

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

(1) **FAO No.3613 of 2013 (O&M)**
Date of decision : 23.02.2016

Shri Harwinder Singh and another

.....Appellants

Versus

The Oriental Insurance Company and another

...Respondents

(2) **FAO No.5480 of 2013 (O&M)**
Date of decision : 23.02.2016

Sumit Kumar

.....Appellant

Versus

Harwinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: **Mr. Ashwani Bhardwaj, Advocate for appellants**
in FAO No.3613 of 2013 and
for respondents No.1 & 2 in FAO No.5480 of 2013.

Mr. Lalit Garg, Advocate for respondent No.1
in FAO No.3613 of 2013 and
for respondent No.3 in FAO No.5480 of 2013.

Mr. Ashwani Arora, Advocate for respondent No.2
in FAO No.3613 of 2013 and
for applicant-appellant in FAO No.5480 of 2013.

DARSHAN SINGH, J.

This judgment of mine shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 29.04.2013 passed by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter called the 'Tribunal') vide which the claimant-appellant of FAO No.5480 of 2013 has been awarded the compensation to the tune of Rs.2,02,508/- along with interest @ 7.5% per annum from the date of filing the claim petition till realization, on account of the injuries suffered by him in the motor vehicular accident, which took place on 18.08.2010.

2. The claimant-appellant of FAO No.5480 of 2013 has filed the appeal for enhancement of the amount of compensation.

3. FAO No.3613 of 2013 has been filed by the driver and owner of Canter No.PB-12B-9874 to challenge the recovery rights of the awarded amount given to the Insurance Company from the insured-owner.

4. During the pendency of the appeal, Sumit Kumar the appellant of FAO No.5480 of 2013 has also moved the application CM No.23138-CII of 2013 under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 for permission to lead the additional evidence to prove the disability certificate issued by the Post Graduate Institute of Medical Education and Research, Chandigarh (in short the 'PGI, Chandigarh').

5. This application has been contested by respondent No.3

the Insurance Company on the grounds inter alia that the disability certificate annexed with the application had no nexus with the present case. This accident had occurred on 18.08.2010 and the claim petition was decided on 29.04.2013 i.e. almost after three years. It is not believable that he could not get the disability certificate during this period. It is further pleaded that after the decision of the case, he has procured this document to get some more amount of compensation. It is further pleaded that the disability shown in the certificate is not permanent in nature. The appellant has not given any sufficient reason as to why this document could not be produced at the appropriate stage. The disability suffered by the appellant-claimant seems to be temporary in nature. With these pleas, the respondent-Insurance Company pleaded for dismissal of the application.

6. I have heard Mr. Ashwani Bhardwaj, Advocate, learned counsel for appellants in FAO No.3613 of 2013 and for respondents No.1 & 2 in FAO No.5480 of 2013, Mr. Lalit Garg, Advocate, learned counsel for respondent No.1 in FAO No.3613 of 2013 and for respondent No.3 in FAO No.5480 of 2013, Mr. Ashwani Arora, Advocate, learned counsel for respondent No.2 in FAO No.3613 of 2013 and for applicant-appellant in FAO No.5480 of 2013 and gone through the paper-book carefully.

7. Learned counsel for the appellant-claimant contended that the production of the disability certificate is very essential for the just decision of the case. He contended that earlier the disability could not be assessed as the claimant was under the prolong treatment. Now the

appellant has been examined by the Medical Board of PGI, Chandigarh on 26.07.2013 and the disability certificate has been issued, as per which the claimant has suffered 12% disability. He contended that the claimant should be allowed to produce the said disability certificate in evidence as the victim is entitled to get just compensation as per the provisions of the Motor Vehicles Act, 1988.

8. Mr. Ashwani Bhardwaj, Advocate, learned counsel for the appellants in FAO No.3613 of 2013 contended that the route permit of the canter in question Ex.R4 was very much produced before the Tribunal but learned Tribunal has not taken any note of the route permit Ex.R4 in the impugned award.

9. He further contended that the said route permit was issued by the District Transport Authority, Patiala and it was duly countersigned for Chandigarh. It was valid on the date of the accident. So, the recovery rights have been wrongly given to the Insurance Company.

10. Mr. Lalit Garg, Advocate, learned counsel for the respondent-Insurance Company contended that the disability certificate annexed by the claimant with the application for additional evidence has no nexus with the present accident as the accident has taken place on 18.08.2010, whereas this certificate has been issued on 26.07.2013 i.e. almost after three years. No explanation has been given as to why this certificate could not be obtained during the trial before the Tribunal. He further contended that the disability mentioned in the certificate is only temporary in nature as it is nowhere mentioned that it was permanent

disability. Thus, he contended that no case is made out to allow the claimant to lead the additional evidence.

11. He further contended that the learned Tribunal has categorically held that no route permit of the vehicle in question was produced, so the right of recovery was rightly granted.

12. I have duly considered the aforesaid contentions.

13. Firstly, I take up the application filed by the claimant-appellant for leading the additional evidence.

14. In the application, filed by the claimant it has been categorically mentioned that his physical disability could not be assessed earlier as he had remained under prolonged treatment. It is a fact of common knowledge that in order to assess the accurate disability, the victim is examined by the Medical Board only after the treatment. So, the delay in production of the disability certificate is well explained in the application filed by the appellant.

15. There is no dispute with the proposition of law that the Tribunal is required to grant just compensation to the victim. The appellant-claimant was not having disability certificate when the case was decided by the learned Tribunal. The disability certificate has been issued by the PGI, Chandigarh on 26.07.2013 i.e. after the decision of the case by the learned Tribunal. The plea raised by the learned counsel for the Insurance Company that in the disability certificate it is not mentioned that the claimant has suffered the permanent disability is a question which can be got clarified from the doctor concerned at the time of his

statement. Thus, as the production of the disability certificate dated 26.7.2013 issued by the PGI, Chandigarh is essential for the just decision of the case, so the application filed by the appellant-claimant Sumit Kumar is hereby allowed. Appellant-claimant Sumit Kumar is permitted to produce and prove the disability certificate in accordance with law in his additional evidence.

16. The perusal of the record shows that appellants of FAO No.3613 of 2013 have brought on record the copy of the route permit Ex.R4. The learned Tribunal has not referred this document at all in the award. So, the learned Tribunal has not taken note of the route permit Ex.R4 and has not discussed its effect while determining the question of liability. The learned Tribunal in the impugned award has mentioned that as the vehicle was having the registration number of Punjab and the accident has occurred within the territory of Chandigarh, therefore, the permit was required to ply the vehicle in Chandigarh. It was further mentioned that no permit whatsoever has been produced on record by respondents No.1 & 2 (appellants in FAO No.3613 of 2013). These observation of learned Tribunal are against the record. The route permit Ex.R4 was very much available on record which was totally escaped the notice of the learned Tribunal and has vitiated its findings with respect to the liability.

17. Thus, keeping in view my aforesaid discussion, as the application filed by the claimant Sumit Kumar to produce and prove the disability certificate in the additional evidence has been allowed the said

disability certificate has to be proved by examining the doctor concerned. The respondents will also have to afford the opportunity to cross-examine that witness. The amount of compensation will also have to be re-assessed in view of the disability certificate. The question of liability also requires re-determination in view of the copy of the route permit Ex.R4.

18. So, both the present appeals are hereby allowed and the case is remanded to the learned Tribunal to decide the case afresh in accordance with law.

19. The parties are directed to appear before the learned Tribunal on 16.03.2016.

23.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**