

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5930 of 2015 (O&M)

Date of decision : September 09, 2015

Sukhwinder Singh

.....Appellant

Versus

Baljinder Singh and others

....Respondents

FAO No. 5931 of 2015 (O&M)

Sukhwinder Singh

.....Appellant

Versus

Jaswinder Singh and others

....Respondents

FAO No. 5932 of 2015 (O&M)

Sukhwinder Singh

.....Appellant

Versus

Lakha Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Salil Sablok, Advocate
for the appellant.

LISA GILL, J.

FAO Nos. 5930, 5931 and 5932 of 2015 are taken up
together for hearing as they emanate out of one motor vehicular

accident which took place on the intervening night of 3.12.2011/04.12.2011. Three claim petitions had been preferred by the claimants/injured in the said accident which were decided vide separate award of even date i.e. 20.12.2014 passed by learned Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as the 'Tribunal').

Present appeals have been preferred by the owner of the offending vehicle i.e. canter bearing Registration No. PB-32-J-8460. As per the case of the claimants, all three of them i.e. Baljinder Singh, Jaswinder Singh and Lakha Singh @ Sohan Singh were proceeding to village Machlikalan on the road from Mohali on their motorcycle on an intervening night of 03.12.2011 and 04.12.2011 at about 12.30 mid night. Their motorcycle was at a slow speed on the left side of the road. They were being followed by Balwinder Singh and Mohan Singh on a separate motorcycle. When they reached Landran chowk and were in the process of crossing the same, canter bearing Registration No. PB-32-J-8460 driving at a high speed and in a rash and negligent manner by its driver – Kuldeep Singh arrived from Kharar side and struck against their motorcycle. All three of them i.e. Baljinder Singh, Jaswinder Singh and Lakha Singh @ Sohan Singh fell on the road. They were taken to Sri Guru Harkrishan Sahib Hospital, Sohana from where Lakha Singh was referred to PGI, Chandigarh. All of them received serious injuries. FIR, Ex. P1 was registered on the statement of Balwinder Singh an injured eye witness of the said accident.

All the three injured filed separate petitions under Section

166 of Motor Vehicles Act, 1988 praying for compensation on account of disability suffered by them as well as loss of earning, medical expenses etc.

Appellant-respondent Sukhwinder Singh owner of the canter contested the claim petition by filing a joint written statement alongwith the driver, denying the occurrence of the accident. It was pleaded that false criminal case had been filed only to claim compensation. Said written statement was admittedly not signed by the said respondents. Petitions were also contested by the insurance company pleading that apart from the fact that the insurance cover was not valid at the time of accident, driver of the offending vehicle was not having a valid and effective licence neither was there a valid permit or fitness certificate at the time of alleged accident.

Learned Tribunal framed the following issues:-

1. Whether the claimant Baljinder Singh received injuries in a road side accident caused due to the rash and negligent driving by respondent No. 1 while driving vehicle bearing No. PB-32-J-8460? OPP
2. Whether the claimant is entitled to compensation, if so at what rate and from whom? OPP
3. Whether the claim petition is maintainable? OPP
4. Whether the claimant has no cause of action to file the petition? OPR
5. Whether the driver of the offending vehicle was not holding valid and effective driving licence? OPR
6. Relief.

Written statement filed on behalf of the appellant-owner and driver-Kuldeep Singh was not taken into consideration as it was not signed by any of them.

On appreciation of the evidence on record, learned Tribunal concluded that all the three claimants had received injuries in the road side accident caused due to rash and negligent driving of the offending canter by respondent – Kuldeep Singh. Compensation was afforded to all the three claimants as under:-

Baljinder Singh (Claimant-respondent in FAO No. 5930 of 2015)	₹17,000/-
Jaswinder Singh (Claimant-respondent in FAO No. 5931 of 2015)	₹26,870/-
Lakha Singh @ Sohan Singh (Claimant-respondent in FAO No. 5932 of 2015)	₹8,94,000/-

Lakha Singh @ Sohan Singh suffered amputation of his right leg as well as multiple injuries on the face, eye, head and other parts of the body, which is proved on record. It is further proved that he remained bedridden for about six months. As per disability certificate Ex. P1 in MACT Case No. RT34/23.12.2011 (subject matter of FAO No. 5930 of 2015) Lakha Singh suffered permanent disability to the extent of 60% as proved by PW1 Dr. Ramesh Kumar. Lakha Singh was a vegetable vendor. Functional disability of this claimant was assessed as 30%. He was 27 years old at the time of accident, therefore, an addition of 50% of the income was awarded, Taking his income to be ₹7,500/- per month, multiplier of 17 was applied. It has been held that the appellant being the owner of the vehicle is liable to pay compensation as the accident has been caused on account of rash and negligent driving of the offending vehicle by his driver-respondent Kuldeep Singh.

