Before Rajbir Sehrawat, J.

ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED—*Appellant*

versus

RAM AVTAR SHARMA AND OTHERS—*Respondents*

FAO No.934 of 2021

September 14, 2021

Motor Vehicles Act, 1988—Indian Penal Code, 1860—Ss.279 and 337—Appeal filed by the Insurance Company against award of Motor Accident Claims Tribunal—Contention of appellant that claimant suffered 50% physical disability, he could not be awarded compensation assuming 100 disability—Since claimant could not perform any work, compensation had to be assessed on the basis of functional disability, which is 100% owing to the fact that the claimant was unable to earn a livelihood—Appeal dismissed.

Held that, another limb of the argument of the counsel for the appellant is that when the physical disability is assessed to be 50% then there is no justification for granting compensation for disability to the extent of 100%. However, even this argument is without any force. The disability of the injured, with reference to loss of income, has to be assessed in terms of the functional disability of the injured. In this case the Doctor has categorically deposed that the injured claimant would not be able to perform any work as a labourer any more. Rather the injury involved in the case will have a future adverse effect on his health. Hence, there is absolutely nothing wrong in the assessment of the tribunal, in taking the functional disability of the injured at the level of 100%.

(Para 6)

Rajbir Singh, Advocate for
Sanjeev Goyal, Advocate , *for appellant*-Insurance Company.

Ashwani Arora, Advocate, for caveator-claimant-respondent No.1 .

RAJBIR SEHRAWAT, J. (Oral)

(1) The instant appeal has been filed by the Insurance-Company for assailing the award dated 09.11.2020 passed by the Motor Accident Claims Tribunal (in short, the Tribunal), Chandigarh, whereby the

Tribunal had awarded an amount of Rs. 221,06,349/- along with interest and benefits, as specified in the award, on account of injuries suffered by respondent No.1-claimant in the accident involving car insured by the present appellant-Insurance Company.

(2) Brief facts, as mentioned in the award passed by the Tribunal, are that on 17.03.2018 the respondent-claimant; along with others; was going from Jawalaji (Himachal Pradesh) to District Bhind (Madhya Pradesh) in a car bearing registration No. MP-30-C-4426 which was being driven by one Vikas Sharma, who is respondent No.2 in the present appeal, at fast speed and in a rash and negligent manner. At about 3.30 AM when they reached near Shahpur Light Point, Chandigarh, then an unknown truck came at fast speed from their left side and struck against the car and fled away after causing the accident. As a result of the accident all the occupants of the car received serious injuries and they were taken to the hospital by a police vehicle. At the hospital, respondent No.1-claimant was given treatment. However, in the accident he had suffered permanent physical disability to the extent of 50%. The said disability has been duly certified by the Doctor. With these assertions the claimant filed a claim petition asserting therein that the claimant was working as a labourer and was earning 215,000/- per month. Now he has been rendered disabled for doing any work. Accordingly a compensation of no lacs along with 12% interest was claimed by claimant-respondent No.1 .

(3) On being put to notice the driver and owner of the car appeared and filed their written statement, stating therein that the accident had taken place due to rash and negligent driving of the driver of unknown truck; against whom FIR No.113 dated 17.03.2018 was registered under Sections 279 & 337 IPC at Police Station Sector 39, Chandigarh, by the driver of the car. The appellant-Insurance Company filed a separate written statement and asserted therein that the car in question was being driven in violation of insurance policy. The driver was not having a valid and effective driving license on the date of accident. Other assertions made in the claim petition were also denied by the appellant-Insurance Company.

(4) To prove the case before the Tribunal the claimant-respondent No.1 had examined Vinod Kumar Shrivas, the eye witness, who happens to be occupant of the offending car. Beside this, other witnesses were also examined; and the claimant also appeared as a witness. The medical evidence regarding the disability of respondent No.1 was also brought on record. The doctor who treated him was also

examined as PW-5. Along with the above said evidence the claimant had placed on record the medical bills and other documents relating to the personal identity and credential of the claimant.

(5) On the other hand, the respondents did not lead any evidence whatsoever. Neither the driver appeared in the witness box nor did the appellant-Insurance Company examine any witness to prove or disprove any fact before the Tribunal.

(6) Appreciating the evidence led by the respective parties, the Tribunal assessed the income of the claimant as 26500/- per month. The disability of the claimant was taken to be 100% functional disability. Accordingly, the above said compensation was awarded.

