

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

FAO No. 3089 of 2002 (O&M)

Date of decision : July 15, 2016

Manpreet SinghAppellant

Versus

Darshan Singh and othersRespondents

FAO No. 1380 of 2002 (O&M)

Darshan SinghAppellant

Versus

Manpreet Singh and othersRespondents

FAO No. 1241 of 2002 (O&M)

State of Punjab and anotherAppellants

Versus

Manpreet Singh and anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Monica Chhibber Sharma, DAG, Punjab
for the appellant (in FAO No. 1241 of 2002)
for respondent No. 3 (in FAO Nos. 1380 & 3089 of 2002)

Mr. Gurcharan Dass, Advocate
for the appellant (in FAO No. 3089 of 2002)
for respondent No. 1 (in FAO Nos. 1241 & 1380 of 2002)

Mr.K.S. Boparai, Advocate
for the appellant (in FAO No. 1380 of 2002)
for respondent No. 1(in FAO No. 3089 of 2002)
for respondent No. 2 (in FAO No. 1241 of 2002)

LISA GILL, J.

Three appeals arising out of a common award dated 22.10.2001 passed by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the 'Tribunal') shall stand decided by this order.

FAO No. 3089 of 2002 has been preferred by the injured claimant – Manpreet Singh seeking enhancement of the compensation awarded to him on account of injuries suffered by him in the accident, which took place on 11.12.1998.

FAO No. 1380 of 2002 has been preferred by Constable Darshan Singh, the driver of the offending vehicle.

FAO No. 1241 of 2002 has been preferred by the State of Punjab challenging the liability fixed upon it.

Brief facts, as described in the claim petition preferred by Manpreet Singh, are that appellant - Manpreet Singh was travelling in his own three-wheeler No. PB-10Y-9502 driven by his driver Jagjit Singh on 11.12.1998. Manpreet Singh was sitting on the extreme left side of his three-wheeler which was being driven on the correct side of the road at a moderate speed. There were three other passengers sitting in the vehicle. When the three-wheeler reached near Darpan studio on the link road, a four-wheeler Allwyn Nissan driven in a rash and negligent manner at a high speed came from the back side and struck against the three-wheeler while attempting to overtake it.

Resultantly, the three-wheeler turned turtle on its left side, appellant - Manpreet fell on the road and his left leg was trapped under the left side of the three-wheeler. Other passengers also fell upon him. The offending vehicle stopped at a little distance and its number was noted down by Jagjit Singh who was driving the three-wheeler. The driver's name was revealed. The driver of Allwyn Nissan, himself told Jagjit Singh that the vehicle belonged to Senior Superintendent of Police, District Khanna and the driver was posted at police post Kot under the jurisdiction of Police Station Sadar Khanna. Manpreet's parents came to the spot and took him to CMC Hospital, Ludhiana where he was treated. Appellant - Manpreet had to undergo sustained treatment for which he spent a huge amount. As the police authorities were not registering a formal FIR and unnecessarily procrastinating the matter, representations to the higher authorities including a representation to the Chief Minister of the State was preferred and ultimately FIR No. 175 was registered on 21.04.1999 at Police Station Division No.5, Ludhiana.

Claim petition under Section 166 of the Motor Vehicles Act was preferred by Manpreet claiming compensation on account of injuries suffered by him. The claim was resisted by the respondents taking a specific stand that the accident in question never occurred with the offending vehicle i.e. Allwyn Nissan No. PB-10B-9996. Furthermore, the driver Constable Darshan Singh was not at the spot of the occurrence at the relevant time as he was assigned to VIP duty at Machhiwara on 11.12.1998 in connection with some ceremony of Malwa factory in which the Chief Minister of the State

was to be present. The four-wheeler in question remained parked at police post Kot from 10.12.1998, 11.12.1998 and 13.12.1998. Therefore, there was no occasion for the accident in question having been caused by the offending vehicle Allwyn Nissan.

A rejoinder was filed by the claimant controverting the averments in the written statement. Learned Tribunal on the basis of the pleadings of the parties formulated the following issues:-

1. Whether the claim petition is not maintainable, as alleged? OPR.
2. Whether the claimant is estopped by his own act and conduct from filing the claim petition? OPR
3. Whether the petition is bad for non-joinder and mis-joinder of parties? OPR.
4. Whether the claimant received injuries in motor vehicle accident on 11.12.98 at about 8.00 p.m. near Darpan Studio, Link Road, Bharat Nagar Chowk Ludhiana with Mohinder Nissan No. PB-10H-9996 being driven in a rash and negligent manner by respondent No. 1? OPP.
5. If issue No. 4 is proved to what amount of compensation the claimant is entitled to claim and from whom? OPP
6. Relief.

