IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-1717-2006 (O&M)
Date of Decision : 20.09.2024

Punjab National Bank ....Appellant

Versus

Mam Chand and others ....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Aseem Kataria, Advocate for the appellant.

Mr.Dinesh Kumar Prajapati, Advocate
for respondent No.1.

Mr. Rahul Bansal, Advocate for
Mr. D.R. Bansal, Advocate
for the respondent No.3.

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SUDEEPTI SHARMA, J.

1. The instant appeal has been preferred by the Punjab National Bank against the award dated 09.01.2006 passed by the learned Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal') under Section 166 of the Motor Vehicles Act, 1988, whereby the claimant was awarded compensation of Rs.2,36,873/- along with interest @ 7.5 % per annum.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 10.6.2002, the claimant was going from Barwala to Swami Hospital, Dera Bassi by a three wheeler No. HR-37A-9246 being driven on the correct left hand side of the road at a moderate speed by its driver Banarsi Dass. At about 10.00 a.m., when they reached near Punjab Cinema Hall, Dera Bassi, in the meantime, a tractor bearing registration No.HR-02F-0314 being driven rashly and negligently by respondent No.1 came from opposite side and hit the three wheeler by going on the extreme wrong side of the

road. As a result of the accident, all the occupants of the three wheeler suffered injuries. The claimant suffered multiple simple and grievous injuries including fracture on right leg at femur his and bone was crushed badly. The claimant suffered fracture of right femur, left knee joint and left leg below knee besides other multiple injuries. The claimant was taken to PGI from the spot where he remained admitted w.e.f. 10.6.2002 to 18.6.2002. The traction and fixator were applied on the right leg of the claimant for one month by way of operation on 11.6.2002 and operation for plating of left leg was also conducted. Another operation of right leg was conducted on 19.07.2002, in Saket Hospital, Panchkula and fourth operation was conducted for plating of left leg. A four inch piece of right femur bone was replaced by way of operation. The claimant is still under treatment and confined to bed. The claimant has spent more than Rs. 90,000/- on his treatment, transportation, attendant/visitors etc. The claimant is having good health in the age of 34 years. He was running a shop of washing and iron the clothes near bus stand Barwala by placing a Khokha on Panchayat Land and paying rent thereof of Rs. 200/- per month. The claimant was earning more than Rs. 5,000/- per month but on account of injuries suffered by him in this accident, he has become permanent disabled and unable to do any work or earn anything.

3. Upon notice of the claim petition, respondents appeared and denied the factum of compensation.

4. From the pleading of the parties, the Tribunal framed the following issues:-

> *"1 Whether the accident in question took place due to rash and negligent driving of his vehicle by respondent no.1, as alleged? OPP*

> *2 If issue No.1 is proved, whether the claimant received injuries in the accident in question, if so to what effect? OPP*
>
> *3 If the above issues are proved, whether the claimant is entitled to compensation, if so to what amount? OPP*
>
> *4 Whether respondent no.1 was not holding a valid and effective driving license on the date of accident?OPR-4*
>
> 5. Relief."

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation of Rs.2,36,873/- alongwith interest @ 7.5% per annum. Hence, the present appeal.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. The learned counsel for the appellant-Punjab National Bank submits that the tractor in question was financed by appellant in favour of respondents No.2 and 3 namely, Sukhdev Singh and Darshan Singh on 28.05.1999. The insurance policy of the tractor was being renewed from time to time by respondents No.2 and 3. He further contends that the tractor was further got insured on 12.03.2003 with the insurance company and the said premium was debited to the loan account of respondents No.2 and 3. He further contends that it was primary duty of the respondents No.2 and 3 to get the vehicle insured. He further contends that since the vehicle was not got insured at the relevant time by respondents No.2 and 3, therefore, they are liable to pay compensation but the learned Tribunal has wrongly held the appellant liable to pay the amount of compensation. He prays for allowing the appeal.

7. Per contra, learned for the respondent No.1-claimant argues that the award passed by the learned Tribunal is liable to be enhanced.

8. On the other hand, learned for the respondents No.2 and 3 prays for dismissal of the award.

9. I have heard learned counsel for the parties and perused the whole record of this case. Relevant portion of the Award passed by the learned Tribunal is reproduced hereunder:-

