

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

...
CMAM no.39/2017

Reserved on: 09.04.2021

Pronounced on: 04.06.2021

United India Insurance Company Limited

.....Appellant(s)

Through: Ms Rifat Khalida, Advocate

Versus

Fizullah Khan and others

.....Respondent(s)

Through: Mr S. H. Naqashbandi, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Impugned in this Appeal is Award dated 6th January 2015, passed by Motor Accident Claims Tribunal, Srinagar (for brevity "*Tribunal*") on a claim petition no.280/2004 titled *Faizullah Khan v. Ali Akbar Khan and others*, as also Order dated 8th December 2016, passed by the Tribunal on a Review Petition, bearing File no.110/2015, primarily on the grounds that: driver of offending vehicle was not having valid and effective driving licence; and compensation on account of medical expenses, loss of earnings, damages for pain, suffering and trauma and loss of expectations of life has been given on higher side without application of judicial mind.
2. Heard and considered.
3. A claim petition, as is discernible from record on the file, was filed by claimant/respondent no.1 before the Tribunal on 23rd December 2004,

averring therein that on 30th May 2004, while travelling on motorcycle bearing Registration no.JK01F-1806, he was hit by Tata Sumo, bearing Registration no.JK05-2758 on Uri Road near TCP at Challain, resulting seriously injuries to him. FIR no.32/2004 in this regard was registered in police station Boniyar. Claimant/respondent no.1 maintained that he was sole distributor of castrol products in Kashmir Valley and his monthly income was Rs.30,000/-. He claimed that he incurred Rs.2.00 Lakhs on his treatment and engaged two persons for taking his care and pay them weekly Rs.2000/- each. Appellant Insurance Company, in its written statement before the Tribunal, insisted that in absence of policy particulars, Insurance Company is not in a position to admit or deny liability. By impugned Award, the Tribunal granted compensation in the amount of Rs.6,91,000/- along with 4% interest from the date of claim petition till its final realization excluding the period from 11th April 2008 to 29th June 2011 when the matter was lying over as dismissed in default.

4. A review petition was preferred by appellant Insurance Company before the Tribunal, which was dismissed vide order dated 8th December 2016.
5. Taking into account case set up and submissions made by learned counsel for appellant Insurance Company, it would be apt to go through the record of the Tribunal as also impugned Award/order.
6. First contention of appellant Insurance Company relates to validity and effectiveness of driving licence of driver of offending vehicle. Perusal thereof reveals that claimant's evidence was closed in terms of Order

dated 4th October 2013 and appellant Insurance Company was asked to lead its evidence. Documents with respect to offending vehicle, including driving licence, was produced by its owner before the Tribunal, which were given to appellant Insurance Company for verification purposes. Learned counsel appearing for Insurance Company before the Tribunal submitted that offending vehicle was under proper insurance cover. However, Insurance Company failed to file verification report about het documents and accordingly evidence of appellant Insurance Company was closed vide order dated 14th July 2014. Even, a witness, namely, Jamsheed Saqib, Legal Administrative Officer of Insurance Company, produced and examined by appellant Insurance Company did not make any whisper as regards documentary evidence produced by owner of offending vehicle. In that view of matter, there is no impetus or force in contention of appellant Insurance Company that driver of offending vehicle was not having valid and effective driving licence and as a consequence of which, appeal on hand is liable to be dismissed.

7. Another contention of appellant Insurance Company is that compensation has been given on higher side by the Tribunal. Perusal of impugned Award reveals that while calculating loss of income/ earnings, the Tribunal took into account the fact all facets of the matter. The Tribunal comprehensively discussed Issue no.2 vis-à-vis entitlement of compensation in consequence of injuries suffered by claimant. Claimant/respondent no.1 examined Dr. Ghulam Qadir to strengthen his case. The Tribunal has in clear cut terms mentioned that

as per disability certificate, claimant suffered 40% disability, but he did not explain whether it is overall functional disability of his whole body or 40% disability of injured limb only and in absence of any clarification, disability can be taken as 40% disability of injured limb and not overall functional disability of his whole body. After saying this, the Tribunal further said that it was also to be kept in mind that doctor had stated that by passage of time disability of claimant would aggravate and increase and, therefore, Tribunal has taken 30% disability instead of 40% and it is on the basis of 30% disability that the Tribunal has computed loss of income/earning of claimant/respondent no.1. In such circumstances, impugned Award as also impugned order does not warrant any interference and as a corollary thereof the present Appeal is liable to be dismissed.

8. For the reasons discussed above, the Appeal on hand is **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.
9. The record of the Tribunal along with copy of this judgement be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar

04.06.2021

Ajaz Ahmad, PS

Whether the order is reportable: Yes/No