

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

FAO No.1425 of 2003 (O&M)

Date of Decision: 12.05.2015

Balbir Singh

.....Appellant

Versus

Satwinder Singh and another

.....Respondents

FAO No.1426 of 2003 (O&M)

Kela Devi and another

.....Appellants

Versus

Satwinder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr.Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate,
for appellant (s).

Mr. Rohti Goswami, Advocate for
Mr. Vinod Chaudhari, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J

These two separate appeals filed by claimants Balbir Singh and other by Smt. Kela Devi and Sher Singh against the award dated 20.11.2002 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred as 'The Tribunal') whereby the appellants are seeking enhancement of

compensation.

2. Relevant facts for the purpose of decision of the appeals that motor vehicle accident took place on 02.10.1998. On that date Satwinder Singh respondent (driver and owner of truck bearing No.PB-11B-8191) was driving the said truck. Canter bearing registration No.HR-45-3232 was being driven by Nafe Singh. The accident took place near village Tikri in the area of police station Alipur, Delhi. At that time offending truck was going ahead of the canter. The canter was in the process of overtaking the truck and Satwinder Singh respondent No.1 suddenly turned his vehicle towards the middle of the road and hit the canter. The occupants of the canter were seriously injured and the driver died in this accident. As per claimant the accident had taken place because of rash and negligent driving of respondent No.1 Satwinder Singh while driving offending truck bearing registration No.PB-11B-8191.

3. Notice was ordered to be issued to respondents. Respondents No.1 and 2 served but did not put their appearance and were proceeded against ex parte. Respondent No.2-Insurance company contested the claim petition on all accounts. Plea was taken that accident took place because of sole negligence of the driver of the canter.

4. 'The Tribunal' settled the issues and after recording the evidence and appreciating the same returned the findings that the claim petition of **Kela Devi and another Vs. Satwinder Singh** be returned to the claimant for presentation before the appropriate Tribunal as 'The Tribunal' at Karnal was not having territorial jurisdiction. Claim petition titled as **Balbir Vs. Satwinder Singh** was accepted and compensation to the tune of ₹97,512/- was awarded along with interest.

5. Being aggrieved on passing of this order both the claimants-appellants are in appeal by way of separate appeals before this Court.

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6. At the time of arguments Mr. Sagar Aggarwal, learned counsel for appellant submits that 'The Tribunal' has wrongly returned the claim petition titled as Kela Devi and another Vs. Satwinder Singh (MACT Case No.69 of 1999 of Karnal) observing that Courts at Karnal was not having jurisdiction. As per learned counsel for appellant, it had come in the statement of PW-4 that claimant was resident of Karnal.

7. While arguing on this point Mr. Rohit Goswami, learned counsel for respondent took plea that it had come in evidence that claimant was not residents of Karnal as they had shown their residence to be Plot No.78. The matter was investigated by investigator of insurance company and it was reported that the same was just a plot. The investigator was examined before 'The Tribunal' as RW-1. So the claim petition was rightly returned by 'The Tribunal' and appeal against said order deserved to be dismissed.

8. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that as per provisions of Section 166 of Motor Vehicle Act, claim petition can be filed at the option of the claimant either at the place where he is residing or where the accident had taken place or where the respondent resides. For ready reference Section 166(2) is being reproduced as under:

“Section 166(2) of the Act reads as under:-

“166 – Application for compensation

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the

Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”

9. The above referred provision makes it clear that claim petition can be filed at the option of the claimant and the same may be filed where he is actually residing, or where he is carrying on business or where the accident had taken place or where the defendant reside. In this case claimant had taken the plea that he was residing at Karnal and it had come in the statement of PW-4 as well as PW-6 that claimant were actually residing at Karnal and the claim petition was filed at Karnal. As regards to the statement of RW-1, it was submitted that the investigation report Plot No.78 was identified by tea vendor who admitted that the number of property were not properly given in that locality. That way the inquiry report submitted by the investigator on the basis of such evidence cannot be made the basis so as to come to the conclusion that claimants were actually not residing at the address given whereas positive evidence has come by way of statement of PW-4 and PW-6 that claimants were residing in the area of Karnal.

10. More so similar matter had gone before Hon'ble Supreme Court and Hon'ble Apex Court while interpreting Section 166(2) of the Motor Vehicle Act observed that Motor Vehicle Act is a special statute. The jurisdiction of the Tribunal having regard to the terminologies used therein must be held to be wider than the Civil Court. A claimant has a wide option. Identical view has been taken by co-ordinate Bench of this Court in

case Kamlesh and others Vs. Satish Kumar and others 2012(1) PLR 131 P&H.

11. In view of the above provisions of law as incorporated under Section 166(2) of Motor Vehicle Act and as per observations of Hon'ble Supreme Court and from Co-ordinate Bench of this Court, 'The Tribunal' fell in error while returning the findings that Motor Accident Claims Tribunal, Karnal was not having the territorial jurisdiction especially when the evidence was available on the file that claimants were in fact residents of Karnal.

12. In view of the above the order passed by 'The Tribunal' thereby ordering to return the claim petition to the claimant for presentation before the appropriate Tribunal is set aside and it is observed that 'The Tribunal' at Karnal is having the jurisdiction to try and entertain and decide the claim petition.

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13. Claimants has sought enhancement of compensation on the ground that claimants had sustained fracture, injuries. Resultantly he had to remain 45 days as indoor patient. He had suffered 20% permanent disability. He had produced and proved the medical bills and still 'The Tribunal' awarded compensation to the tune of ₹50,000/- only.

14. Mr. Rohit Goswami, learned counsel for appellants took the plea that 'The Tribunal' has already awarded 'Just Compensation'.

15. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that 'The Tribunal' has not awarded 'Just Compensation' because practically nothing has been awarded on account of pain and suffering, loss of income,

transportation charges and attendant charges. Claimants produced bills amounting to ₹47,512/- and he was just awarded ₹50,000/- under all these heads. It is a matter of common knowledge that if a person remains as indoor patient for 45 days and suffered permanent disability to the tune of 20%, he is not in a position to procure and preserve all the bills regarding his treatment. More so injured and his family member have to undergo agony and pain and suffering. Such disability certainly result into loss of earnings for the period when he remained on the bed and loss of earnings for future earning as well. In such cases he has also to shed some money on account of attendant charges. It is also a matter of common knowledge that such like damages cannot be quantified and there is not standard yardstick to determine the amount of compensation and somewhat guess work has to be done. Accordingly in the present case the amount on account of pain and suffering, loss of income, attendant charges, etc. enhanced from ₹50,000/- to ₹1,00,000/-. The enhanced amount of compensation shall be payable from the date of claim petition. The enhanced amount of compensation be paid within 45 days from today failing which claimant shall be entitled to receive interest @ 7.5% per annum from the date of claim petition.

16. Resultantly FAO No.1425 titled as Balbir Singh Vs. Satwinder Singh and another is partly accepted and FAO No.1426 of 2003 titled as Kela Devi and another Vs. Satwinder Singh and another is accepted.

(SHEKHER DHAWAN)
JUDGE

May 12, 2015

msd