

**358 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 969 of 1998 (O&M)

Decided on: 18.5.2015.

Balwinder Singh

... Appellant

Versus

Guljar Singh and others

... Respondents

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

Present : Mr. Ram Chander, Advocate,
for the appellant.

Mr. Suvir Dewan, Advocate,
for respondent No.3.

K.C.PURI.J.(ORAL)

This is an appeal directed by injured claimant against the Award dated 23.1.1998 passed by Sh. Hari Paran Singh, Motor Accident Claims Tribunal, Kurukshetra (for short “the Tribunal”) vide which the claim petition preferred by the claimant was dismissed.

Briefly stated the case of the claimant is that on 17.4.1996 at about 7.45 AM he was going in a truck No. HR-07-A-7855 as a co-driver and that the said truck was being driven by respondent No.1 in a rash and negligent manner and that the said truck was going from Rajmundri to Amritsar. When it reached in the area of Nargut Balli, Haiderabad, the said truck hit another truck going ahead of it and the accident took place. As a result of which the claimant

received multiple injuries. FIR under Sections 279, 337 and 427 IPC was registered. There was a fracture of right humerus of right arm, both knees, upper jaw and upper right canine, teeth were also dislocated and the claimant remained admitted in Civil Hospital, Narkanda (Hyderabad) for 3-4 days. Thereafter, he was shifted to Malerkotla and then he took treatment from Dr. J.P. Baharal, Medical Officer (Orthopedic Surgeon), Lok Nayak Jai Parkash, Hospital, Kurukshetra and was admitted there on 3.6.1996, where he was operated upon twice for bone grafting and steel plates were inserted in the right arm and he incurred Rs.50,000/- on his treatment and Rs.30,000/- shall be incurred in future. The claimant is aged 21 years and his income is Rs.1500/- per month.

The respondents No.1 & 2 filed joint written statement taking preliminary objections of estoppel, maintainability. It was pleaded that no accident had taken place as alleged by the claimant. A false story has been made.

The respondent No.3 insurance company took the preliminary objections of misjoinder and non-joinder of parties, locus-standi, maintainability and jurisdiction. It was pleaded that no accident has taken place as alleged. The truck was being driven in contravention of the terms and conditions of the insurance policy and the truck driver was not having a valid driving licence at the time of accident.

From the pleadings of the parties, following issues

were framed:-

1. Whether the accident occurred due to rash and negligent driving of respondent No.1 ?OPP
2. If issue No.1 is proved, then to what amount and from whom the claimant is entitled to receive ?OPP
3. Whether respondent No.1 was not holding a valid driving licence ?OPP-3.
4. Relief.

In order to prove his case, the claimant examined PW-1 Parmal Singh, PW-2 Dr. J.P. Bharal, Orthopaedic Surgeon, L.N. J.P. Hospital, Kuruskhetra. The claimant stepped into witness box as PW-3 and closed the evidence.

In rebuttal evidence, Gurbux Singh owner of the vehicle stepped into the witness box as RW-1 and closed the evidence after tendering certain documents.

Learned Tribunal returned a finding on issue No.1 against the claimant and has held that claimant has failed to prove the factum of accident. Since finding on issue No.1 was returned against the claimant so, issue No.2 was also decided against the claimant. However, issue No.3 was decided against insurance company holding that Gulzar Singh was holding a valid driving licence.

I have heard learned counsel for the parties and have gone the file.

The controversy now revolves in respect of issue

No.1. The Tribunal has held that since the owner of the offending

vehicle has stated that no accident has taken place as alleged and as such the claimant has failed to prove the factum of accident.

The Motor Vehicles Act, 1988 is a welfare legislation and has been enacted to provide speedy relief and to grant just compensation to the road side accident victim. Strict rules of CPC are not applicable. The claimant has placed on record documents from which it is revealed that he remained admitted in A.P. Vaidya Vidhana Parishad from 17.4.1996 to 20.4.1996. The claimant has also produced bills amounting to Rs.8891.90. The stand taken by the owner is false on the face of it as O.D claim of Rs.28,073/- has been paid by the insurance company to Gurbax Singh owner of the truck in question whereby the owner has admitted the factum of accident. Mere fact that in the FIR, name of the claimant is not mentioned is not a ground to discard his claim. More so, when he remained admitted in far away place where the accident has taken place. Even thereafter he remained admitted. The claimant has himself supported his case while appearing as his own witness whereas Gulzar Singh has not come into the witness box to deny the factum of accident. The Tribunal should have drawn adverse inference against the respondent as driver has not come into the witness box. So, the Tribunal has given the finding in a casual manner without considering the whole evidence. So, in these circumstances, finding on issue No.1 stands reversed and it stands decided in favour of the claimant and it is held that the claimant received injuries due to rash and negligent driving of tuck No. HR-07-A-7855.

Issue No.2 is regarding quantum of compensation.

The Tribunal has not assessed the compensation. However, it would be very unfair if the case is remanded for determining the amount of compensation and as such the amount of compensation is being assessed by this Court.

The claimant has placed on record bills amounting to Rs.8891.90. So, the claimant is held entitled to Rs.10,000/- in respect of medical expenses. As per evidence on the file, the claimant suffered disability to the extent of 21%. The Disability Certificate Ex. P-1 suggests that the claimant suffered fracture of humerus right and it is a case of physical disability which is temporary in nature. The claimant has also examined PW-2 Dr. J.P. Bharal, who has stated that on 3.6.1996 Balwinder Singh claimant was admitted with a fracture of humerus right and was discharged on 28.6.1996. He was operated for D.C.P plating on 10.6.1996. The expenses of medicines were borne by him. He has also deposed about the disability which was assessed to the extent of 21%. He has also stated that one more operation may be needed for removal of plates and screws. If the plates are to be removed for that operation, a sum of Rs.6000-8000/- would be incurred in a private hospital. In the cross-examination, he has stated that disability is temporary in nature which will decrease with passage of time. So, the claimant is held entitled to claim Rs.7000/- in respect of loss of income during the period of hospitalization. The claimant is also held entitled to claim Rs.5000/- in respect of special diet. The claimant is also held

entitled to claim Rs.40,000/- in respect of disability. So, in this manner, the claimant is entitled to claim Rs.62,000/- as compensation in all. The said amount has been calculated keeping in view the price index prevailing in the year 1996. The said amount shall also carry interest @ 7.5% per annum from the date of application till payment. The liability to pay the amount shall be of all the respondents jointly and severally and the primary liability to pay the amount shall be that of insurance company.

The appeal stands disposed of accordingly.

18.5.2015.
SN

(K.C.PURI)
JUDGE