Learned Tribunal on detailed scrutiny of evidence available on record and the facts and circumstances of the case concluded that claimant - Manpreet indeed received injuries in the accident caused due to the rash and negligent driving of the offending vehicle No. PB-10B-9996 by Constable Darshan Singh.

The record produced by the official respondents seeking to prove the

absence of the driver of the offending vehicle at the place of occurrence has been disbelieved giving detailed reasons. A total sum of ₹3,60,000/- has been awarded to the claimant on account of injuries suffered by him, details of which are as under:-

Medical expenses	₹2,50,000/-
Special diet	₹5,000/-
Costs of nursing and attendant	₹5,000/-
Loss of earning capacity	₹20,000/-
Loss of future income	₹20,000/-
Future medical treatment	₹20,000/-
Mental and physical shock, pain and suffering	₹10,000/-
Loss of amenities	₹10,000/-
Loss of expectation of life	₹10,000/-
Damages for Inconvenience, hardship, discomfiture, disappointment, frustration and mental stress	₹10,000/-
Total	₹3,60,000/-

Learned counsel for the State of Punjab as well as the driver constable Darshan Singh vehemently argued that the learned Tribunal has proceeded on the basis of conjectures and surmises. It is wrongly presumed by the learned Tribunal that the evidence produced by the respondents is fabricated and prepared subsequent to the accident in question in order to escape liability and to save the skin of constable Darshan Singh. While referring to DDR No.30 dated 11.12.1998, Ex.R1 and Report No.13, Ex.R2, it is stated that the driver of the offending vehicle, Constable Darshan Singh was deputed on VIP duty alongwith other employees on 11.12.1998. Constable Darshan Singh had returned to Police Sadar Khanna at

8.30 p.m. (Report No.18). They left for Machhiwara at 5.40 a.m. on 11.12.1998. As per report No.14C, Darshan Singh had gone to Bija Chowk in connection with patrolling from 8.00 p.m. to 9.00 p.m. As per the copy of the log book Ex.R3, the vehicle in question was used on 08.12.1998 and thereafter on 13.12.1998. It remained parked at the police station Kot on 10.12.1998, 11.12.1998 and 13.12.1998. Furthermore, the FIR registered against constable Darshan Singh has since been cancelled. FIR No.175 was cancelled after a thorough inquiry conducted into the matter by S.S. Bhatti, the then S.P. Headquarters, Khanna. Report of the inquiry is Ex.R6. It is submitted that in the event of such clear and cogent documentary evidence on record, the learned Tribunal has grossly erred in holding that the accident in question was caused by the offending vehicle, Allwyn Nissan driven by Darshan Singh. The said finding arrived at by the learned Tribunal is, thus, liable to be set aside.

Learned counsel for the claimant - Manpreet while vehemently refuting the said averments submits that efforts were made by the claimant and his family members to have the FIR registered at the very outset. It is only after numerous representations given by the appellant and his family members, including the representation to the Chief Minister of the State that the FIR was ultimately registered on 21.04.1999. Cancellation of the FIR after getting a one sided inquiry conducted is reflective of the conduct of the police officials. No notice was ever sent to the complainant/claimant before cancellation of this FIR. The evidence on record has been discussed in detail by the learned Tribunal to

arrive at its finding, which is correct and liable to be upheld.

It is further submitted that the claimant-appellant is entitled to enhanced compensation as an extremely meagre amount of ₹3,60,000/- has been awarded whereas it is a matter of record that the claimant suffered permanent disability of 20%. He has produced on record his income tax returns, which reflect his income to be ₹6000/- per month. Loss of future prospects should be granted to him and a multiplier of 17 should be applied to arrive at the loss of income suffered by the claimant. As the appellant was unmarried, compensation should be afforded on account of loss of marriage prospects. No compensation has been awarded for loss of amenities and the compensation awarded to the claimant should, thus, be enhanced.

Learned counsel for the State as well as the driver of the offending vehicle without prejudice to their right in their respective appeals submit that no case for enhancement of compensation is made out.

FAO Nos. 1241 and 3089 of 2002

I have learned counsel for the parties and gone through the record. There is no dispute that the claimant Manpreet was involved in an accident which occurred on 11.12.1998 while he was travelling in his three-wheeler. The question arising for consideration is whether the accident in question was caused due to rash and negligent driving of Allwyn Nissan No. PB-10B-9996 by constable Darshan Singh? Doubtlessly FIR No. 175 in this respect has been registered after considerable delay on 21.04.1999. This delay is,

however, sufficiently explained by the claimant. It is proved that the police authorities were not registering the case as the offending vehicle was a government vehicle driven by a police official. It is only after various representations to the higher authorities as well as the Chief Minister of the State that the FIR in question was ultimately registered. Claimant - Manpreet Singh PW9 as well as the claimant's brother Gurpreet Singh have clearly testified to this effect. PW10 Gurpreet Singh has specifically deposed that the police officials came to their house and called him to Police Station Division No. 5, Ludhiana and offered to get a compromise effected. However, he did not agree to the same and pressed for registration of an FIR. Inspector Pritam Singh, the then SHO of the Police Station Division No. 5 is also stated to have offered to settle the matter between the parties. Darshan Singh is stated to have offered a sum of ₹1,00,000/50,000/- if the claimant did not insist on the registration of the FIR, but this was not acceptable to the claimant. It is further a matter on record that the claimant Manpreet was ultimately discharged from the hospital on 01.03.1999 i.e. just little while before the registration of the FIR.

On a pointed query, it is not disputed by the learned counsel for the State or the driver of the offending vehicle that before cancellation of the FIR in question, no notice was issued to the complainant. Therefore, in such a scenario, the State of Punjab or the driver of the offending vehicle cannot derive any benefit in the present proceedings from the cancellation of this FIR.

The observation of the learned Tribunal that the

documents sought to be relied upon by the State seem to be ante dated and prepared subsequently, is not without reason. Even as per entries and documents referred to and relied upon by the State and the driver of the offending vehicle, the VIP duty in question of the driver Constable Darshan Singh was over by 6.30 p.m. It is a matter of record that ASI Harinder Singh, posted as In-charge police post Kot was having his residence at Ludhiana. Constable Darshan Singh was admittedly the designated driver of the offending vehicle i.e. Allwyn Nissan truck. There is truth in the averment that ASI Harinder Singh having his residence at Ludhiana travelled in the vehicle driven by Darshan Singh to meet his family at Ludhiana and on the way back the accident in question did occur. The testimony of the official witnesses themselves raises suspicion and they have miserably failed to falsify or rebut the claim of the injured appellant. Specific reference in this regard can be made to the testimony of RW1, ASI Harinder Singh who stated that all the police officials deputed for VIP duty went on their own private vehicles. ASI Harinder Singh RW1, proceeded on his private motor cycle and the remaining police officials proceeded on two scooters and some of them took a lift in a private vehicle. On the said day, they are stated to have covered a distance of about 100 k.m. in discharge of their official duties and admittedly they did not claim nor receive any allowance for this purpose. The said claim indeed rings hollow and this stand has been rightly rejected by the learned Tribunal in the given factual scenario. Furthermore, the contention that the offending vehicle was not in a running condition based on entries in the log book Ex. R3, fails to

inspire confidence for the reason that there is no report reflecting that the offending vehicle was not in working order. There is nothing on record to show any repair work which may have been carried out on this vehicle.

Another argument raised is that the driver named in the FIR had been incorrectly mentioned as Surinder Singh. At the time of accident the driver in question is stated to have revealed his name as Surinder Singh whereas the claim is against Darshan Singh. This contention is being only noted to be rejected for the reason that along with the name Surinder Singh, constabulary No.389 had been duly mentioned. Observation of the learned Tribunal that the driver of the offending vehicle himself may have given a wrong name gains credence for the reason that 'No.389' has been noted by the witness, Jagjit Singh and is duly recorded even though the said driver's name is incorrect. Thus, the driver of the offending vehicle stands identified. Similarly the objection that the vehicle was mentioned as Mahindra Nissan instead of Allwyn Nissan is of no avail to the State of Punjab and others. It is rightly recorded by the learned trial Court that it is difficult for a layman to make such a fine distinction in the make and type of vehicle. The registration number of the said vehicle was correctly mentioned.

Learned Tribunal has rightly concluded the accident to have taken place due to rash and negligent driving of the offending vehicle by Constable Darshan Singh. Learned counsel for the State as well as Constable Darshan Singh is unable to point out any illegality or infirmity in the said finding.

