IN THE HIGH COURT OF PUNJAB AND HARYANA, AT CHANDIGARH

FAO No.1725 of 2007
Date of Decision: 4.11.2016

Roshan Lal

..... Appellant

vs.

Kamal Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.K. Saini, Advocate,
for the appellant.

Ms. Vandana Malhotra, Advocate,
for respondent No.3.

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AMOL RATTAN SINGH, J.

This is an appeal of the claimant before the learned Motor Accident Claims Tribunal, Hisar, seeking enhancement of compensation of Rs.35,000/- awarded by the Tribunal to him, on account of the injuries received by him in an accident that took place on 10.11.2000.

2. The facts, as taken from the Award of the learned Tribunal, (as the records of this case were burnt in the fire that took place in the record-room of this Court in January 2011), are as detailed hereinafter.

As per the claimant, he was travelling in a jeep bearing registration no.HR-21/4424 on 10.11.2000, going from village Lilas to Gorakhpur. The jeep was allegedly being driven in a rash and negligent manner by respondent no.1 herein, due to which it is stated to have turned

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turtle near village Panihar Chak.

The appellant is stated to have been shifted to Jain Hospital, Hisar, where he remained admitted till 23.11.2000, i.e. for a period of 13 days, during the course of which he spent Rs.35,000/- on his treatment.

3. The claim petition having been filed under Section 166 of the Motor Vehicles Act, 1988, on 11.01.2003, notice was issued to the respondents, upon which respondents no.1 and 2, i.e. the driver and owner of the vehicle (respondent no.1 being the son of respondent no.2), filed a joint written statement denying that the accident took place due to the rash and negligent driving of respondent no.1, further stating that actually it was an act of God, for which no-one was liable.

It was otherwise stated that the vehicle was duly insured with respondent no.3.

4. The insurance company that had insured the vehicle, i.e. respondent no.3, filed a separate written statement taking usual preliminary objections of collusion between the petitioner and the first respondent, of the latter not holding a valid driving licence, nor being under the employment of the insured etc.

On merits, it was contended that the petitioner had himself attached a copy of DDR no.32 dated 10.11.2000, in which respondent no.1 had made a statement before the police that he lost control of the jeep due to the sudden appearance of four *'Neelgais'* on the road and as such, it was not anybodys' fault.

The factum of the insurance of the vehicle was admitted but the liability to pay compensation was denied.

5. Upon the aforesaid pleadings, the following issues were framed

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by the learned Tribunal:-

> "1. Whether the accident in question took place due to rash and negligent driving of jeep bearing registration no.HR-21/4424 driven by respondent no.1 as alleged? OPP
> 2. Whether petitioner Roshan Lal sustained injuries in this accident, if so to what amount of compensation and from whom, the petitioner is entitled to recover? OPP
> 3. Whether petition is based on collusive between the petitioner and respondent no.1? OPR3
> 4. Whether the offending vehicle was being driven by an unauthorised person without holding a valid and effective driving licence? OPR3
> 5. Relief."

6. The appellant-claimant examined himself as PW1, Dr. Ramesh Jain as PW2 and Dr.A.L. Bagri as PW3. He also tendered documents by way of evidence, including a copy of the DDR, Ex.P13.

7. Respondents no.1 and 2 tendered in evidence a verification report, which, however, was not exhibited but only taken on record as Mark-A.

The insurance company tendered into evidence the insurance policy as Ex.R1.

8. Upon the aforesaid evidence and the pleadings, the Tribunal found from the testimony of the appellant-claimant, that other than respondent no.1, respondent no.2 was also travelling in the jeep at that time and that respondent no.1 was driving at a very fast speed despite being asked to slow down.

The appellant is shown to have supported his version of the accident in his testimony, but in cross-examination he admitted that he had not lodged any criminal case against the driver and further, that the occupants of

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the jeep were his relatives.

He further also denied that the accident took place on account of '*Neelgais'* coming on to the road and that in order to save them, respondent no.1 lost control, resulting in the jeep turning turtle.

9. It was also seen that respondent no.1 did not step into the witness box to rebut the testimony of the appellant-claimant, and that the version of the accident given in the DDR did show that the accident had taken place on account of the *'Neelgais'* coming in front of the vehicle.

