

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 927 of 1998 (O&M)

Date of decision 18.03. 2015.

Pawan Kumar

..... Appellant.

versus

Rajinder Pal Singh and others

..... Respondents.

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

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

Present : Shri Dinesh Kumar, Advocate for the appellant.
Mr. Tarun Singla, Advocate for
Mr. Ashok Aggarwal, Advocate for respondent No.3-
Insurance Company.

K.C.PURI, J.

Challenge in this appeal is to the Award dated 28.02.1998 passed by Shri Rajinder Parshad, Motor Accident Claims Tribunal, Kaithal vide which claim petition preferred by the Pawan Kumar claiming a sum of Rs.4,00,000/- in respect of injuries sustained by him in motor vehicular accident, was dismissed.

2. Briefly stated that Pawan Kumar claimant filed a petition under Section 166 and 140 of Motor Vehicles Act (in short - the Act) claiming a sum of Rs.4,00,000/- as compensation in respect of motor vehicular accident caused due to rash and negligent driving of Jagtar Singh

respondent No.2 and insured with respondent No.3. It is alleged that on 7.3.1993 at about 7.30a.m., Pawan Kumar claimant was accompanying the truck bearing registrations No. HYA-7055 for delivery of 1280 empty tins to M/s Shakti Container and Supplier Assandh Road, Jind from Ambala as an employee of M/s Prem Chand Ramesh Kumar at old Anaj Mandi Ambala City. It is alleged that on the way at Jind Road 5km ahead of Kaithal towards Jind, the truck in which the claimant was travelling met with an accident on account of rash and negligent driving of the said truck by respondent No.2. The claimant sustained injuries. He was medico-legally examined and then he was shifted to Ambala K.D.Hospital where he remained admitted for 20-30 days. He was operated upon two times and is still under the treatment.

3. Respondent No.1 filed written statement alleging that accident had not taken place due to his rash and negligent driving. He has pleaded that accident has taken place due to break-failure and there was no fault of the driver of the truck. The truck in question hit another standing truck parked on the road side. Thus the accident was not caused due to rash and negligent driving of the truck in question. On merits, the allegations were denied.

4. Respondent No.2 did not file any written statement and adopted the written statement filed by respondent No.1.

5. Respondent No.3- Insurance Company filed separate written statement and controverted the allegations of the claim petition on the ground that the claim petition is not maintainable. The driver was not

holding valid driving licence. The claim petition is false. Denying other averments, answering respondent prayed for dismissal of the claim petitions.

6. No replication was filed. From the pleadings of the parties, following issues were framed :-

- (1) Whether the accident resulting in injuries to Pawan Kumar took place due to rash and negligent driving of the driver of truck No. No.HYA-7055 ? OPP
- (2) If issue No.1 is proved in affirmative, what amount of compensation is the claimant entitled ?OPP
- (3) Whether the driver of the offending vehicle did not possess a valid driving licence ? OPR
- (4) Whether the insurance company is not liable on the ground stated in the P.Os. ?OPR
- (5) Relief.

7. In order to prove its case, claimant examined Dr. Nitin Mehta as PW-1, claimant himself appeared as PW-2, Ram Karan alias Ram Kumar as PW-3, Dr. B.B.Kakkar, Medical Officer, PW-4, Navneet Kumar, PW-5 and closed his evidence.

8. On the other hand, respondents tendered certain documents in support of their case.

9. The Tribunal, returned finding on issue No.1 against the claimant. The learned Tribunal further held that in view of finding on issue No.1, issue No.2 became redundant and issue No.3 was decided against the insurance Company. Issue No.4 was also decided against the insurance Company but in view of finding on issue No.1, it is held that this issue has become redundant. The learned Tribunal ultimately dismissed the claim petition vide award dated 28.02.1998, as aforesaid.

10. Feeling dissatisfied with the above said Award, the claimant-appellant has directed the present appeal, as aforesaid.

