

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2457 of 2002 (O&M)

Date of Decision : 05.08.2016

Parkash Chand

....Appellant

Versus

Krishan Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pradyuman Yadav, Advocate
for the appellant.

Ms. Namrata Kaur, Advocate
for Mr. Chanderhas Yadav, Advocate
for respondent no. 2.

Mr. Anoop Kumar Yadav, Advocate
for respondent no. 3.

Surinder Gupta, J.

This is appeal filed by claimant-appellant challenging the award passed by Motor Accident Claimants Tribunal, Narnaul (later referred to as 'the Tribunal') whereby claim petition filed by claimant was dismissed.

2. Case of claimant, in brief, is that on 09.09.1999, he was going on his cycle towards his village, when he was hit by respondent no. 1, who was driving the scooter bearing registration no. HR-31-A-8070 (later referred to as 'the offending vehicle') in a rash and negligent manner. Respondent no. 1 came on wrong side of the road, hit the claimant and then sped away from the spot. Claimant was taken to Civil Hospital, Narnaul where he remained admitted upto 17.09.2009. However, his treatment continued for a long time and he had to spend ₹20,000/- on his treatment.

3. Claimant is a daily wager and remained under constant threat of respondent no. 1 and his relatives not to lodge any complaint in the matter.

Respondent no. 1 is an influential person having a political clout and it is evident from the evidence that despite approaching police no FIR was registered in the matter. FIR was ultimately registered on 30.11.1999. In the accident claimant lost eight teeth which have affected his health and has created various types of health and digestive problems. It has also affected his eye-sight.

4. Respondents no. 1 and 2 denied the accident and all the averments of claimant regarding the accident. Respondent no. 3 insurer of the offending vehicle also denied the accident and its liability to pay any amount of compensation.

5. The Tribunal discarded claim of claimant keeping in view the fact that in the statement of claimant (Ex. R-1) recorded by the police this fact was not mentioned that accident was caused by the offending vehicle. The delay of 50 days in lodging FIR also made the Tribunal to observe that version of claimant is doubtful.

6. Learned counsel for the appellant has argued that claimant-appellant belongs to poor strata of society. For a period of about 7 days after the accident he remained admitted in hospital. Thereafter, he remained under constant threat and intimidation by respondent no. 1 and his family members, who have got political clout in the area. The Tribunal had taken note of the fact that FIR was registered on the intervention of Human Rights Commission. After having failed to get FIR lodged, claimant approached the Human Rights Commission and on his complaint FIR was registered. Claimant has no enmity with respondents no. 1 and 2. In case he had to falsely involve some vehicle he could have chosen some favourable person and not respondents no. 1 and 2, who are denying his claim.

claimant finds no support in view of his statement (Ex. R-1) recorded by police after the accident wherein he has not named respondent no. 1 or had given number of the offending vehicle. It was at later stage that claimant altered his statement out of greed and falsely implicated respondent no. 1. Sole testimony of claimant that accident was caused due to rash and negligent driving of respondent no. 1 cannot be relied upon in view of facts mentioned in the DDR (Ex. R-1) and delay of 50 days in lodging FIR.

8. While appearing as PW-5, claimant has stated that his cycle was hit by the offending vehicle, which was being driven at a very high speed in a zig-zag manner by respondent no. 1, who came from opposite direction and hit his cycle. His statement recorded by the police was not read over to him and his signatures were obtained on blank paper. His brother met D.S.P. and S.P. for taking action against respondent no. 1 for causing accident but no action was taken. A complaint was made to Human Rights Commission, Delhi on the basis of which FIR was registered. He has stated that one Chander, *thekedar* of Ganiar has political clout and is related to respondent no. 1, who exercised his influence on police not to take action against respondent no. 1. He has further stated that respondent no. 1 alongwith son of that contractor Chander came to him and threatened him with dire consequences if any action is taken against respondent no. 1.

9. To rebut the statement of claimant, respondent no. 1-Krishan Kumar appeared as RW-5 and denied the accident with plea that he was confined to bed and his ankle remained under plaster from 03.06.1999 to 28.09.1999. He admitted that in criminal case he is facing trial.

10. From the statement of RW-5, it is evident that claimant had no ill-will and enmity against him so as to falsely implicate him in this case.

the fact without there being any evidence on record that this witness was confined to bed from 03.06.1999 to 28.09.1999 and during this period his mobility was totally restricted. Even this witness while appearing as RW-5 has nowhere stated that his movement was restricted or he was confined to bed.

11. Rajinder son of Ramji Lal, alleged pillion rider on the scooter, appeared as RW-1 and has also denied claim of claimant-appellant. RW-3 Mani Kishore of the village of claimant has stated that on 09.09.1999 at about 07.30 p.m., claimant was lying on the road in injured and motionless condition. He has stated about presence of Krishan Kumar there, who on his request took claimant to hospital. He has admitted that Krishan Kumar is married to daughter of Chander Singh, contractor of their village. RW-1 Rajinder has also admitted that Chander Singh of their village is a road contractor. This witness and Chander Singh both are *Ahir* by caste while claimant is *Harijan* and there is party faction in the village.

12. Though, respondents have tried to avail service of RW-1 Rajinder and RW-3 Mani Kishore but both are not of any help to them as both stated that they have not seen the accident. Their conduct shows their allying with respondents no. 1 and 2 as they did not make any effort to intimate the police about the occurrence. Statement of claimant is worth believing that after the accident he had been approaching the police but failed to get FIR registered, which was ultimately registered when he made complaint to Human Rights Commission. It is not uncommon in villages that police is influenced to get such matters either compromised or hushed up. Recording of DDR (Ex. R-1) is a glaring example of this fact. It was mentioned in DDR that cycle of claimant was hit by some unidentified

vehicle and police till registration of FIR made no attempt to trace that

vehicle. This indicates that DDR was got recorded with ulterior motive to save respondent no. 1. Claimant, who is not an influential person, is fighting for his claim. He has not projected his claim worth lacs or millions against respondents so as to draw inference that he wants to make booty by falsely implicating the offending vehicle. Genuineness of claim by claimant and his simplicity can be well understood from the fact that he has placed on record bills of only ₹356/-, which are of his x-ray examination and no bills of purchase of medicines. In case claimant had to raise false claim in collusion with respondents no. 1 and 2, he would have preferred highly inflated claim. Otherwise, he would have chosen the vehicle, whose owner would not have contested his claim tooth and nail.

13. Keeping in view all the above facts and circumstances, I find that the Tribunal has not appreciated the evidence regarding incident in proper perspective and was got swayed by manipulated facts produced on record by respondents. The Tribunal is required to have a sensitive and humane approach while scrutinizing evidence in such cases, particularly when the claimant belongs to poor strata of society and is pitched against influential persons. Finding of the Tribunal on issue no. 1 is perverse, not sustainable in the eyes of law and is set aside. It is proved on record that the accident was caused due to rash and negligent driving of the offending vehicle by respondent no. 1.

14. In view of findings on issue no. 1, the Tribunal did not assess the compensation and held issues no. 2 and 3 as redundant. Above observation of the Tribunal is also not in consonance with law. When issues have been framed, the Tribunal is required to record findings on all the issues.

counsel for parties on issues no. 2 and 3 as well.

16. As already discussed, claimant remained admitted in hospital for about seven days, the prescription slip placed on file shows that a number of medicines were prescribed to him from time to time. Injuries suffered by him in the accident have been described by PW-1 Dr. R.K. Walia, Medical Officer, General Hospital, Narnaul as follows:-

- “(i) There was a lacerated wound right eye lid 5 cm x 1 cm, 1.5 cm deep in orbit. Muscles cut in right upper lid. There was sub conjunctival haemorrhage temporally anterior and posterior segment was normal. Ocular movement normal. X-ray was advised.
- (ii) Lacerated wound on the nasal bridge 1 cm x 1 cm irregular. Bleeding was present. Tenderness and bleeding nose was present. X-ray was advised.
- (iii) Lacerated wound upper lip in the midline through and through skin 1 cm x 1 cm irregular.
- (iv) There was teeth injury in upper and lower jaw. Front row of teeth absent in upper and lower jaw. There was laceration present in the corresponding jaw and bleeding.”

17. PW-2 Dr. R.K. Jain, Dental Surgeon, General Hospital, Narnaul has stated that eight teeth of claimant were missing when he examined him on 10.09.1999. There were stitches, bleeding and clots in the teeth sockets.

18. Claimant while appearing as PW-5 has stated that he spent ₹20,000/- on his treatment.

19. Learned counsel for the appellant has stated that claimant is not

asking for very high compensation. Though, he has suffered a lot of pain

and suffering, and is still facing problem because of loss of teeth in accident. He will be satisfied, if allowed amount he spent on his treatment with some more amount towards pain and suffering.

20. Learned counsel for respondents have submitted that compensation towards medical expenses can be allowed only as per bills on record.

21. As already discussed, bills produced on record relate to x-ray examination. There is no bill of purchase of medicines. The incident pertains to the year 1999. Keeping in view submissions of learned counsel for the appellant and the fact that claimant is entitled to compensation for medical expenses, pain and suffering, attendant charges, special diet, transportation expenses and loss of income during the period he remained hospitalized, he is allowed a lump sum amount of ₹40,000/- as compensation. As the offending vehicle was insured with respondent no. 3 and there is no evidence that owner of the vehicle has committed default of any term of the insurance policy, respondent no. 3-Insurance Company will indemnify the insured by paying entire amount of compensation.

22. As a sequel of my discussion above, this appeal has merit and is accepted. The award passed by Tribunal is set aside and claim petition filed by claimant is allowed and he is awarded compensation of ₹40,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Claimant shall also be entitled to costs of this appeal, which is assessed as ₹10,000/-.

August 05, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No