

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 668 of 2003 (O&M)
Date of Decision : 22.01.2016

Tej Singh

....Appellant

Versus

Krishan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Lathwal, Advocate
for the appellant.

Ms. Monika Jangra, Advocate
for Mr. Tarun Dhangra, Advocate
for respondent no. 1.

Mr. Sudarshan Singh, Advocate
for respondent no. 2-Insurance Company.

Surinder Gupta, J.

This appeal has been filed by Tej Singh-claimant against award dated 17.12.2002, whereby his claim petition under Section 166 of the Motor Vehicles Act claiming compensation for the injuries received by him in a motor accident with three-wheeler bearing registration No. HR-46-3654 (later referred to as 'the offending vehicle') was dismissed.

2. Case of the claimant, in brief, is that on 20.05.2000 at about 12.00 p.m., he was going on his motorcycle bearing registration no. HR-10-C-6227, from Murthal *Chowk* to his house in village Rewali, *Tehsil* and District Sonapat. When he reached near *Shiv Mandir* in the area of Shanti Nagar, the offending vehicle came from Sonapat side, which was being driven by respondent no. 1-Krishan in a rash and negligent manner at a very high speed and hit the offending vehicle against motorcycle of the claimant

from front side as a result of which he fell on the ground and received serious, grievous and multiple injuries. He was taken to Civil Hospital, Sonapat. The matter was reported to the police vide FIR No. 123 dated 29.05.2000, registered at Police Station Sadar, Sonapat.

3. In reply to the claim petition, respondent no. 1 admitted the accident but denied that it had taken place due to his rash and negligent driving of the offending vehicle. Respondent no. 1-A also took a similar plea in his written statement. However, the Insurance Company in its separate written statement denied the accident and its liability to pay the amount of compensation.

4. On appraisal of evidence, the Tribunal dismissed the claim petition with the observations in para 11, as follows:-

“11. The copy of the FIR was introduced in evidence by the claimant. The claimant did not mention the name of the driver or the registration number of the vehicle in his first information report. According to the petition the accident was witnessed by Jagbir son of Surat Singh who got the claimant admitted in the hospital. No evidence has been produced to show that Jagbir had made any statement to the police or that any investigations were thereafter carried out and the police had traced the driver. There is no evidence that any challan was filed against respondent no. 1 or that any case was pending against him. The claimant was required to prove that respondent no. 1 was driving the offending vehicle and his bare statement is not enough and the statement mentioning the registration number is only an improvement. No eye-witness has been examined in this case and it

is found that the claimant has failed to prove that it was respondent no. 1 who was driving the three-wheeler or had caused the accident. As such the issue is answered against the claimant.”

5. Learned counsel for the appellant has argued that the Tribunal appears to have decided the claim petition in a very casual manner while concluding that it is not proved that respondent no. 1 was driving the offending vehicle or had caused the accident. Respondent no. 1 had admitted the accident but had come up with a version that the accident was caused due to rash and negligent driving of motorcycle by the claimant himself. When the accident is admitted, the only relevant observation required to be recorded by the Tribunal was as to whether the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1 or because of rashness and negligence of claimant himself while driving his motorcycle. The evidence on record categorically proved that the claimant reported the matter to the police without any delay vide FIR No. 123 recorded on 29.05.2000 i.e. the date of accident. In the FIR he had given version that the offending vehicle had hit the motorcycle as a result of which he fell on the road under his motorcycle. The driver of the offending vehicle came down. The claimant enquired about his name and address which he did not tell. He cited one Jagbir Singh as another witness of the accident.

6. In support of his case, the claimant himself appeared as PW-1 and has stated that the offending vehicle had hit his motorcycle. At the time of accident respondent no. 1 was driving it in a rash and negligent manner. He came on wrong side of the

road and hit front portion of his motorcycle. Even in his cross-examination it was suggested to him that the offending vehicle was being driven at the time of accident at a moderate speed and it was the claimant who was driving his motorcycle rashly and negligently and accident had taken place due to his fault and not because of the fault of driver of the offending vehicle. The statement of claimant that the accident was caused by driver of the offending vehicle due to his rash and negligent driving is unrebutted as respondent no. 1 has not appeared in the witness-box to state his version of accident and owner of the offending vehicle has also not produced any other witness to rebut the testimony of claimant. No evidence that the claimant was rash and negligent at the time of accident or that he was under the influence of liquor was produced on record. The Tribunal has failed to look into pleading of respondent while recording the finding that the claimant had failed to prove that the offending vehicle was being driven by respondent no. 1 or had caused the accident. The above findings are against the facts and evidence on record and are not sustainable, as such, set aside. It is proved on file that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver i.e. respondent no. 1.

