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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5357-2016 (O&M)
XOBJC-248-CII-2018
Date of Decision : 09.12.2024

National Insurance Company Ltd ... Appellant(s)

Versus

Amarjeet Singh & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Gupta, Advocate for the appellant.

Mr. Pankaj Katia, Advocate
for the respondent No.1/cross-objector.

ALKA SARIN, J. (Oral)

CM-18392-CII-2016

1. This is an application for condonation of delay of 119 days in filing the appeal.

2. For the reasons stated in the application, delay of 119 days in filing the appeal is condoned. CM stands disposed off.

FAO-5357-2016 & XOBJC-248-CII-2018

3. The present order shall dispose off the appeal being FAO-5357-2016 filed by the Insurance Company and the cross-objections being XOBJC-248-CII-2018 filed by the claimant aggrieved by the award dated 11.01.2016 passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'Tribunal'). The parties are being referred as the Insurance Company, injured-claimant and owner and driver of the offending vehicle for the sake of clarity.

4. Brief facts relevant to the present *lis* are that the injured-claimant - Amarjeet Singh - filed the claim petition on the ground that on 20.09.2013 at about 09.30 am while he was standing in the street outside his house, his brother Harjinder Singh reversed his Tavera car bearing Registration No.CH-02-2134 rashly and negligently and struck the vehicle against him and as a result he sustained injuries and his left leg was fractured. The silencer of the Tavera car got stuck to his leg resulting in a deep wound. He was taken to Govt. Medical College and Hospital, Sector-32, Chandigarh from where he was referred to PGI Chandigarh. At PGI Chandigarh his left leg above the knee was amputated. The accident was witnessed by Satnam Singh resident of village Manakpur. It was further averred that he was working as a driver and was earning Rs.15,000/- per month. However, after the amputation he was unable to drive the vehicle. DDR was also got registered in this regard. Written statement was filed by the driver of the offending vehicle admitting all the contents. The owner of the offending vehicle did not put in appearance despite service and was proceeded against ex parte. The Insurance Company filed its written statement raising various preliminary objections including that the claim petition was highly inflated and exaggerated and that the driver of the offending vehicle was not having a valid driving licence and the vehicle was being driven in contravention of the terms and conditions of the insurance policy. It was further averred that the claim petition was bad for misjoinder and non-joinder of necessary parties and further that the claim petition was filed in collusion with the owner and driver of the offending vehicle. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the petitioner suffered injuries in motor vehicular accident dated 20.9.2013 due to rash and negligent driving of offending car No.CH02-2134 by respondent No.2 Harjinder Singh ? OPC
2. Whether the petitioner is entitled to compensation on account of injuries suffered by petitioner in motor vehicular accident, if so to what extent and from whom ? OPP
3. Whether the respondent No.1 was not holding valid and effective driving at the time of accident ? OPR-3
4. Whether respondent No.1 has violated the terms and conditions of the Insurance policy, if so, its effect ? OPR-3
5. Relief.

5. On issue No.1, the Tribunal held that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle and no evidence to the contrary had been led by the Insurance Company. Taking the disability to the extent of 70% as per the Disability Certificate (Ex.67) and the income of Rs.7,000/- as per the minimum wages, the following compensation was awarded :

Sr.No.	**Head of claim**	**Amount**
1	Pain and suffering	Rs.25,000/-
2	Loss of amenities of life	Rs.25,000/-
3	Medicine	Rs.1,80,842/-
4	Pecuniary loss of income	Rs.9,99,600/-
5.	Cost of artificial limb	Rs.5,00,000/-
6.	Future increase @ 50%	Rs.4,99,800/-
7	Periodical replacement of artificial limb	Rs.3,00,000/-
8	Special diet and transportation	Rs.10,000/-
9	**Total**	**Rs.25,40,242/-**
	Rounded off	**Rs.25,40,000/-**
	Interest	**6%**

6. Learned counsel for the Insurance Company would contend that the present case is a clear case of collusion as the Tavera car was owned by the father of the injured-claimant and the driver of the said car was his brother. It is further the contention of the learned counsel that since the Tavera car was being reversed in a lane when the accident took place and, hence, it is not a case of rash and negligent driving. The leaned counsel would further contend that future prospects @ 50% have been given, however, the same ought to have been 40% keeping in view the fact that the injured-claimant has been treated as a labourer. It is further the contention of the learned counsel that the amounts awarded for cost of the artificial limb as well as under the other heads are on the higher side.

