to him, is highly excessive and therefore, the impugned order is liable to be modified by way of reducing the same.

5. However, the above-raised contention is bereft of any merit because Annexure A-1 is the copy of the Disability-Certificate issued to the claimant wherein he is certified to have suffered permanent disability to the extent of 58% with the loss of stability due to the fracture on his legs. Further, Annexure A-2 is the copy of the testimony of PW-2 Dr. Vikram Dagar, a member of the Medical Board constituted for the assessment of disability and a perusal thereof reveals that the afore-named doctor has specifically deposed



during his examination-in-chief itself that due to the above-referred disability, the person is unfit for driving the vehicle and doing hard labour work.

6. It has recently been observed by the Apex Court in **Indra Bai Vs. Oriental Insurance Company Ltd & another, 2023 LiveLaw (SC) 543** that “*it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (i.e., workman) has incurred total disablement and thus, if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under Section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (I) of sub-section (1) of Section 2 of the Act does not dilute the import of the substantive clause and rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement*”. These observations clinch the entire controversy in the present case and in the light of the same, it is held that the Competent Authority has correctly assessed the disability of the claimant as 100% for the purpose of working out the amount of compensation payable to him.

7. As a sequel to the fore-going discussion, it follows that the order under challenge, does not suffer from any illegality, irregularity infirmity or perversity so as to call for any interference by this Court. Resultantly, the same is, hereby, upheld and the appeal in hand, being devoid of any merit, stands dismissed accordingly.

11.07.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No