(7) Arguing the case the learned counsel for the appellant-Insurance Company has submitted that the accident had happened due to the rash and negligent driving of the unknown truck, which had run away from the spot. Even the driver of the offending car had got the FIR registered to the same effect. Therefore, the car insured by the appellant had not been negligent at all. Hence, no liability can be fastened against the appellant-Insurance Company. To buttress his argument qua the negligence the counsel for the appellant also submitted that the car was in stationary position on the light point only, therefore, by any means, the car could not have been negligent. The counsel has also referred to the affidavit filed by respondent No.1-claimant before the Tribunal in examination-in-chief in which no negligence has been attributed to the offending car. Further argument of the counsel is that since the claimant had suffered only 50 % of physical disability, therefore, the Tribunal has gone wrong in assuming 100% disability of the claimant and accordingly in granting the excessive compensation on account of disability of the claimant. The Tribunal has wrongly granted the compensation for future treatment. No such treatment has been advised by the treating Doctor. Hence, the award passed by the Tribunal deserves to be set aside and the appellant-Insurance Company deserves to be exonerated from the liability to make the payment of the compensation.

(8) On the other hand, the counsel for the respondent-claimant has submitted that the Tribunal has rightly awarded the compensation as per the evidence led on record. The counsel has referred to the statement of the eye-witness Vinod Kumar made before the Tribunal, who has specifically deposed that it was the negligence of the car in question, which was being driven in a rash and negligent manner at fast

speed. Still further it is submitted by the counsel that the very fact that the driver of the offending car has not chosen to appear as witness before the Tribunal is sufficient to draw the adverse inference against the respondents, particularly when they are denying the accident. The counsel has also submitted that since the claimant cannot perform any work as of now, due to this disability, therefore, the functional disability has rightly been taken as 100%. Qua the future treatment the counsel has pointed out that while deposing before the Tribunal; the Doctor has clearly stated that the claimant would require physiotherapy for 18 months and thereafter the claimant would require a special calcium diet as well.

(9) Having heard the counsel for the parties, this court does not find any substance in the argument of the counsel for the appellant-Insurance Company. So far as the negligence of the offending vehicle is concerned, there could not have been a witness better than the person traveling in the said car. Co-passenger Vinod Kumar has been examined as a witness by the claimant. He has deposed in categoric terms that the accident had taken place due to the negligent driving of the offending car; which stands insured by the present appellant. In his statement similar assertion has been made regarding the truck also; but the same is stated to have run away from the spot. However, this would not be a factor to deny the claimants their compensation from the present insurance company. At the best, any composite negligence of two vehicles could have been a dispute between the Insurance Company of the car and of the said truck, had the present Insurance Company brought the Insurance Company of the Truck on record and raised claim against them. The claimant has right to choose either of the offending vehicles to recover the compensation from them, leaving the respondents to get recovery rights, *inter se,* amongst them.

(10) Although, the counsel for the appellant has relied upon the contents of the FIR to contend that the driver of the car was not negligent, rather, it was the driver of the truck which had run away, which was exclusively negligent in the case, however, this court cannot ignore the fact that the FIR in question has been got registered by none other than the driver of the offending car. Therefore, it is but natural that he would try to save his skin only. This fact has also been highlighted by the subsequent conduct of the driver of the offending car in not appearing before the Tribunal even to prove his claim made in the FIR. Although, the counsel for the appellant has also submitted that since the vehicle was at the light point, therefore, this fact, *ipso facto,*

rules out any negligence on the part of the offending car, however, this assertion is not supported by the evidence on record. The eye witness examined in the case has stated that the offending car was being driven in a negligent manner and at the fast speed by the driver of the offending car. There is nothing on record to suggest that the car was in stationary position at the light point. Hence, this argument of the counsel for the appellant is also liable to be noted only to be rejected.

(11) Another limb of the argument of the counsel for the appellant is that when the physical disability is assessed to be 50% then there is no justification for granting compensation for disability to the extent of 100%. However, even this argument is without any force. The disability of the injured, with reference to loss of income, has to be assessed in terms of the functional disability of the injured. In this case the Doctor has categorically deposed that the injured claimant would not be able to perform any work as a labourer any more. Rather the injury involved in the case will have a future adverse effect on his health. Hence, there is absolutely nothing wrong in the assessment of the tribunal, in taking the functional disability of the injured at the level of 100%.

(12) The argument of the counsel for the appellant qua compensation for future treatment is also devoid of any force. It has come in the statement of the treating Doctor, that the claimant would be requiring physiotherapy sessions at least up to 18 months. Even thereafter the claimant would be requiring the high calcium diet in view of the specific nature of the injuries suffered by him. Hence, the Tribunal has not committed any legal error in granting the compensation on account of future medical assistance as well.

(13) No other argument was raised.

(14) In view of the above, finding no merit in the present appeal, the same is dismissed.

(15) The statutory amount deposited by the appellant be sent to the concerned Tribunal for onward reimbursement to the claimants in accordance with law.

P.S. Bajwa