IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5683 of 2005 (O&M)
Date of Decision : 02.06.2016

Mamta .....Appellant

Versus

Karnail Singh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sunil Rana, Advocate
for Mr. Amit Jaiswal, Advocate
for the appellant.

Mr. Anil Shukla, Advocate
for respondent no. 2.

Mr. Vinod Chaudhri, Advocate
for respondent 3.

Surinder Gupta, J.

This is appeal filed by claimant-Mamta against award dated 20.10.2005 passed by Motor Accident Claims Tribunal, Ambala whereby her petition under Section 166 of the Motor Vehicles Act seeking compensation for the injuries suffered by her in a motor accident with car bearing registration No. PB-48-0184 (Maruti Esteem) (later referred to as 'the offending vehicle'), was dismissed.

2. Claimant described the incident in para 24 of the petition as follows:-

"That on 01.01.2003, the claimant alongwith her mother-in-law at about 10.00 a.m. were going to Ambala City from their house. The injured was moving ahead from the mother-in-law Smt. Padma Devi and when the injured was about to cross G.T. Road, near Jail Bride, a car no. PB-48-0184 came from

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the side of Patiala Chowk being driven by accused no. 1-Karnail Singh on a high speed rashly and negligently without giving horn and struck his car with the claimant as a result of which the claimant sustained injuries and Karnail Singh shifted the injured to the CH Ambala City and thereafter ran away from there. This accident has been took place due to the rash and negligent driving of the respondent no. 1. The FIR was recorded on 04.01.2003 by Padma mother-in-law, since she was busy in the treatment of Mamta injured in the PGI and FIR was recorded at Kalka Maur, Ambala City.

That this accident has been caused due to the rash and negligent driving of driver of esteem car no. PB-48-0184 i.e. respondent no. 1, as such, the respondent no. 1 being driver, respondent no. 2 being the owner and the respondent no. 3 being insurer of car no. PB-48-0184 are jointly and severally liable to pay compensation to the claimant."

3. Respondent no. 2 owner of the offending vehicle denied the accident and contested and controverted the averments made in the petition. However, he pleaded that the offending vehicle was insured with Oriental Insurance Company Ltd. i.e. respondent no. 3, as such, liability, if any, is of Insurance Company to pay the compensation. Respondent no. 1 i.e. driver of the offending vehicle did not appear to contest the petition.

4. Oriental Insurance Company Ltd. in its separate written statement also denied the accident and labeled the story put-forth by claimant as a concocted one. It was alleged that the accident was caused by some unidentified vehicle. In the record of PGI, Chandigarh vehicle was described as Jeep. FIR was got recorded on 04.01.2003 at about 06.15 p.m.,

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implicating the offending vehicle. The version regarding accident as incorporated in the FIR was motivated and after thought, put-forth in connivance with respondents no. 1 and 2 with a design to get the compensation. It was further pleaded that the vehicle involved in alleged accident was being driven by a person without holding an effective and valid driving licence and there was violation of terms and conditions of the insurance policy. All the other averments of claimant were also contested, controverted and denied.

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

(i) Whether the accident in question took place due to rash and negligent driving of car bearing registration No. PB-48-0184 by Karnail Singh respondent no. 1 causing injuries to Mamta claimant? OPP

(ii) If issue no. 1 is proved in the affirmative, whether the claimant is entitled to compensation for the injuries sustained in the accident. If so, to what amount and from whom? OPP

(iii) Whether insurance company is not liable for payment of compensation in view of the preliminary objections taken in the written statement? OPR-3

4. Relief.

6. The Tribunal observed that the offending vehicle was falsely involved in this case as it was insured with respondent no. 3 and discarded the plea of claimant that accident was caused by the offending vehicle and dismissed the petition.

