

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

FAO No.5395 of 2003 (O&M)
Date of Decision: February 10, 2015

Harbans Singh ...Appellant

Versus

Abdul Gafoor and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. H.S. Tuli, Advocate
for Mr. S.S. Rangi, Advocate
for the appellants.

Mr. G.N. Malik, Advocate
for respondents No.1 to 4.

FATEH DEEP SINGH, J.

The appellant-Harbans Singh who was one of the claimants before the learned Motor Accident Claims Tribunal, Ludhiana is aggrieved over the award dated 23.7.2003, whereby, his claim for grant of compensation for the injuries as well as damage to his motor vehicle stood declined.

Heard learned counsel for the parties. It is the stand of the claimant that on 7.8.1997 while he was going on his Moped No.PB-10D-6752 from his village Jatiwal to Machhiwara around 3 p.m. near Octroi Post Macchiwara, a truck No.PCT-9699 came from behind and being driven rashly and negligently by respondent-Abdul Gafoor hit his vehicle leading to injuries and hospitalisation. It is not disputed even by the respondents that Ex.P7 FIR pertaining to this accident was registered against the

driver and, thus, in view of the law laid down in **Keshub Mahindra v. State of Madhya Pradesh' II (1996) ACC 292 (SC)** is in itself prima facie evidence of culpability of the driver. Learned Tribunal while adjudicating on issue No.1 has taken a very critical appraisal by harbouring around the delay in lodging the FIR and absence of name of the driver when the claimant himself has testified it so and what is corroborated from the FIR Ex.P7 as well as medical evidence consisting of PW3 Dr. Avtar Singh, who has proved disability certificate Ex.P8 which corroborates the disability certificate issued by DMC Hospital and his treatment at DMC Hospital for injuries has been brought about by PW1 Manoj Kumar, Record Keeper are matters which certainly advances the case of the claimant. The mere premise as has been recorded by the learned Tribunal that the name of the driver was not recorded in the FIR does not comes to the aid of the respondents when the eye-witness account given by PW8 Kewal Singh, who rushed to the aid of the injured corroborates this aspect and merely because FIR has not been registered by the eye-witness does not carries any weight and mere *inter se* relationship of the eye-witness and the claimant does not means that it needs to be construed detrimental to the interest of the claimant. It needs to be reiterated here that Act is a welfare Statute for the betterment of the claimants where stricter principles of law and Evidence Act are not to be applied. Therefore, in the absence of any evidence led by the respondent's side to contradict the evidence and to rebut the same so proved by the claimant is adverse to the interest of the respondents in terms of Section 114 of Evidence Act. Merely because respondent-driver by virtue of judgment Ex.R1 has been acquitted does not has its

repercussions on the outcome of the present case and which weighed heavily in mind of the learned Tribunal while dismissing the claim petition. Since the owner and the driver who have contested the litigation have failed to step into the witness box to state their side of the story and taking adverse presumption in terms of Section 114 of the Evidence Act it is held that accident resulting in injuries and hospitalisation of the claimant is an outcome of rash and negligent driving of respondent-Abdul Gafoor, driver of the offending truck and, thus, the findings on issue No.1 needs to be brushed aside.

The claimant has proved on records his disability certificates Ex.P1/P2, his hospitalisation in DMC Hospital, Ludhiana and expenses incurred by way of Ex.P3 to Ex.P6 and Ex.P10 to Ex.P74. Though, the claimant claims that he is aged around 54 years which is elaborated from the records and that in the absence of any evidence otherwise his earnings needs to be taken as that of a daily wage labourer and the permanent disability is in respect of left elbow to the extent of 30% and which certainly would have its repercussions on his earning capacity as a labourer as well. Taking into account the daily wages prevalent at the time of accident @ ₹3500/- per month and it is a matter of common knowledge that it usually takes a period of six months for fracture of the bone to heal and for which period he would have been unable to work and must have denied earnings for this period of six months and, therefore, needs to be granted ₹21,000/- for this. The evidence shows that claimant has spent a sum of ₹17,000/- on his treatment at DMC Hospital Ludhiana, besides subsidiary charges and, therefore, in view of the law laid down in

R.D. Hattangadi vs. Pest Control (India) Private Limited 1995

(2) PLR 298 SC the claimant is certainly entitled to the following compensation:-

(a) Pecuniary compensation:-

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| (i) Compensation assessed on account of | ₹21,000/- |
| loss of earnings during hospitalisation/injury. | |
| (ii) Compensation assessed for special diet, | ₹12,000/- |
| service of attendant and conveyance. | |
| (iii) Compensation assessed on account of | ₹1,40,000/- |
| loss of earnings due to physical disability. | |

(b) Non Pecuniary compensation:-

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|---|-----------|
| (i) Compensation assessed on account of | ₹15000/- |
| physical pain and mental agony. | |
| (ii) Compensation assessed for loss of beauty | ₹30,000/- |
| and pleasures of life. | |

Total	₹2,18,000/-
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It is admitted even by the respondents that at the time of accident respondent-Abdul Gafoor was the driver of the offending vehicle and which vehicle at that time owned by respondent-Sher Khan who is being represented by his heirs and the vehicle has not been proved to be insured at the time of the accident and, therefore, the driver and the owner shall be jointly and severally liable to pay this compensation amount.

The claimant will be entitled to the interest @ 7.5% per annum from the date of filing of the petition till realisation of the amount. Since there is no evidence pertaining to damages to the moped neither any report of the surveyor much less any photograph or expert has opined the likely damages and

requirement or replacement of any spare parts has been brought forth much less the model of the vehicle and depreciation and, therefore, in the absence of any cogent evidence this claim of damage to the vehicle certainly needs to be declined.

In view of the foregoing discussions, the award is certainly a wrong appreciation of evidence and law and needs to be modified by way of acceptance of present appeal to that extent.

(FATEH DEEP SINGH)
JUDGE

February 10, 2015

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