IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1067 of 2006

Date of Decision: November 09, 2017

Satya Devi and others

.....Appellants

versus

Dinesh Kumar and another

.....Respondents

FAO No. 3557 of 2005

National Insurance Co. Ltd.

.....Appellant

versus

Vishnu and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present:- Mr. Rahul Jain, Advocate for
Mr. Jasmeet Singh Bedi, Advocate
for the appellant (in FAO No. 1067 of 2006)
for the respondents (in FAO No. 3557 of 2005)

Mr. R.N. Singal, Advocate
for the appellant (in FAO No. 3557 of 2005)
for respondent No. 2 (in FAO No. 1067 of 2006)

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Sudhir Mittal, J. (Oral)

1. By this common judgment I am deciding two appeals (FAO No. 1067 of 2006 and FAO No. 3557 of 2005), one filed by the claimants for enhancement and the other filed by respondent No. 2 – Insurance Company claiming discharge from liability to pay the compensation.

2. The claimant alongwith his brother was driving home on a motor

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cycle at about 11.45 p.m. on 27.6.2004. The said motorcycle was being driven by brother of the claimant whereas the claimant himself was riding pillion. When they approached Devi Lal Chowk, Karnal, the driver of the motor cycle was dazzled by the bright lights of a heavy vehicle plying on the G.T. Road, as a result of which he lost control of the vehicle and it fell on the road. The driver did not sustain any serious injuries whereas the claimant was seriously injured. This accident was witnessed by one Lajpat (PW-4) who took the claimant to Vijay Hospital in Karnal while the driver of the motorcycle (brother of the claimant), went home to inform the family. As a result of this accident left leg of the claimant was amputated below the knee, on account of which he suffered 50% permanent disability of the total body.

3. Learned Motor Accident Claims Tribunal (Fast Track Court), Karnal (hereinafter referred to as the Tribunal) found that the motor cycle of the brother of the claimant was infact involved in the accident and the claimant suffered injuries on account of the accident as explained by the claimant. Resultantly, a compensation of ₹ 1,78,511/- was granted to the claimant alongwith interest @ 9% per annum from the date of filing of the claim petition till the date of realization.

4. Learned counsel for the Insurance Company vehemently contends that the accident of the motor cycle has not been proved and, therefore, the liability can not be foisted upon it. It is his submission that had the accident taken place in the manner suggested by the claimant, his brother would not have left him on the road and would have himself taken him to hospital, thus, falsifying the story put forth by the claimant. It is further argued that the FIR has been registered on 29.6.2004 whereas the accident took place on 27.6.2004 and there is a delay of two days, in which period, the story has been concocted by the claimant.

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5. Learned counsel for the claimant on the other hand submits that the findings of the Tribunal are rational and he supports the same.

6. The Tribunal has examined this aspect of the matter in some detail and has held as follows :-

> *"So far as the contention of learned counsel for respondent No. 2 that the claimant was taken by PW4 Lajpat in the hospital of Dr. Vijay Gupta and respondent No. 1, brother of the claimant, had gone to his home to inform about the accident to his relatives highly improbable and the statement of PW2 Dr. Vijay Gupta who stated that the claimant was brought to his hospital by some passerby who left the hospital immediately is concerned, in this regard it is pertinent to mention here that the case of the claimant is this that at the time of accident he alongwith his brother respondent No. 1 was coming from Ranwar Road, Karnal, towards his house situated in City Karnal on the offending vehicle which was being driven by respondent No., 1 and due to dazzling lights of heavy vehicles plying on GT Road which fell on the eyes of respondent No. 1 causing imbalance the offending vehicle and both of them fell down on the road and sustained injuries. To support the above version of the claimant, PW4 Lajpat who had taken the claimant in the hospital of Dr. Vijay Gupta and respondent No. 1 Dinesh did not accompany him to the hospital and he (Dinesh) had gone to inform the relations and Dinesh met him after about a week. He also stated that he knew Dinesh before the accident and Dinesh was with Vishnu at the time of accident and he witnessed the same. He also frankly admitted that he did not know before the accident that Dinesh was real brother of Vishnu and he came to know*

