

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2684 of 2003 (O&M)
Date of decision 02.07. 2015.

Satyawan Sharma

..... Appellants.

versus

Jamna Dass and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Miss Monika Thakur, Advocate for the appellant.
Shri D.P. Gupta, Advocate for respondent No.3.

K.C.PURI, J.

Appellant-claimant Satyawan Sharma has directed the present appeal against the Award dated 10.04.2003 passed by Shri Hari Paran Singh, Motor Accident Claims Tribunal, Panipat, vide which his claim petition stood dismissed.

2. Succinctly, the facts as emanating from the record are that claimant has received injuries in a motor vehicular accident which took place on 24.05.1999 and therefore he claimed Rs.15,00,000/- as compensation by filing claim petition. It is alleged that on 24.05.1999 claimant was travelling on a motor cycle as pillion rider, being driven by

Ranbir, while going from Jattal Road to N.F.L., and when they were crossing Sanjay Chowk, Panipat a truck bearing registration No.HR-45-3975 being driven by Jamuna Dass respondent No.1 rashly and negligently dashed the said motor cycle as it was coming from the wrong side and that respondent No.2 was influential person and he managed the police and put pressure on the relatives of the claimant-injured through police to get the matter compromised. Claimant further pleaded that he was earning Rs.2500/- per month by working as driver with one Rajender Sharma of Delhi and that no case was registered by the police as they were under the influence of respondents and that the claimant received multiple injuries and became permanently disabled and his left thigh was also amputated and that his disability was to the extent of 80% and he spent Rs.50,000/- on his treatment and also engaged a permanent servant to look after him.

3. Respondent Nos.1 and 2 in their joint written statement denied all the allegations and alleged that no such accident has taken place with their truck which was insured with Oriental Insurance Company.

4. Respondent No.3, Insurance Company took various preliminary objections that petition was vague. Moreover, respondent No.1 i.e. truck driver was not holding a valid driving licence at that time and that the accident took place due to own negligence of the motor cyclist on which the claimant was riding and no accident took place with the said truck.

5. Replication was filed. From the pleadings of the parties, the following issues were framed-

- 1 Whether the accident in question took place due to rash negligent driving of truck No HR-45-3975 by respondent no1 ? OPP
- 2 Whether the petitioner is entitled to compensation, If so to what amount and from whom? OPP
- 3 Whether the truck in question was being driven against the terms and conditions of the insurance policy, if so to what effect ? OPR
- 4 Relief.

6. The Tribunal, after assessing the testimony of the witnesses dismissed the claim petition vide award dated 10.04.2003, as aforesaid.

7. Feeling dissatisfied with the above said Award dated 10.04.2003, the claimant-appellant has directed the present appeal.

7. I have heard learned counsel for the parties and have gone through the records of the case.

8. Learned counsel for the appellant has submitted that finding of the Tribunal on issue No.1 is palpably wrong. Issue No.1 has been decided against the appellant merely on the ground that no FIR was registered in the present case. It is submitted that FIR is not the requirement of law to prove the negligence. This Court in authority **Bimla Devi and others vs. Punjab State and others reported in 2001 (1) R.C.R. (Civil) page 596** has held that it is not necessary to lodge the FIR. It is submitted that the claimant has stated on oath that accident has taken place due to rash and negligent driving of the driver of offending truck No HR-45-3975 by respondent no1. Respondents No.1 and 2 in their written statement have admitted the factum of accident but they have pleaded that respondent No.1 was not driving the vehicle negligently. PW-5 Ranbir Singh has also

supported the case of the claimant. PW-6 Dr. Anil Raheja, has also stated that injuries sustained by the claimant were the result of motor vehicular accident took place on 24.05.1999. Appellant received injuries in the accident which ultimately led to the amputation of his left thigh due to gangrenous. It is further submitted that appellant spent Rs.50,000/- on his treatment and has suffered a permanent disability to the extent of 80%. The FIR was not recorded as respondents are influential persons. Moreover, oral compromise was arrived at. The learned Tribunal has committed a grave error in dismissing the claim petition.

9. In reply to the above noted submissions, counsel for the respondent-Insurance Company has supported the award of the Tribunal. It is submitted that according to the claimant, accident has taken place near the police post. No effort was made by the appellant to register the case. There was no motive for the police against the appellant for not registering the FIR. In case, the police officials have refused to lodge the FIR, in that case, the appellant could have knocked the door of the higher authorities or the Court. So, in these circumstances, the claimant has failed to prove the negligence on the part of the respondent No.1. It is submitted that when the appellant failed to prove the accident, therefore, prayer has been made for dismissal of the appeal.

10. I have heard both the sides and have gone through the records of the case with their able assistance.

11. The controversy in the present lis resolves around issue No.1. The learned Tribunal after appreciating the evidence on the file reached to

the conclusion that claimant has failed to prove that he has received injury due to rash and negligent driving of offending vehicle. The learned Tribunal has sway away mainly on the ground that in the present case, no FIR has been registered. It is further observed by the Tribunal that since according to the claimant, the occurrence has taken place near the police post, so, in these circumstances, FIR/DDR should have been recorded.