Insurance company was absolved of its liability on the

ground that the offending vehicle was insured w.e.f. 04.12.2010 to 11.59.59 of 03.12.2011 but the accident in this case occurred at 12.30 a.m. in the intervening night of 03.12.2011 and 04.12.2011. Aggrieved from the said finding whereby the insurance company has been absolved of its liability, present appeals have been preferred by the owner of the offending vehicle.

Learned counsel vehemently argues that written statement filed on behalf of the appellant/owner has been wrongly ignored. The Tribunal could not have ignored the written statement at the time of arguments/passing of the order. It is further submitted that insurance company could not be absolved of its liability as the accident in question is not proved to have occurred after midnight of 03.12.2011.

Learned counsel for the appellant further argues that learned Tribunal has grossly erred in not taking note of the fact that there were three persons riding the motorcycle at the time of alleged accident. Therefore, contributory negligence on the part of the injured is apparent on the face of it.

I have heard learned counsel for the appellants and gone through the files.

It is not disputed that the written statement, which was submitted, does not bear the signatures of the appellant. It was signed only by the counsel for the appellant. In this situation, learned Tribunal has rightly observed that said written statement cannot be taken into consideration. It is further observed by the Tribunal, that even in this written statement, the appellant has denied the

occurrence of this accident.

Respondent owner (present appellant) and driver never stepped into the witness box to rebut or explain the allegations as levelled in the claim petition. As per the FIR, it is specifically mentioned that the accident took place at 12.30 mid night on the intervening night of 03.12.2011 and 04.12.2011. The appellant cannot derive any benefit from mention of the accident to have taken place at about 12.30 mid night on the said dates. This is so specifically in view of the fact that the appellant did not file written statement as per provisions of law. He neither led any evidence to prove that the accident in question did not occur after 12.00 mid night on the intervening night of 03.12.2011 and 04.12.2011 but occurred prior thereto. To prove this aspect, specific evidence should have been led. It is indeed a fallacious argument raised on behalf of the appellant that once the written statement of the appellant was not being taken into consideration there was no question of having led any evidence. It is not disputed that the written statement was filed at the initial stage. Thereafter, appellant did not take any steps whatsoever to lead evidence at any point of time prior to the passing of the impugned award. To hold that the appellant could not in any case have led evidence in view of the unsigned written statement, thus, the matter should be remanded at this stage would indeed be a travesty of justice where the appellant is afforded benefit of his own wrong.

Perusal of the grounds of present appeals reveal that the ground of written statement having been wrongly rejected has not

even been raised, therefore, prayer on behalf of the appellant that the matter should be remanded before the Tribunal at this stage is clearly untenable and unacceptable. Stand taken in the present appeal is that the insurance policy of the vehicle was valid uptill 23.59 hours on 03.12.2011 and the owner had orally informed the insurance company to issue cover note of the subsequent year on the following day.

Consequently, I do not find any infirmity or illegality in the finding returned by the Tribunal regarding the liability in this case.

Similarly, contention of the appellant that the claimants are guilty of contributory negligence is devoid of any merit. Triple riding of the motorcycle would render the claimants liable for requisite action under the Motor Vehicles Act. To prove contributory negligence it is incumbent upon the party so alleging to prove that accident in question was caused on account of said violation of the Motor Vehicles Act. There can be no presumption in respect to contributory negligence in such cases, especially when rash and negligent driving of the respondent-driver has been proved on record. It is not denied that the said driver faced criminal proceedings. Appellant in this case has not led any evidence whatsoever to prove contributory negligence.

It has been rightly observed by the Tribunal that even in the written statement, which otherwise cannot be taken into consideration, the case of the appellant is of denial of the accident. Therefore, finding on this count is also correct in the facts and circumstances of the case.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the quantum of compensation awarded to all the three claimants. There is no ground for any reduction therein.

Consequently, being devoid of any merit, all the three appeals are dismissed.

September 09, 2015
rts

(Lisa Gill)
Judge