> *"17. As regards the quantum of sentence, claimant examined PW1 Dr. Umesh Modi, Medical Officer, General Hospital, Sector 6, Panchkula who has proved disability certificate Ex. Pl and this disability certificate was issued by the medical Board and it was signed by him as a member of the Board and this disability is a permanent one.*
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> *18. PW2 Mam Chand claimant in his affidavit Ex. P2 deposed that he remained admitted in PGI Chandigarh from 10.6.2002 to 18.6.2002. The traction was applied on both the legs and fixator was fixed on right leg and remained fixed for 1½ months. He was operated on both the legs on 11.6.2002. Steel rod was inserted in left leg. After the discharge from PGI Chandigarh, he has taken the treatment from Saket Hospital, Panchkula where he was admitted on 19.6.02 and remained admitted for 3-4 months in Saket Hospital, Panchkula. An operation on right leg was conducted on 19.7.2002 in Saket Hospital and steel rod was inserted and plaster was fixed for three months. An operation on left leg was also done in Saket Hospital by the doctors. He was operated on right leg and plate was removed due to formation of pus and infection. He was discharged on 9.9.02 from Saket Hospital, Panchkula and*

thereafter, he visited Saket Hospital, Panchkula for taking OPD treatment every week for a period of 6-7 months. He visited Saket Hospital '30-35 times by hiring a private taxi at the rate of Rs. 500/- per visit. Bracelets were fixed on both the legs on 9.9.02 and he purchased the same at the rate of Rs. 670/- to Rs.1000/-. He is still undergoing treatment. The doctor of Saket Hospital has advised him another operation on the right leg, which may incur expenditure Rs. 60,000/-. He has spent Rs. 2 Lacs on his treatment, transportation, diet, attendant and visitor etc. He is a Washer man and running a shop for washing and ironing the clothes at Bus stand Barwala in a rented premises and he was earning more than Rs. 5000/- per month and now he has become permanent disabled and cannot do his work due to this disability. He further stated that his disability has been assessed to the extent of 75% by the Medical Board, Panchkula.

19. As per disability certificate Ex. Pl proved by PW1 Dr. Umesh Modi, claimant suffered 75% permanent disability in relation to his lower limb. As per medical bills/receipts Ex.P3 to Ex. P100, he has spent Rs. 46873/- on medicines etc. It is also established by evidence on record that he remained in PGI Chandigarh as well as Saket Hospital, Panchkula and he has been operated many times and hence, he has spent something on transportation, special diet, attendant and visitors etc. and further entitled for compensation due to pain and suffering.

Hence, total compensation on account of injuries of the claimant is assessed as under:-

Permanent Disability	*:*	*75%*	*1,50,000.00*
Medical Bills			*46,873.00*
Transportation, special Diet, loss to income etc.			*30,000.00*
Pain and suffering			*10,000.00*
TOTAL			***2,36,873.00***

20. Hence, total compensation on account of injuries of claimant is assessed Rs. 2,36,873/-.

21. Learned counsel for respondents no. 1 and 2 argued that the tractor in question was got financed from Punjab National Bank, Indra Market, Jagadhari and it was responsibility of the bank to get insured the tractor till the payment of the entire loan amount and the bank was negligent not to get insured the tractor at the relevant time being the date of accident and in such circumstances, respondent no.4 bank is liable to pay compensation and there was no fault on the part of respondents no.1 and they are not liable to pay compensation to the claimant.

XXXX XXXX XXXX XXXX

26. RW3 Lachman Dass Deputy Manager of the Bank has come in the witness box alongwith record of tractor trolley bearing registration no. HR02F-0314 financed by the bank in the name of Darshan Kumar and Sukhdev Singh on 28.5.99. He further deposed that the tractor was insured w.e.f. 29.5.99 and *premium worth Rs. 3109/- was paid by the bank to the insurance company. The tractor was again got insured on 30.5.2000 and cover note no. 609906 of National Insurance company is on the record and premium was paid worth Rs.2852/-. Thereafter, the tractor was got insured on 29.5.2001 and the premium was paid Rs.2539/- and this insurance was valid upto 29.5.2002. He also brought the statement of account of the loan and proved copy of the same as Ex.R8. He further deposed that the tractor was got insured on 12.3.2003 with the United India Insurance Company:"*

10. A perusal of the above reveals that as per statement of RW3 Lachman Dass Deputy Manager of the Bank examined by the respondents, it has come on record that tractor bearing registration no. HR02F-0314 was financed by the bank in the name of Darshan Singh and Sukhdev Singh on 28.05.1999 and it was insured by the bank itself from 29.05.1999 by paying premium of Rs. 3109/- to the insurance company and thereafter again it insured on 30.5.2000 vide cover note no. 609906 of National Insurance company and premium of Rs.2852/- was paid. Thereafter, the tractor was again got insured on 29.5.2001 and the premium of Rs.2539/- was paid by the Bank itself to the insurance Company and the insurance policy was valid till 29.5.2002. It has come to surface that the accident took place on 10.06.2002. A perusal of above reveals that the vehicle was being got insured by the bank from time to time and it was mandatory duty of it to insure it continuously but during the period of accident, the vehicle was not insured by the bank itself. Therefore, the bank is at fault to perform its mandatory duty and as such the learned tribunal has rightly held the respondent No.4-Bank liable to pay the amount of compensation.

11. In view of the above, there is no infirmity in the award qua this aspect, the appeal is hereby dismissed.

12. Pending applications, if any, also stand disposed of.

September 20, 2024 **(SUDEEPTI SHARMA)**
A.Kaundal **JUDGE**

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No