7. The next question which arises for consideration is as to how much compensation the claimant is entitled and from whom? It has been noticed in many appeals that the Tribunals do not record the finding on all the issues while dismissing the claim petitions with the observations that the accident and negligence of driver of the offending vehicle is not proved. When the issues have

been framed, the Tribunal is required to record finding on all the issues. In this case, though, there was issue no. 2 “as to what amount of compensation, the petitioner is entitled, if so and from whom?” yet the Tribunal recorded no finding on this issue in view of finding on issue no. 1 that claimant has failed to prove that respondent no. 1 was driving the three-wheeler or caused the accident.

8. The parties have led evidence and I have heard detailed argument on this point, as such, proceed to decide issue no. 2 in this appeal.

QUANTUM OF COMPENSATION:-

9. The copy of medico-legal report (MLR) of the claimant has been produced on record as Ex. P-48 which shows that the claimant was having fracture and other injuries and the ‘ortho opinion’ was sought. The medico-legal examination of claimant was conducted immediately after the accident. Though, the claimant has not produced any doctor to depose regarding the injuries suffered by him, his total period of admission in the hospital but while appearing as PW-1 he has stated that he suffered multiple fractures on his right leg besides other grievous injuries and remained as indoor patient in Civil Hospital for about 26-27 days. Thereafter, he remained outdoor patient for about seven months. He produced copies of bills of purchase of medicines, his x-ray examination etc. as Ex. P-1/A, Ex. P-2 to Ex. P-46 of the amount of ₹10,267.55 ps. (rounded off as ₹10,270/-).

10. As per disability certificate (Ex. P-47), he had suffered 15% disability on account of fracture in tibia with shortening of leg by inch (sic 1 inch). From the evidence on record this can be safely concluded that claimant had suffered fracture and other injuries. His x-ray was got conducted several times. The prescription slip on record shows that he was an OPD patient even in October, 2000 and thereafter i.e. for more than 5 months after the accident. X-ray examination of his right leg was recommended by the doctor and repair of POP was also mentioned on prescription slip. Though, the claimant has not examined the doctor who treated him but the above evidence is enough to draw inference that he was under treatment even in October, 2000 and his leg was under POP. This is why the doctor had recommended repair of POP.

11. Taking into account the above evidence, the claimant is entitled for medical expenses of ₹10,270/-, which he had incurred during his treatment. Claimant is also entitled to ₹10,000/- towards future medical expenses as after healing of fracture he required constant medical attention and physiotherapy. Towards disability of 15%, claimant is allowed a lump sum compensation of ₹50,000/-. In this case the claimant was still under POP of his fracture after five months of the accident, as such, he is entitled for loss of income for a period of six months. Quantum of loss of his income is assessed as ₹5000/- per month. The claimant is also allowed compensation of ₹10,000/- for special diet, ₹20,000/- for pain and suffering, ₹10,000/- towards transport charges, ₹10,000/- towards attendant charges and ₹10,000/- towards loss

of amenities of life. The total amount of compensation to which the claimant is entitled is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Towards medical expenses as spent by the claimant	₹10270
(ii)	Future medical expenses	₹10000
(iii)	Towards disability of 15%	₹50000
(iv)	Loss of income @ ₹5000/- per month for six months	₹30000
(v)	Special diet	₹10000
(vi)	Towards pain and suffering	₹20000
(vii)	Transportation expenses	₹10000
(viii)	Attendant charges	₹10000
(ix)	Loss of amenities of life	₹10000
Total		₹160270

12. Admittedly, the vehicle was insured with respondent no. 2-Insurance Company and there is no evidence that the insured had violated the terms and conditions of insurance policy or respondent no. 1 was not holding a valid driving licence at the time of accident, as such, respondent no. 2 i.e. New India Insurance Company Ltd. is under liability to indemnify the insured by paying the amount of compensation directly to the claimant.

13. In view of my above discussion, this appeal has merit and is accepted. The award passed by the Tribunal is set aside. The claim petition is allowed and the claimant is awarded compensation of ₹1,60,270/-. He shall also be entitled to interest @ 7.5% per annum on compensation amount from the date of filing of the claim petition. As the vehicle was duly insured, the

entire amount of compensation shall be paid by respondent no. 2- Insurance Company to the claimant. The claimant shall also be entitled to costs of this appeal. The counsel fee is assessed ₹10,000/-.

January 22, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? *Yes/No*