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about this fact after the accident. He also stated that he had seen the registration number of the motorcycle at the spot. PW2 Dr. Vijay Gupta undoubtedly stated that the claimant/injured was brought by some passerby who immediately left the hospital but it does not lead to the conclusion that PW4 Lajpat was not that person who had taken the claimant to the hospital of Dr. Vijay Gupta PW2, rather it goes to support the stand of the claimant that only one person had accompanied the claimant/ injured to the hospital of Dr. Vijay Gupta and respondent No. 1 had gone to his house to inform about the accident to his relatives. PW2 Dr. Vijay Gupta also stated that the condition of the claimant/injured was critical and that might be the reason for Lajpat PW4 who had taken the claimant to the hospital of Dr. Vijay Gupta and respondent No. 1 had gone to his house to inform about the accident to his relatives. PW2 Dr. Vijay Gupta also stated that the condition of the claimant/injured was critical and that might be the reason for Lajpat PW4 who had taken the claimant to the hospital that he did not prefer to stay in the hospital and did not give consent for the treatment. Had the claimant sustained injuries from somewhere else, he could easily involve any other vehicle seeking compensation and not involved the vehicle of his own brother as he was having ample time after the accident to manufacture a false story regarding the accident in question as the daily diary report was registered on 29.6.2004 whereas the accident in question took place in the intervening night of 27/28.6.2004. On the other hand, not even an iota of evidence has been led on behalf of the respondents that the offending vehicle was not involved in the accident in question and the

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same has falsely been implicated."

7. The view taken by the Tribunal is a plausible one and can not be said to be perverse, therefore, I accept the said view and hold that the claimant suffered injuries in the manner detailed by him.

8. The next issue to be decided is whether the Tribunal has assessed the compensation correctly? The claimant stepped into the witness box as PW-5 and filed his affidavit Ex. P-7. As per his statement his income was ₹ 38,000/- per annum which was being earned by him by running a tea stall. The Tribunal has not accepted this statement on the ground that no receipt/bill book etc. has been placed on record to substantiate the same. I can not accept this reasoning given by the Tribunal for the reason that the person running a tea stall by the road side can not be expected to maintain accounts and records regarding his income. The accident took place in the year 2004 and the income claimed by the claimant is merely ₹ 3166/- per month, which cannot be said to be highly inflated having regard to the nature of business being done by him. Nothing is on record to suggest that the claimant made a false statement with regard to his source of income and the income itself. However, it is common knowledge that a claimant tries to claim a little more than what he actually earns. Keeping this aspect in view, I hold that the annual income of the claimant can safely be taken to be around ₹ 30,000/- per annum. The disability of 50% in respect of the whole body has been proved on record by way of statement of PW-7 Dr. Vinod Kumar and also the disability certificate Ex. P1. The age of the claimant has been taken as 48 years by the Tribunal and I accept the same. The compensation of ₹ 11,511/- assessed by the Tribunal on account of medical expenses is based upon the bills placed on record as Ex. P-8 to P-14. Under the head of general damages for pain and suffering

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compensation of ₹ 5,000/- only can be granted statutorily which the learned Tribunal has granted.

9. In view of the above, multiplier of 13 taken by the Tribunal is correct and the loss of income on account of permanent disability is, thus, assessed as ₹ 1,80,000/-. To this, sum of ₹ 11,511/- is added on account of medical expenses and ₹ 5,000/- for pain and suffering. The claimant is entitled to a total of ₹ 1,96,511/- as compensation for the injuries sustained by him.

10. The appeal of the claimant is, thus, partially allowed and that of the Insurance Company is dismissed. The enhanced amount will be paid by the Insurance Company within a period of three months from the date of receipt of certified copy of this judgment alongwith interest @ 7.5 % p.a. from the date of filing of claim petition till the date of payment.

November 09, 2017 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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