Finding that, in fact, the DDR has been lodged by respondent no.1, the Tribunal took an inference that naturally, the said respondent would not implicate himself by stating that he was driving the vehicle in a rash and negligent manner and as such, it was held the claimant could not be made to suffer on account of the statement made by the driver himself before the police, who also happened to be a relative of the claimant.

Hence, in any case, the version of the claimant not having been denied by respondent no.1 by way of testimony, the issue of negligence was decided in favour of the appellant.

10. As regards the injuries sustained by the appellant, it was found from the testimony of two doctors who had deposed in favour of the appellant-claimant, that he had suffered a serious injury in the pelvic region, due to which he remained admitted in the Jain Hospital, Hisar, for about 15 days and also suffered a disability to the extent of 6% on account of “post traumatic weakness of the right hip”, due to a fracture of the “Gaelic Ramous right (Grade IV)”.

It was also found that Rs.6683/- had been spent on the treatment of the appellant as per bills produced by him and as recorded on the bed head

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ticket, Ex.P1.

The aforesaid sum and about Rs.28,000/- over and above that sum, was awarded on account of trauma, suffering and agony. Thus, a total sum of Rs.35,000/- was awarded by way of compensation, which was held to be the liability of all the respondents jointly and severally, there having been found to be no breach of the conditions of the insurance policy.

Interest @ 6% per annum was also awarded on the compensation amount, running from the date of the filing of the claim petition, till realization of the amount.

11. Before this Court, Mr. R.K.Saini, learned counsel for the appellant, submitted that the approximate amount of Rs.28,000/- awarded for pain, suffering and agony was highly inadequate, as actually that was the amount spent by the appellant on his treatment itself. He also submitted that on account of the 6% disability suffered, the Tribunal should have awarded special compensation and further, compensation towards special diet should also have been awarded.

12. Ms. Vandana Malhotra, learned counsel for the respondent-insurance company (none having appeared for respondents no.1 and 2 either on the date when the judgment was reserved or immediately prior thereto), submitted that the appellant having produced bills of only Rs.6683/-, and the doctors who testified for him also not having stated anything with regard to any extra expenditure incurred, nothing more than the amount of Rs.6683/- can be awarded for the appellants' treatment and further, the disability of 6% also having been assessed only on account of “post traumatic weakness” due to a fracture, it was not a permanent disability and as such, the lump-sum amount of Rs.35,000/- was sufficient for the kind of injuries received by the

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appellant.

13. Having heard learned counsel for the parties and having considered the Award of the Tribunal, I agree with learned counsel for respondent no.3 that as regards the amount spent on the treatment of the appellant, nothing more than what was led by way of evidence in the form of bills and the amount stated to have been spent as per the bed head ticket, can be awarded to the appellant.

Similarly, in the absence of any permanent disability having been assessed by the competent Medical Board, of which PW3, Dr. A.L.Bajaj, is seen to have been a member (as per the Award), no specific amount for such disability can also be awarded.

As regards the amount of Rs.28,317/- awarded over and above the amount spent on medicines, towards trauma, suffering and agony etc., I however do agree with learned counsel for the appellant, to the limited extent that even keeping in view the fact that the appellant may have had to take a special diet on account of his fracture and recovery thereafter and for the trauma and suffering that he went through, the said amount is not wholly adequate.

14. Consequently, Rs.10,000/- is awarded over and above the amount awarded by the Tribunal, of which Rs.3000/- is considered adequate towards special diet and Rs.7000/- towards pain and suffering etc. Thus, now a total sum of Rs.35,000/- is awarded towards pain and suffering, Rs.6683/- towards the expenditure on treatment and medicines and Rs.3000/- towards the special diet that the appellant would necessarily have had to take towards his healing process. Hence, the total sum awarded under the aforesaid heads comes to Rs.44,683/- which is rounded off to Rs.45,000/-.

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The enhanced amount of Rs.10,000/- shall carry interest @ 4% per annum, running from the date of filing of the claim petition, till the date of realization thereof.

15. The appeal is partly allowed to the aforesaid extent, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

November 4, 2016
dinesh/davinder

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No.

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