In respect to the claim of enhancement of compensation awarded to the claimant-appellant, it is pertinent to note that it is proved on record that the appellant – Manpreet Singh was admitted to the hospital on various occasions. PW1 Dr. A.B. Thomas, Department of Plastic Surgery, CMC Hospital, Ludhiana has proved that Manpreet Singh was brought to the hospital on 12.12.1998 as a case of alleged road side accident. He remained admitted till 28.12.1998. There were injuries on his left leg associated with fractures as well as injuries of the muscles and skin. The second and third admission was under the department of plastic surgery i.e. from 14.01.1999 to 28.01.1999 and from 05.02.1999 to 01.03.1999 respectively. Admission of the claimant to the hospital as well as expenses incurred on account of hospital charges have been proved by PW8 Balam, Junior Accounts Officer, CMC Hospital, Ludhiana. PW1 further revealed that the cost of medicines were not included in the amount charged by the hospital. Fact of admission of Manpreet Singh on 12.12.1998 is further proved by PW2 Dr. Roy P. Daniel, Resident, Department of Orthopaedic deputed by Dr. M.K. Mann, Incharge Orthopaedic Department, CMC Hospital Ludhiana. Medico legal report was proved by PW2 as Ex. CD. It is mentioned in the medico legal report that the patient was admitted with an alleged history of side to side collision with a truck while driving auto rickshaw. Crushing of the muscles of left popliteal fossa and the calf muscles with the ends of the fractured bones through the wounds was noticed.

PW2 has proved that a rod was inserted in the left leg

and the bone was not fully united and infection developed in the wounds. External affixation (rod) was removed and the ring affixation had to be done. The cost of treatment was proved. It is also proved on record that claimant - Manpreet Singh went for a regular follow up till July, 2000. PW2 has deposed that wounds were joining but the strength was not there and the claimant was using crutches. Photographs of the injured and the injured leg were proved by Dr. Roy P. Daniel, PW2, as Ex.CE, Ex.CR, Ex.CG and Ex.CH. PW2 has specifically deposed that the claimant suffered a permanent disability due to the injuries sustained by him in the accident in question. As per the disability certificate dated 31.08.2001 Ex.PA, the claimant suffers from disability of 50%.

PW3 Gian Singh has testified that he attended to the claimant when he was in the hospital. His duties included taking meals to the hospital for the claimant and providing care for him. He would also take back the utensils home and was paid ₹50/- per day for his services. Medical bills for the medicines etc. have been duly proved by PW5, PW6 and PW7. There is no dispute regarding the actual medical expenses of ₹2.5 lakhs incurred by the claimant as calculated by the learned Tribunal with the help of the counsel.

The claimant was aged about 29 years at the time of accident and an income tax payee. Claimant – Manpreet while appearing as PW9 has specifically deposed that he was an income tax assessee since 1997. Income tax returns for the year 1998-99 Ex. PE, 1999-2000 Ex. PD, 2000-2001 Ex. PC, 2001-2002 Ex. PB are on record and the same have not been disputed by the

respondents. As per income tax return Ex. PE pertaining to the year 1998-99, the claimant was earning a sum of ₹6000/- per month. Though, it is not in dispute that the claimant had employed a driver for plying auto rickshaw and he was not plying it himself, this fact by itself cannot be a ground to deny compensation to the claimant on account of loss of income as is sought to be urged. There is nothing on record to suggest that the claimant could not have increased his earnings by his efforts in future or by even driving the auto rickshaw himself. The claimant's functional disability can be safely assessed as 20% and he is entitled to 50% increment on account of loss of future prospects in view of his age i.e. 29 years at the time of accident. A multiplier of 17 is required to be applied as per settled principles.

As per the guidelines laid down by the Hon'ble Supreme Court in **Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765,** the appellant would be entitled to loss of future income assessed at **₹3,67,200/-** $[(₹6000 \times 20/100) + (20/100 \times 50/100 \times ₹6000) \times 12 \times 17]$. Actual medical expenses of ₹2,50,000/- incurred by the claimant duly proved on record invariably have to be awarded. The claimant is entitled to a sum of ₹1,00,000/- on account of pain and suffering and a sum of ₹50,000/- for future medical expenses as it has come on record that claimant had not fully recovered at that time. On account of expenses incurred on special diet, attendant etc. a sum of ₹15,000/- is awarded.

It is not disputed that the appellant was unmarried, thus,

he is entitled to compensation on account of loss of marriage prospects to the tune of ₹75,000/- as well as compensation on account of loss of amenities assessed as ₹1,00,000/-. The compensation payable to the appellant is, thus, re-worked as under:-

Loss of earning capacity/future income	₹3,67,200/-
Loss of marriage prospects	₹75,000/-
Loss of amenities	₹1,00,000/-
Actual Medical expenses incurred	₹2,50,000/-
Future medical expenses	₹50,000/-
Special diet and attendant charges	₹15,000/-
Pain and suffering	₹1,00,000/-
Total	₹9,57,200

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 6.5% per annum on the enhanced amount from the date of filing of the petition till realization.

In view of discussion as above, FAO No. 3089 of 2002 is partly allowed and FAO Nos. 1380 and 1241 of 2002 are dismissed.

July 15, 2016
rts

(Lisa Gill)
Judge