

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

FAO No.4343 of 2007(O&M)

Date of decision:19.9.2016

Sat Pal

....Appellant

VERSUS

Randhir Singh and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Arvind Bansal, Advocate for
 Mr. Vinod Bhardwaj, Advocate for the appellant.

 Mr. Gaurav Verma, Advocate for
 Mr. Surender Deswal, Advocate for respondents No.1 and 2.

 Mr. Neeraj Khanna, Advocate for respondent No.3.

REKHA MITTAL, J.

The injured/victim has filed the present appeal to challenge the award dated 02.06.2007 passed by the Motor Accident Claims Tribunal, Kaithal (in short 'the Tribunal') whereby application filed under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation has been dismissed.

In short, as per the case set up by the claimant/appellant, on 18.11.2005 at about 10 a.m., he was going from Kaithal to village Nouch on motorcycle No.6235. When he reached near motor workshop on Ambala road, Santro car bearing No.HR-05M-1111 came from Ambala side, driven rashly and negligently. The car struck against the motorcycle and as a result, he received multiple injuries.

The driver and owner of the alleged offending vehicle filed a joint written statement and controverted the allegations that accident took

place due to involvement of Santro car. It has been averred that respondent No.1 has been falsely challaned in the criminal case at the instance of the claimant only to obtain compensation.

Respondent No.3- Insurance Company filed its separate reply denying all the material averments raised in the petition with a plea that claim petition has been filed on false averments and in collusion with respondents No.1 and 2, so the same is liable to be dismissed.

The Tribunal framed the following issues for determination:-

- 1) Whether the accident in question resulting into injuries to claimant, took place due to rash and negligent driving of car No. HR-05M-1111 on the part of its driver, respondent No.1, as alleged? OPP.
- 2) If issue No.1 is proved, whether the claimant is entitled to compensation, if so to what amount and from whom? OPP.
- 3) Whether there has been any violation of the terms and conditions of the insurance policy, if so to what effect? OPR-2.
- 4) Relief.

To prove his case, the claimant examined Krishan Lal PW-1, Dr. Nitin Mehta PW-2, Dr. Pabnish Aggarwal PW-3, Ram Saran Bhatt PW-4, Sanjay PW-6 and himself appeared as PW-5.

The insurance company examined licensing clerk as RW-1. The other respondents tendered into evidence copy of registration certificate Ex.R1, copy of driving licence Ex.R2 and copy of insurance policy Ex.R3.

After having heard counsel for the parties, in the light of materials on record, the Tribunal determined issue No.1 against the

claimant but assessed compensation to the tune of Rs.90,000/- qua injuries suffered by him.

Counsel for the appellant has submitted that the Tribunal in para 11 has wrongly held that FIR registered on 24.11.2005, after a delay of six days, does not disclose registration number of the offending vehicle. It is vehemently argued that the FIR Ex.P13 lodged at the instance of the injured/victim makes a specific reference to the registration particulars of the offending vehicle both in column No.7 as well as body of the report. It is further argued that the claimant has adduced documentary evidence to explain delay of six days in getting recorded his statement as he was declared fit for the first time on 24.11.2005 to make a statement and on the very same day, his statement was recorded by the police on the basis whereof FIR was registered. It is further argued that even brother of the appellant namely Sanjay examined as a witness has categorically deposed that he approached the police for lodging of FIR but the police told him that they would record statement of the injured/victim as soon as he is declared fit by the doctors. In addition, it is submitted that after due investigation of the FIR lodged at the instance of the appellant, a report under Section 173 Cr.P.C. has been submitted in the Court and driver of the offending vehicle is facing trial. Counsel would urge that there is no material on record that the claimant knew owner or driver of the offending vehicle before the occurrence much less the offending vehicle having been involved as a measure of collusion between the claimant and respondents No.1 and 2.

Counsel for the insurance company, on the contrary, has urged that findings recorded by the Tribunal on issue No.1 are based upon

correct appreciation of the facts on record, therefore, do not warrant intervention. It is further submitted that as the claimant has failed to discharge onus of issue No.1, he is not entitled to get any compensation.

Counsel for the appellant has also asserted his claim for enhancement of compensation but the same would be dealt with after discussion qua findings on issue No.1.