7. Learned counsel for the appellant has argued that claimant belongs to poor strata of society and was working at the relevant time as

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maid servant. After the accident, she was shifted to hospital by respondent no. 1 and thereafter, he ran away from the spot. The record of hospital and DDR with the police was manipulated. She had no enmity with driver and owner of the offending vehicle so as to falsely implicate them. The police in investigation of the case registered vide FIR No. 7 dated 04.01.2003 had found respondent no. 1-Karnail Singh guilty and presented the challan against him. It is also evident that the vehicle in question was taken into possession by the police and got mechanically examined on 22.01.2003. It was found in damaged condition. Front bumper was crack, left side headlight and indicator were broken, front main glass was also broken and there was dent on it which show that this vehicle had met with an accident and it is nowhere the case of respondents that this vehicle had met with some other accident. The Insurance Company had appointed an investigator and placed his report (Ex. RD) on file wherein the investigator has reported that owner of the offending vehicle confirmed the accident but stated that driver-Karnail Singh left his job. All this shows that version of the accident as given by claimant is correct and the Tribunal has wrongly discarded the same.

8. Learned counsel for respondent no. 3 has argued that claimant has come-forward with the version that at the time of accident her mother-in-law was also there and had accompanied claimant to Civil Hospital, Ambala City but in the record of hospital prepared at the time of her medical examination, it is mentioned that injured was unconscious and brought by some unknown person. In the discharge slip issued by PGI, Chandigarh, it is mentioned in summary of the case that patient was hit from behind by Jeep, which shows that the accident had not taken place with the offending vehicle. It was only on 04.01.2003 that FIR (Ex. PA) was registered wherein

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the offending vehicle was involved for the first time. All this shows that the offending vehicle was planted in order to get compensation. The investigator appointed by the Insurance Company categorically stated that the offending vehicle bearing No. PB-48-0184 has been planted in this case and report is to be read as a whole and not in part.

9. The vital question which arises for consideration is as to whether the offending vehicle was involved in the accident?

10. Claimant had examined Padma Devi, her mother-in-law, as PW-1, who has stated that the offending vehicle came from behind and hit the claimant. The driver thereafter stopped the car and took her and her daughter-in-law to Civil Hospital. Claimant was unconscious and she was asked to bring medicines. In the meanwhile, respondent no. 1 fled away from hospital. Next day, claimant was shifted to PGI, Chandigarh. It was on 04.01.2003 that FIR was registered by the police. Claimant herself appeared as PW-2 and stated that she was hit by car from behind when she was going from Ambala City to her house.

11. First relevant document on record is investigation report (Ex. RD), produced by Insurance Company wherein the investigator appointed by it has stated that when he visited Mandi Gobindgarh and met owner of the offending vehicle, he informed that Karnail Singh-respondent no. 1 has left his service but confirmed the accident. It was in later part of the report that he tried to indicate without any basis that the offending vehicle has been planted. The report shows that owner of the offending vehicle has conceded before the investigator that the accident had taken place. This fact is further corroborated by mechanical report (Ex. RE) of the offending vehicle. The police had taken the offending vehicle into possession and then got it mechanically examined on 22.01.2003 and found bumper, left side headlight

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and indicator, front main glass broken and dent on the bonnet. It is nowhere the case of respondents no. 2 and 3 that the vehicle was involved in any other accident. The condition of vehicle as found in the report of mechanic (Ex. RE) clearly indicates that it had met with an accident. The third circumstance to support the contention of claimant is that respondent no. 1 driver of the offending vehicle has neither appeared as witness nor filed any written statement to rebut the version of claimant.

12. Admittedly, in the report prepared at Civil Hospital, Ambala, it is mentioned that the injured was brought by some unknown person. Name of the injured was not mentioned as she was unconscious. In the discharge slip while giving the brief summary, it is mentioned that the injured was hit from behind by the Jeep. These facts in no manner suggest that the offending vehicle has been planted in this case. The evidence produced by claimant to prove the accident is not to be tested and scrutinized in the manner it is scrutinized in a criminal case. It is case of claimant that she was taken to hospital by respondent no. 1 himself in his car. Claimant belongs to a poor strata of society and the possibility that attempt was made to hush up the case, cannot be ruled out. In view of that circumstances that have come on record, it is amply proved that the offending vehicle was involved in the accident and owner of the offending vehicle admitted that his driver was respondent no. 1-Karnail Singh.

13. In view of above, the Tribunal has committed grave error while dismissing the claim petition with the observation that the accident is not proved to have been caused by the offending vehicle and this vehicle was planted at later stage. The finding of Tribunal to this effect is set aside and findings on issue no. 1 are reversed and recorded against respondents no. 1 and 2 and in favour of claimant.