11. The learned counsel for the appellant-claimant has submitted that the trial Court has returned the finding on issue No.1 against the claimant on the ground that he has recorded DDR in which it is mentioned that accident has taken place due to brake failure. It is submitted that claimant has not made any DDR as he was not fit to make statement at the relevant time. It is submitted that according to the allegations made in the claim petition driver of offending vehicle was driving the truck in question rashly and negligently. It has been further pleaded that the truck has struck against the other vehicle from back side.

12. The respondents have pleaded that accident has taken place due to failure of brakes of the truck but it has been admitted that offending vehicle struck against another vehicle from back in which claimant had received injuries. So, it is submitted that even if the stand taken by the respondents is taken as a gospel truth, in that case, the rash and negligent driving of respondents stands proved.

13. It is submitted that it is the duty of the owner of the truck to mechanically keep the vehicle roadworthy and brakes have to be checked in routine. The very fact that truck has struck against the back side of another vehicle prove the fact that driver of the offending vehicle was negligent.

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

15. The admitted case of the parties is that claimant was travelling

in the offending vehicle and the same met with an accident. The said truck hit another vehicle from the back side. The owner and driver of the vehicles are legal bound to keep the vehicle in roadworthy condition. It was the duty of the owner and driver to check whether the brake system was intact. The very fact that vehicle struck another vehicle from the back speaks volume that driver of offending vehicle was driving the vehicle rashly and negligently. So, even if the claimant has mentioned in the DDR that accident has taken place due to failure of brake of offending vehicle even then the respondents are not absolve of their liability. Needless to say that Insurance Company is liable to indemnify the owner as the driver of offending vehicle was holding a valid driving licence. Learned counsel for the claimant has relied upon authorities **K. Suresh vs. New India Assurance Co. Ltd., and another reported in 2013 (1) R.C.R. (Civil) page 312 ; Rajesh vs. Surjeet Singh and others reported in 2005 (2) R.C.R. (Civl) page 486 ; Virat Sama vs. Mohan Lal and others reported in 1994 ACJ page 432 and Ranjit Kaur vs. Chhinderpal Singh & others reported in 2006(4) R.C.R. (Civl) page 702.** In the above said rulings this Court has held that FIR/DDR is not the criteria to prove the negligence. The negligence has to be determined in accordance with the evidence on the file. The pleadings and evidence on the file proved the fact that accident has taken place due to rash and negligent driving of driver respondent No.2 of truck No. No.HYA-7055, as discussed above.

16. In view of the above discussion, the finding of the learned trial Court on issue No.1 stands reversed and it is held that accident has taken

place due to rash and negligent driving of truck No. No. HYA-7055 by Jagtar Singh respondent No.2.

17. The next point for determination is regarding the amount of compensation. The learned Tribunal has not decided the said issue in view of decision on issue No.1. Since issue No.1 now stands decided against the respondents, so amount of compensation has to be assessed. The accident has taken place in the year 1993 and it would not be in consonance of justice to remit the case back for determination of amount of compensation.

18. In this case, complainant has spent on his treatment a sum of Rs.39,988/- as is evident from receipts Ex.C-1 to C-144. So, the claimant is held entitled to Rs.40,000/- in respect of actual expenditure on medicine.

19. The amount of compensation has to be assessed keeping in view the fact that accident has taken place in the year 1993. The claimant suffered 20% disability. So, an amount of Rs.40,000/- stands allowed in respect of permanent disability which includes loss of pleasure of life and loss of future income etc. The claimant is also held entitled for another sum of Rs.20,000/- in respect of future treatment, special diet and attendance charges. The respondents are held jointly and severally liable to pay the aforesaid amount. The primary liability to pay the said amount is that of Insurance Company. The aforesaid amount shall carry interest @ 7½ % per annum from the date of claim petition before the Tribunal till the date of realization.

20. Disposed of accordingly.

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

(K.C.PURI)
JUDGE

March 18 , 2015
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