The observations made by the Tribunal that the FIR does not disclose registration number of the offending vehicle or it only states that the offending vehicle was a Santro car of red colour are contrary to records. As has been rightly pointed out by counsel for the appellant, the FIR makes a specific reference to the registration particulars of the offending vehicle both in column No.7 as well as body writing. It is also an undisputed position of the case that after due investigation of the FIR, the police has presented the challan for trial of driver for committing offence punishable under Sections 279, 337 and 338 of the Indian Penal Code, 1860. The documents Ex.P9 to P11 substantiates contention of the appellant as to the circumstances under which he could not get recorded his statement to the police till 24.11.2005. The Medical Officer General Hospital, Kaithal declared the injured unfit to make statement vide Ex.P9 to P11. This apart, lodging of FIR is not a condition precedent for claiming compensation by invoking the provisions of the Motor Vehicles Act. In this view of the matter, it can be safely held that the Tribunal failed to appreciate the evidence in right perspective and did not consider the documents on record with regard to delay in lodging the FIR being satisfactorily explained and the FIR contained a detailed account of the occurrence including particulars of the offending vehicle.

Not only this, brother of the injured namely Sanjay PW-6 tendered into evidence his affidavit Ex.P14. He has deposed that on 18.11.2005 when he came to know that his brother had met with an accident, he and Mohinder were coming from village Nouch to Kaithal. Near Shubham Motor Workshop Ambala road, Kaithal, one accidental car Santro black bearing No. HR-05M-1111 was standing and its show of right side below headlight was having cracks. Accidental motorcycle of his brother was also lying there. It is further deposed that when he reached the hospital at Kaithal, his brother was unconscious and he told the police about the accidental car but the police said that they would record statement of Satpal when he will gain consciousness. Sanjay and Satpal were cross-examined at length but nothing tangible and material has been elicited to challenge their veracity much less to impeach their credibility. Admittedly, driver of the offending vehicle did not appear in the witness-box to counter statement of injured/victim Satpal. There is nothing on record suggestive of the fact that Satpal had any hostility against Randhir Singh to get him falsely indicted in the criminal proceedings for the sake of getting compensation. Examined from any angle, I find it difficult to sustain the findings recorded by the Tribunal qua issue No.1. In view of the voluminous evidence available on record, the claimant has successfully proved that the accident in question took place due to rash and negligent driving of car No.HR-05M-1111 by its driver resulting in multiple injuries to the claimant. Accordingly, issue No.1 is answered in favour of the claimant and against the respondents.

This brings the Court to assessment of compensation made by the Tribunal. The Tribunal awarded compensation to the tune of Rs.90,000/- under following heads:-

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|----|---------------------------------|-------------|
| 1. | Expenses on medical treatment - | Rs.65,000/- |
| 2. | Pain and suffering - | Rs.15,000/- |
| 3. | Loss of income - | Rs.10,000/- |

Counsel for the appellant has submitted that the claimant remained admitted in various hospitals namely Government Hospital, Kaithal, New Holy Family Hospital Kaithal, Government Hospital Chandigarh and the total period of his hospitalization is more than 2½ months. He was operated upon for bone grafting and suffered disability to the extent of 7.5% as per disability certificate Ex.P6. It is further argued that the claimants spent approximately Rs.1,50,000/- on his medical treatment but as he could not maintain the bills/vouchers with regard to the entire expenditure, he has been awarded an amount of Rs.65,000/- towards medical expenses. It is argued that compensation awarded by the Tribunal under various heads needs enhancement and the claimant is also entitled to compensation under additional heads.

Counsel for the insurance company, on the contrary, has supported the assessment made by the Tribunal.

There is no denial that the claimant got treatment from various hospitals since the date of accident till 23.01.2006. He suffered temporary disability of 7.5% in regard to restriction of terminal flexion at the right knee joint. He suffered fracture of right tibia, fibula bone and femur bone.

Taking into consideration the nature of injuries sustained, period of confinement in the hospital and temporary disability to the extent of 7.5%, the claimant is entitled to loss of income for a period of six months. To prove his income, the claimant examined Krishan Lal PW-1 and he deposed that the claimant was working as a Mistri on his saw mill at a salary of Rs.2,500/- per month. Krishan Lal PW-1 did not produce the best documentary evidence stated to be in his possession to prove employment of Satpal and his salary. However, taking a clue from the minimum wage fixed by the State of Haryana and available to an unskilled worker in November 2005, loss of income is assessed at Rs.2,300/- per month. The claimant shall be entitled to an amount of Rs.13,800/- for loss of income.

The Tribunal has awarded an amount of Rs.15,000/- for pain and suffering. In view of the discussion made hereinbefore, the claimant is awarded an amount of Rs.30,000/- for pain and suffering. He shall be entitled to another sum of Rs.10,000/- for services of an attendant, special diet and transportation.

So far as the plea of the claimant for increase of expenses on medical treatment, in view of bills proved on record coupled with that the Tribunal has awarded an amount of Rs.65,000/- towards medical expenses, transportation, special diet, attendant charges etc, no further increase in this regard is justified.

In view of the above, total compensation payable to the appellant comes to Rs.1,18,800/- and the enhanced compensation is Rs.28,800/- (Rs.1,18,800/- - Rs.90,000/-), payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

SEPTEMBER 19, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no