7. *Per contra*, the learned counsel for the injured-claimant/cross-objector would contend that the injured-claimant in the present case was 29 years of age at the time of the accident and that while reversing rashly and negligently the Tavera car hit the leg of the injured-claimant and the silencer got stuck to his left leg leading to a deep wound which eventually led to the amputation. The learned counsel would further contend that had the driver been vigilant, there was no question of the car hitting the injured-claimant while it being reversed. Also, the nature of injuries received by the injured-claimant would reveal that the car was being reversed at a speed which itself would show that the same was being reversed in a rash and negligent manner. The learned counsel would further contend that the disability though has been taken as 70%, however, the functional disability ought to have been treated as 100% as the injured-claimant was treated as a labourer

and being a labourer he would not be able to do the work of a labourer since his leg was amputated. The learned counsel would further contend that the amounts awarded under the various heads i.e. pain and suffering, loss of amenities of life and cost of artificial limb are on the lower side. The learned counsel for the injured-claimant has relied upon judgments of the Hon'ble Supreme Court in the cases of **Pappu Deo Yadav Vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** and **Erudhaya Priya vs. State Express Transport Corporation Ltd. [2020 (3) RCR (Civil) 374]** and that of the Delhi High Court in the case of **Reliance General Insurance Co. Ltd. vs. Rohit Kumar & Ors. [2017 (7) AD (Delhi) 602]**.

8. Heard.

9. In the present case the argument of the learned counsel for the Insurance Company that it is a case of collusion and that the car cannot be considered to have been driven in a rash and negligent manner since it was being reversed in a lane when the accident took place deserves to be rejected. In the present case the Tavera car though being driven by the brother of the injured-claimant was, on the face of it, being driven in a rash and negligent manner inasmuch as the injury received by the injured-claimant was a deep wound due to the silencer being getting stuck to his leg resulting in amputation of his left leg above the knee leading to 70% disability. The PGIMER Chandigarh discharge card clearly refers to the Roadside Accident having taken place on 20.09.2013 for which the injured-claimant was referred to the PGIMER Chandigarh. The injured-claimant had approached the Court saying that he was working as a driver, however, in

the absence of any evidence, he was treated as a labourer. Having been treated as a labourer, he would definitely have suffered inasmuch as he would not be able to carry out the work of a labourer due to amputation of his leg. In view thereof, this Court deems it fit to treat his functional disability as 80%. Since there is no dispute qua the income of the injured-claimant as Rs.7,000/- per month as well as the multiplier of '17' the same are, hence, maintained.

10. The argument of the learned counsel for the Insurance Company that an addition of 50% towards loss of future prospects has wrongly been made by the Tribunal deserves to be accepted inasmuch as the injured-claimant was treated as a labourer and, hence, as per the law laid down in the case of **Pappu Deo** (supra), an addition of 40% would be applicable towards loss of future prospects instead of 50%. Further, the amounts awarded under the heads pain and suffering, loss of amenities of life and special diet and transportation are on the lower side and the same are enhanced to Rs.2,00,000/- towards pain and suffering; Rs.5,00,000/- towards loss of amenities of life and Rs.50,000/- towards special diet and transportation. The amounts awarded towards costs of artificial limb and periodical replacement of artificial limb are also on the lower side. Taking a cue from the judgment in the case of **Rohit Kumar** (supra), wherein an amount of Rs.7,00,000/- was awarded towards cost of the artificial limb in the year 2017, this Court deems it appropriate to award an amount of Rs.10,00,000/- towards costs of the artificial limb and for future maintenance of the said artificial limb. An amount of Rs.1,80,842/- awarded

towards medicines is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	[Rs.7,000 x 12] = Rs.84,000/-
2	Loss of annual Income on account of 80% functional disability	Rs.67,200/- (Rs. 84,000 - 16,800)
3	Future prospects @ 40%	[Rs.67,200 + 26,880] = Rs.94,080/-
4	Multiplier of 17	[Rs.94,080 x17] = Rs.15,99,360/-
5	Special Diet and Transportation charges	Rs.50,000/-
6	Medicines as allowed by the Tribunal	Rs.1,80,842/-
7	Pain and suffering	Rs.2,00,000/-
8	Loss of amenities of life	Rs.5,00,000/-
9	Costs of Artificial limb and its maintenance in future	Rs.10,00,000/-
10	**Total Compensation**	**Rs.35,30,202/-**

11. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till realization of the entire amount.

12. In view of the above discussion, the appeal being FAO-5357-2016 filed by the Insurance Company and the cross-objections being XOBJC-248-CII-2018 filed by the injured-claimant stand disposed off. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

09.12.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO