

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1005 of 2002
Date of Decision : 14.09.2016

Manmohan Singh

.....Appellant

Versus

Dhira and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Jain, Advocate
for the appellant.

Mr. S.S. Narula, Advocate
for respondents no. 1 and 2.

Surinder Gupta, J.

This is appeal by claimant-Manmohan Singh against award dated 08.12.2001 passed by Motor Accident Claims Tribunal, Kapurthala, (later referred to as 'the Tribunal') dismissing his claim petition filed under Section 166 of the Motor Vehicles Act.

(Note:- As per report, original file of appeal FAO No. 1005 of 2002, got burnt in fire incident that occurred in the concerned branch on 30.01.2011. File of the Tribunal, which was retrieved, is also in badly burnt condition. Counsel for parties have supplied some copies of pleadings and evidence but all the documents produced and proved on Tribunal file are not available. The appeal is being disposed of on the basis of reconstructed file of the appeal and documents supplied by learned counsels.)

BRIEF FACTS

2. Claimant has given details of accident in para no. 24 of claim petition, which reads as follows:-

“24. That on 18.08.1997, at about 08.00 p.m., injured-Manmohan Singh was coming back to his house at village Lakhan Kalan from Jalandhar on his scooter bearing registration no. PB-08-2471. When injured Manmohan Singh, his uncle-Lakhvir Singh and Sawaran Singh reached near village Bishanpur, one tractor make Ford bearing registration No. PCV-1267 alongwith tiller was coming from Lakhan Kalan village without light and in a rash and negligent manner. When the tractor was passing through the scooter of Manmohan Singh, the tiller of the tractor struck against the scooter of Manmohan Singh with the result claimant-Manmohan Singh fell on the tiller of the tractor and the tiller of the tractor struck with both legs of the claimant and with the result of this accident, claimant-Manmohan Singh got serious injuries on both the legs and fell on the road.”

3. The matter was reported to the police vide FIR No. 123 dated 20.08.1997, for offences punishable under Sections 279, 338 and 427 IPC registered at Police Station Kotwali, Kapurthala.

4. Claimant was taken to Dr. H.S. Oberoi of Oberoi Hospital, Jalandhar, where he remained admitted for more than one month and spent more than ₹1 lac on his treatment and medicines. He claimed compensation of ₹15 lacs for the injuries caused to him.

5. Respondents no. 1 and 2. i.e. driver and owner of the offending vehicles denied the accident and alleged that a false FIR was registered

against them. In FIR, claimant has alleged that accident took place with the tractor on which no registration number was written. Tractor no. PCV-1267 was insured with National Insurance Company Ltd. i.e. respondent no. 3.

6. In separate written statement filed by insurer, a plea was raised that driver of the offending vehicle was not holding a valid driving licence at the time of accident and it was being plied without proper documents. The alleged accident is a result of composite and contributory negligence of claimant and driver of the tractor. Other averments of claimant were contested, controverted and denied *inter alia* pleading that this claim petition has been filed by claimant in collusion with respondents no. 1 and 2.

7. Pleadings of parties led to framing of the issues as follows:-

- (i) Whether the claimant received injuries in an accident which occurred due to rash and negligent driving of tractor no. PCV-1267 by respondent no. 1 on 18.07.1997 in the area of village Lakhan Kalan road, near village Bishanpur? OPP
- (ii) If issue no. (i) is proved, to what amount of compensation the claimant is entitled and from whom? OPP
- (iii) Whether respondent no. 1 was not holding a valid driving licence? OPR
- (iv) Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR

(v) Relief.

8. In support of his case, claimant examined Dr. H.S. Oberoi as AW-1. He himself appeared as RW-2. Claimant examined Swaran Singh another eye-witness of the accident as AW-3 and Yash Paul employer of claimant as PW-4. Respondent no. 1-Dhira appeared as RW-1. Respondents examined Charanjit Kaur, Senior Clerk, DTO, Jalandhar as RW-2, Dr. Rajender Pal Singh as RW-3, while respondent no. 2-Inderbir Singh appeared as RW-4.

9. On appraisal of evidence, the Tribunal held while deciding issue no. (i) that accident with the offending vehicle, due to its rash and negligent driving by respondent no. 1, is not proved. The Tribunal assessed compensation payable to claimant as ₹1,62,000/- but in view of finding on issue no. (i), claim petition was dismissed. It was also held that respondent no. 1 was not holding a valid driving licence and finding on issue no. (iii) was recorded against respondents no.1 and 2 and in favour of respondent no. 3. Issue no. (iv) was decided against respondents for want of any evidence.

10. I have heard learned counsel for parties and perused the award and copies of pleadings and evidence placed on file with their assistance.

11. Firstly I look into reasons recorded by the Tribunal while discarding the version of claimant that the accident took place with the offending vehicle due to its rash and negligent driving by respondent no. 1. The Tribunal observed that claimant and his witness have not deposed about registration number of the tractor which caused the accident and who was driving the same, as such, involvement of the offending vehicle in the

accident is not proved. It was further observed by the Tribunal that accident took place during night time and it appears that due to darkness both claimant-Manmohan Singh and his witness AW-3 Swaran Singh could not see registration number of the offending vehicle. Swaran Singh, who was one furlong away from the place of accident and “could not possibly know as due to whose fault the accident took place”. Though, respondent no. 1-Dhira was arrested in the criminal case relating to this accident registered against him for offences punishable under Sections 279, 338 and 427 IPC, in which he was convicted and his appeal was dismissed, yet the finding of guilt recorded in a criminal case is not admissible to prove his liability in this claim petition.

12. Before ascertaining sustainability of observations of Ist Appellate Court, it will be relevant to have a look on oral evidence, copy of which are available on record. Claimant while appearing as RW-2 has described the accident as follows:-

“On 18.08.1997, at about 08.30 p.m./08.00 p.m., I was going to village Lakhan Kalan from Jalandhar on scooter bearing no. PB-08-C-2471. When we reached near Bishanpur, I crossed Sardar Swaran Singh. A Ford tractor was coming from the opposite side alongwith tiller, which was coming at a very high speed. Tractor struck against the scooter and I fell down on the tillers. My legs were fractured.”

13. In cross-examination, a suggestion was given to claimant to the effect that it had taken place due to his own negligence, which implies that accident was not denied. Then a suggestion was given to claimant that he

was hit by some unknown vehicle and there was no number on the said tractor. AW-3 Swaran Singh has stated that on 18.08.1997 at about 08.00 p.m., he was going from Kapurthala to his village Lakhan Kalan. Near village Bishanpur, claimant crossed him. A tractor was coming from opposite side at a very high speed. A tiller was attached with that tractor. In the accident, claimant fell on the tiller. He reached the spot within one minute. **The tractor driver was there on the spot and was caught. He remained there till claimant was removed to hospital. Thereafter, he went to the police after about three hours of the accident and narrated the entire incident. His statement was recorded by the police which visited the spot alongwith him and took the scooter and tractor into possession from the spot.**

14. Respondent no. 1-Dhira appeared as RW-1. He has stated that he was not driving the tractor involved in the accident. However, he admitted that in criminal case registered against him concerning this accident he was convicted and sentenced by the trial Court and his appeal against conviction was dismissed. **Respondent no. 2-Inderbir Singh appeared as RW-4 and has stated that he is owner of the offending vehicle (tractor) and respondent no. 1 was driver on this tractor. He further admitted that the tractor bearing no. PCV-1267 was taken on *sapurdari* by him after the accident.** He was aware that respondent no. 1 was convicted by the trial Court for causing the accident and his appeal was dismissed. The above evidence establish beyond doubt the involvement of offending vehicle in accident and that it was caused by respondent no. 1. Though, claimant and his witness have not disclosed the number of the tractor but it is proved that the tractor involved in the accident was taken

into possession by the police from the spot of accident. Tractor bearing no. PCV-1267 was got released on *sapurdari* by its owner respondent no. 2- Inderbir Singh. Respondent no. 1 was caught at the spot. Case bearing FIR No. 123 dated 20.08.1997 was registered at P.S. Kotwali, Kapurthala for offences under Sections 279, 338 and 427 IPC in which he faced trial and was convicted and sentenced. His appeal against conviction and sentence was also dismissed. Above evidence prove identity of the vehicle involved in the accident and also of its driver who caused the accident. The Tribunal has brushed aside the above overwhelming evidence by mere observation that evidence in the criminal case and judgment of criminal court are not admissible to hold that respondent no. 1 was driving the vehicle and the offending vehicle was involved in the accident. Above findings recorded by the Tribunal are perverse and not sustainable in the eyes of law. It is proved from the testimony of claimant and AW-3 Swaran Singh that the accident was caused by respondent no. 1 due to rash and negligent driving of the offending vehicle.

15. To prove injuries suffered by him, claimant has examined Dr. H.S. Oberoi, who appeared as AW-1 and has stated that claimant was brought to his hospital with injuries as follows:-

- (i) Fracture right femur middle third (grievous injury).
- (ii) Fracture left femur middle third (grievous injury).
- (iii) Multiple lacerated wounds over right knee, chin and lower lip.

16. Claimant was operated upon and remained admitted in the hospital till 31.08.1997. He placed on record injury report (Ex. A-1), copy

of bed head ticket (Ex. A-2) and hospital bill of ₹46,000/-. He further submitted that patient spent on medicines, x-ray and subsequent visits to hospital and thereafter, expenses were incurred by him during removal of nails. He had total permanent disability of 35%. He deposed in his cross-examination that a day before his statement he had checked the claimant. His knee joint movements are restricted on both sides and he cannot squat. Claimant while appearing as AW-2 has stated that he spent ₹75,000/- on his treatment and now he is unable to squat and cannot do work. Claimant examined Yash Paul, proprietor Yash Paul Fabricator as PW-4. He has stated that claimant was doing denting and painting job in his workshop and was earning ₹4000/- per month. He produced copy of certificate to this effect as Ex. P-3. He, however, could not produce any record of payment of ₹4000/- to claimant.

17. Respondents examined Dr. Rajender Pal Singh Boparai of Sh. Guru Teg Bahadur Hospital, Amritsar as RW-3. He on examination of claimant in Court stated that case of claimant was an old operated case of fracture femur of both legs (thigh). From the record, he observed that interlocking nailing was done about four years back on both femurs and nails have since been removed. There was no shortening of any limb and he could walk without support. For the slight stiffness of both the knee joints, he assessed his overall physical disability as 10% (permanent). He further stated that in view of injuries on the person of claimant, he might not have been able to walk for about two or three months. He, however, gave his opinion in the Court without examining any x-ray in respect to the injuries but on the basis of his experience as Orthopaedic Surgeon deposed that injuries improve in six months or so and thereafter permanent disability can

be assessed. While taking into account the above evidence, the Tribunal calculated amount of compensation payable to claimant as ₹1,62,000/-, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Medical expenses including hospital and medicines charges	₹75000
(ii)	Pain and suffering	₹50000
(iii)	Loss of earning @ ₹1500/- per month as casual labourer	₹10000
(iv)	For 10% permanent disability	₹27000
<i>Total</i>		₹162000

18. The Tribunal while computing aforesaid amount did not allow any compensation towards nutritious diet, attendant charges, future medical care, loss of amenities of life. On these counts compensation of ₹5000/- is awarded towards nutritious diet, ₹5000/- towards attendant charges, ₹5000/- towards future medical expenses, which include expenses on physiotherapy etc. Doctor has deposed that movements of claimant are now restricted. He cannot squat and this hampers daily routine and number of job related activities which he was doing, as such, compensation of ₹50,000/- is awarded towards loss of amenities of life. Compensation allowed by the Tribunal on other heads call for no interference.

19. In view of above, total amount of compensation to which claimant is entitled works out as ₹2,27,000/-.

20. On issue no. (iii), the Tribunal observed that respondent no. 1 was not holding a valid driving licence and exonerated the insurer of the offending vehicle on this ground.

21. While appearing as RW-1, respondent no. 1-Dhira produced on record original driving licence (Ex. R-1) issued by D.T.O. Jalandhar. RW-2 Charanjit Kaur, Senior Clerk, D.T.O., Jalandhar has stated that this licence was not issued by their office. RW-4 Inderbir Singh, owner of the offending vehicle has stated that respondent no. 1 was working as driver with him from 1981 to 1988 and then he remained driver with Mulkh Raj at Jalandhar. He was again employed by him as driver on the tractor in January, 1996. Prior to 1981, Dhira was working as tractor driver with Kamal Kumar of village Lakhan Kalan. He had seen his driving licence before employing him and had satisfied himself that he was holding a proper driving licence. Respondent no. 1 was a perfect driver.

22. Question which arises for consideration is as to whether there was any negligence on the part of owner of the offending vehicle or he has flouted the terms and conditions of insurance policy by allowing a person possessing fake driving licence to drive motor vehicle. It is evident from statement of RW-4 Inderbir Singh that he had seen driving licence of respondent no. 1 and was personally aware that he is a good driver. He had been seeing respondent no. 1 driving the vehicle for a very long time prior to the accident. In these circumstances, no lapse for the alleged breach of terms and conditions of the insurance policy can be attributed to respondent no. 2-Inderbir Singh. Reference in this regard can be made to **United India Insurance Company Limited vs. Lehu, 2003 (2) RCR (Civil) 278**, wherein it was held as follows:-

“When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the

driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors., 1987 (2) SCC 654, Sohan Lal Passi v. P. Sesh Reddy and Ors., 1996 (5) SCC 21 and New India Assurance Co. Shimla v. Kamla and Ors., 2001 (4) SCC 342. We are in full agreement with the views expressed therein and see no reason to take a different view.”

23. As a sequel of my above discussion, this appeal has merit and

the same is accepted. Award passed by the Tribunal is set aside and claim petition is allowed. Claimant is awarded compensation of ₹2,27,000/-, which will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Respondent no. 3 being insurer of the offending vehicle is held liable to pay the amount of compensation. Claimant shall also be entitled to costs of this appeal, which is quantified as ₹10,000/-.

September 14, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No