12. The learned Tribunal, while deciding the case has not appreciated the object of enactment of Motor Vehicles Act. The said Act has been enacted with an underlying idea to provide speedy relief to the victims involved in vehicular accidents. At the same time, this Court is conscious of the fact that sometimes false claims in connivance with other parties are made to extract the money from the Insurance Company and the Court has to safeguard the interest of Insurance Company in this regard. It is not the requirement of law that there must be FIR to get the claim under the Act. This aspect of the case has already been dealt with in authority **Bimla Devi and others' case (supra).**

13. The claimant has pleaded that his age is 25 years and he was driver of car. He has also taken stand that the police has connived with respondent Nos.1 and 2 as respondent No.2 is influential person and on that account, FIR has not been registered. The occurrence has taken place on 24.5.1999 and as per evidence on the file the claimant got a fracture. He has further stated that he was taken to Hyderabad Hospital where he was given first aid and on the next day he was taken to his village Pathari. He has further stated that he was admitted in the PGI Rohtak on 4.6.1999. It so

seems that claimant is a rustic villager and has taken his injury on a lighter way. After getting first aid, he went to the village. The claimant has not taken the injury in serious manner and as such there was gangrening and ultimately which led to amputation of his left thigh. The stand taken by the claimant seems to be genuine as the same has been reflected by him in the history made before PGI, Rohtak. In the history before the PGI, Rohtak it is mentioned that claimant received injuries in the motor vehicle accident on 24.5.1999. It has been further mentioned in the case history of the claimant that claimant was treated at his village Pathari (Sonepat) and at the time of admission he has gangrening in respect of his fracture on his left leg. This case history has been recorded on 4.6.1999 and on that day, it cannot be believed that claimant has got legal advise. The claimant filed claim petition on 24.9.1999 giving the detailed facts. It is mentioned by the claimant that accident has taken place due to rash and negligent driving of truck No HR-45-3975 by Jamna Dass respondent No.1 in the claim petition and also while appearing as his own witness, respondent No.1 has admitted the factum of accident but has denied the factum of negligence. So, the fact of accident has been admitted by both the parties. Insurance Company has not taken the stand that there is connivance of the claimant and the respondents, rather it has been pleaded that accident has taken place due to negligence of the claimant sitting on pillion rider of motor cycle with some other vehicle, other than truck No HR-45-3975. The Tribunal has observed that claimant has failed to prove the accident. The mere fact that claimant and contesting respondent Nos.1 and 2 admitted the factum of accident

with the offending vehicle, goes a long way to prove the stand taken by the claimant. So, in these circumstances, the learned Tribunal has committed grave error while deciding issue No.1 against the claimant. The statement of claimant under oath inspires confidence and the Tribunal should have accepted his statement. Statement of Jamna Dass respondent to the effect that he was not negligent, cannot be believed. However, claimant and respondent Jamna Dass have stated that there was compromise. So, it so seems that due to compromise, matter may not be reported. At that time the claimant could not visualize that injuries sustained by him would result into the gangrening, which ultimately ruin his life by amputation of his leg.

14. In view of the above discussion, findings on issue No.1 stands reversed and this issue stands decided in favour of the claimant.

15. The Tribunal has not decided the issue regarding amount of compensation. The occurrence has taken place on 24.05.1999 i.e., about more than 16 years back and it would be unjust to remand the case for determination of amount of compensation. So, the amount of compensation is being dealt hereinafter only.

16. The claimant received injury on 24.5.1999 whereas amputation of his left thigh was done at PGI, Rohtak on 8.6.1999 due to gangrening. As per Bed Head Ticket, he remained admitted in PGI, Rohtak from 4.6.1999 onwards and his discharge sheet is dated 18.06.1999. As per document Ex.P-29, the claimant was again admitted in the PGI, Rohtak from 5.7.1999 to 12.7.1999. As per disability certificate Ex.P-30 claimant suffered 80% disability on account of amputation of his left thigh. The

bills produced on the record are valuing about Rs.28,748.30ps. So, in these circumstances, the claimant is held entitled to claim the amount as under :-

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|---|---------------|
| 1. Expenses on medicines | Rs. 30,000/- |
| 2. Expenses on special diet during the period of hospitalization and transportation | Rs. 20,000/- |
| 3. Loss of pleasure of life and loss of future prospectus of life and loss of prospectus of marriage. | Rs. 50,000/- |
| 4. Pain and suffering | Rs.1,00,000/- |
| 5. Loss of future income to the extent of 80% after taking into account the future prospectus. | Rs.5,00,000/- |

So, in all the claimant is held entitled to claim a sum of Rs.7,00,000/-. The said amount shall carry interest @ 7½% per annum from the date of claim petition before the Tribunal till the date of realization. Since the issue of driving licence has been decided against the Insurance Company and as such all the respondents are jointly and severally liable for payment of the awarded amount and the primary liability is that of Insurance Company.

20. In the manner indicated above, the present appeal stands disposed of accordingly.

21. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

July 02 , 2015

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