IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.11.2017

FAO No.5563 of 2002

Bhagwan Dass ...Appellant

Vs.

Trilochan Singh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Monika Arora, Advocate, for
Mr. Pritam Saini, Advocate, for the appellant.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

On hearing Ms. Monika Arora, appearing on behalf of the claimant-appellant and Mr. Rajneesh Malhotra, learned counsel representing respondent No.3 – Insurance Company and having regard to all the attending facts and circumstances of the case, I am of the considered view that it is an appropriate case to award compensation under Section 140 of the Motor Vehicles Act, 1988 (for short 'the Act') departing from Section 166 of the Act which to bear fruit requires a finding of rash and negligent driving to maintain an award. What persuades me to take this course is that the factum of accident is admitted and so is the injuries, but that there has been failure before the Tribunal to prove rash and negligent driving on the part of the offending truck driver and not bringing the case under Section 140 (2) of the Act. The Tribunal has awarded zero compensation.

It was the truck driver, who lodged an FIR against the claimant-appellant for rash and negligent driving and after trial the appellant has been acquitted by the criminal court of the charge of rash and negligent driving. Besides, the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal') in its Award dated 27.09.2002 has erred in holding in Para.8 that the appellant in his pleadings as well as in his testimony took a U-turn contrary to the first version contained in the FIR Ex.P10 as by claimed respondent No.1 driver of the offending truck responsible for causing the accident by his rash and negligent driving. The Tribunal failed to notice that the FIR was not lodged by the appellant Bhagwan Dass, but by the driver of the truck to save himself of liability and, therefore, the question of changing the first version as imagined by the Tribunal would not arise, the author being different trying to save oneself from criminal and tortuous liability. In my opinion, this finding is somewhat perverse and not sustainable in law or on fact. Bhagwan Dass's pleadings and testimony in support thereof could not be rejected on the ground that he was an interested witness and, therefore, no credibility could be given to his testimony.

The other error committed by the Tribunal is that the appellant Bhagwan Dass had several passengers sitting in the Tata Sumo, which he was driving, but he did not care to examine any independent witness regarding the accident. This was not the correct path of reasoning to find an appropriate solution to the case. There is a presumption that taxi drivers would not remember or recognize the passengers who hired them nor were they expected when injured to record their names and addresses much less the expectancy they would come to depose for him during the trial. It is not the case that Bhagwan Dass was travelling with his family and he failed to produce any of them as a witness in support of his case.

Be that as it may, I find no ground to interfere under Section 166 of the Act or to convert this petition to Section 163-A of the Act, but would instead accept the reasonable argument of Ms. Arora that the case can deservedly be brought under the provisions Section 140 (3) of the Act on the principle of 'no fault liability'. There is enough evidence on the record to suggest that in the accident taking place on 29.04.1998, the appellant suffered injuries including fracture of shaft femur Rt. The claimant was admitted in the hospital and his leg was operated upon and a pin was inserted, leading to 8% permanent disability, which is supported by Ex.P14.

Accordingly, the instant appeal is partly accepted. The award dated 27.09.2002 is set aside. The claimant-appellant is held entitled to statutory compensation of ₹25,000/- with interest at the rate of 12% p.a., which was the admissible rate of interest at the time of accident and many years thereafter, the grand total payable by the respondent insurance company from the date of filing of the claim petition till its realization.

The liability to pay compensation cannot be shirked since the offending vehicle was insured with respondent No.3 – Insurance Company and the claimant was the third party covered by the policy for which premium had been paid by the insured.

Accordingly, the Award will be read as modified as per this order. The amount be calculated and deposited by the Insurance Company within two months from the date of receipt of certified copy of this order.

On deposit, the Tribunal would disburse the amount to the claimant as per procedure and without delay when claimant appears in execution of the fresh award.

09.11.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*