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ISSUES NO. 2 AND 3

14. The Tribunal has not recorded any finding on issues no. 2 and 3 with the observation that these issues have become redundant. Observations of the Tribunal are contrary to legal proposition. Even after reaching the conclusion while deciding issue no. 1 that the offending vehicle has been falsely implicated in this case, the Tribunal was required to record findings on issues no. 2 and 3. However, keeping in view the fact that the appeal is 11 years old, instead of remanding the case on this short ground, I have taken assistance of learned counsel for parties with regard to quantum of compensation to which claimant is entitled and liability of Insurance Company to pay amount of compensation.

15. From the discharge summary (Ex. P-3), it is evident that claimant remained admitted in PGI, Chandigarh from 04.01.2003 to 09.02.2003. Prior to that she was admitted in Civil Hospital, Ambala. This shows that she remained admitted in hospital for 40 days.

16. Learned counsel for the appellant has argued that bills of ₹24,240/- spent on treatment, medicines, have been placed on record. Though, there is no certificate of disability suffered by claimant but the medical report (Ex. P-2) shows that claimant was unconscious after the accident. There were fracture injuries of thigh and other parts of body. While discharging from hospital, she was advised to take medicines and to come for review of her injuries. While appearing as PW-2, claimant has stated that she has not fully recovered from disability suffered by her and feels difficulty in walking. Sometimes she falls while walking. She was domestic peon earning ₹2500/- per month but after the accident she has become incapable of doing any work. PW-1 mother-in-law of claimant has also stated that her son Ashwani, who is husband of claimant, is 'thick headed'

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and does not earn anything. Claimant was doing household work in the houses and used to earn ₹2500/- per month. Her husband had already expired and there is no member in the family to earn.

17. Learned counsel for respondents has argued that claimant has placed on record bills of medicines purchased by her. There is no other evidence on record regarding her expenses on treatment. Copy of medico legal examination of claimant (Ex. P-2), discharge and follow up card (Ex. P-3), case summary (Ex. P-57) show that claimant had suffered various fracture injuries of thigh and other part of body. At the time of her discharge, she was still on bed and her injuries were described as grievous. Though, there is no disability certificate but it can be well understood that in case of fracture of thigh, it takes three to four months for reunion of bone and even after reunion of bone one cannot lead normal life and this is particularly in the case of claimant, who was a maid servant and working in the houses of people to earn her livelihood. Such an injury makes it difficult to sit on floor and do the petty jobs. Claimant has also suffered a lot of agony, pain and suffering and is entitled for compensation on the conventional heads like attendant charges, nutritious diet, transportation, future medical expenses, loss of income etc.

18. The submissions of learned counsel for appellant have substance and are supported by evidence on record which is unrebutted. Keeping in view above facts and evidence on file, the amount of compensation to which claimant is entitled, is calculated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Medical expenses	₹24240 rounded off to ₹24500
(ii)	Loss of income for three months @ ₹2500/- per month	₹7500

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(iii)	Transportation charges	₹10000
(iv)	Compensation towards pain and suffering	₹30000
(v)	Compensation towards attendant charges	₹10000
(vi)	Compensation for future medical expenses	₹15000
(vii	Compensation for nutritious/ special diet	₹10000
Total		₹107000

19. The offending vehicle was insured with respondent no. 3-Oriental Insurance Company Ltd. and there is nothing on file to show that respondent no. 2-owner of the offending vehicle has committed any breach of terms and conditions of insurance policy. Though, the primary liability to pay amount of compensation is of respondents no. 1 and 2 but respondent no. 3-Insurance Company being insurer of the offending vehicle will indemnify respondent no. 2-owner of vehicle by making payment of compensation amount.

20. As a sequel of my above discussion, the appeal is accepted. Award passed by the Tribunal is set aside and appellant is allowed compensation of ₹1,07,000/- for injuries suffered by her in motor vehicle accident with offending vehicle. Claimant is also entitled to interest @ 7.5% per annum on awarded amount of compensation from the date of filing of claim petition till actual realization. Respondent No. 3-Insurance Company will deposit the compensation amount in bank account of claimant or pay the same through demand draft. Counsel fee is assessed at ₹5000/-.

June 02, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

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