

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.505 of 2012

Date of Decision.21.11.2017

HDFC ERGO General Insurance Company LimitedAppellant

Vs

Ram Pal and othersRespondents

2. FAO No.1809 of 2013

Ram PalAppellant

Vs

Mukesh Kumar and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Vandana Malhotra, Advocate
for the appellant in FAO No.505 of 2012 and
for respondent No.3 in FAO No.1809 of 2013.

Mr. Sanjay Verma, Advocate
for the appellant in FAO No.1809 of 2013 and
for respondent No.1 in FAO No.505 of 2012.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals bearing Nos.505 of 2012 filed at the instance of the insurance company challenging the liability fastened upon it on the premise that the trolley attached with the tractor was not insured, therefore, there was breach of terms and conditions of the insurance policy and 1809 of 2013 at the instance of the claimants seeking enhancement of compensation.

Ms. Vandana Malhotra, learned counsel appearing on behalf of the appellant-insurance company in FAO No.505 of 2012 submitted that on 06.03.2010, the respondent-claimant along with his cousin Chattar Singh was going on motor cycle when the same was hit by one tractor trolley

coming from the opposite side. Due to impact of the same, the claimant received multiple injuries, which ultimately resulted into amputation of left lower limb just below the hip. In this regard, FIR No.25 dated 7.3.2010 under Sections 279, 338 IPC was registered against respondent No.1 in police station, Babain against the unknown vehicle and driver, therefore, the aforementioned offending vehicle alleged to be involved in the accident was introduced later on, thus, there was an apparent collusion between the owner and driver of the offending tractor-trolley and the claimant.

She has drawn attention of this Court to the contents of the FIR, which reads as under:-

“On the tatement of Sh. Chattar Singh son of Sh. Mangta Ram, caste Balmiki resident of village Mathana, Thana Sadar, aged 40-42 years. It is stated that I am the resident of the above mentioned address and doing the labour work. Yesterday on 06.03.2010, I along with my cousin Ram Phal son of Sh. Phoola Ram, Caste Balmiki, resident of Village Mathana was going in motor cycle bullet No.PJI-3609 to Village Isherhari for engagement of daughter of uncle of Ram Phal. At about 2.00 p.m. During the day, we started from Village Isherhari after completion of engagement towards our village Mathana. Ram Phal was driving the motor cycle and I was sitting on the back. When we turned from Ladwa Sahabad Road from village Isherhari towards Babain, a tractor trolley mark Ford blue in colour came from the side of Babain which was being driven by its driver in a rash and negligent manner and the said tractor trolley straightway hit a motor cycle. I and Ram Phal fell on the road due to the impact. Ram Phal suffered fracture in his right leg below knee due to fall on the road and I sustained simple injuries. The driver of the tractor who name and address I do not know took his tractor trolley and went towards Sahabad and I also became unconscious at the spot. After some time, some other persons including Phoola

Ram, father of Ram Phal and Ram Parshad son of Bachna etc. came to the spot who took me and Ram Phal from the spot to Civil Hospital, Kurukshetra for treatment from where Ram Phal was referred to the PGI by the doctor and I was also given medicines. Today you have recorded my statement in Village Gohana. The driver of the tractor trolley make Ford, colour blue whose name and address do not know has caused the accident by driving the tractor trolley in a rash and negligent manner. The driver of the tractor trolley may kindly be located and the action be taken against them.”

The tractor trolley was introduced after 20 days from the accident. In the cross-examination, the claimant admitted that the police came at the spot after an hour of the accident but the tractor number was not given at the time of lodging of the FIR. The claimants have failed to examine Chattar Singh i.e. author of the FIR, eye witness of the accident to prove the involvement of the insured's vehicle. In the FIR, make of the tractor has been referred as Ford but respondent No.1 in his subsequent statement stated that the make of the tractor was Farmtrac, thus, for all intents and purposes, it was a case of hit and run.

The Tribunal has committed illegality and perversity in awarding a compensation of ₹1,87,939/- along with interest @7.5% as the disability of 85% was qua the limb and not of whole body.

On the other hand, Mr. Sanjay Verma, learned counsel appearing on behalf of the appellant-claimant submitted that the tractor trolley was coming from the Babain side when it hit against the motor cycle on which Chattar Singh was pillion rider. The driver of the tractor trolley i.e. respondent No.1 succeeded in escaping from the place of accident towards Shahabd side. As per the report under Section 173 Cr.P.C,

vehicle cannot be ruled out. The claimant became conscious after 15 days of the accident and it is in this backdrop of the matter, delay occurred in giving particulars of the vehicle. He was illiterate and unable to understand English, therefore, could not note down registration number. Once the colour and the make of the tractor had been given in the FIR, it was sufficient to form an opinion that the vehicle involved in the accident was the same as described.

As regards the enhancement of compensation, he submitted that the claimant received multiple serious injuries on his body and his left leg above the knee has been amputated. He spent ₹1 lac on transportation, medicines, diet and payment to doctors, therefore, the compensation is liable to be enhanced.

I have heard learned counsel for the parties, appraised the paper book and records of the Tribunal. Before I give opinion on the rival contentions raised by the parties, it would be apt to reproduce the cross-examination of the claimant-injured which reads as under:-

“xxxxxx by Sh. R.S. Rana, Advocate for respondents No.1 and 2.

Sh. Atul Mittal, Advocate for respondent No.3.

It is correct that there was a busy road at the place of accident. Many people gathered at the spot but I do not know their names. I was conscious at the time of accident. Tractor trolley was not loaded with anything. Front side of the motor cycle was struck with the alleged tractor. It is correct that the tractor was on its right side. I became unconscious after some time of the accident. I regained consciousness after 15 days of the accident. Police reached at the spot after an hour. Police recorded my statement after 15 days of the accident. I disclosed the number of the offending vehicle. It is incorrect that accident took place in some other manner at some other place and the tractor trolley was falsely involved in the

accident in question. It is correct that treatment was free in civil hospitals of Govt. but the medicines are purchased from outside. I have not maintained any recording the amount spent on my treatment. It is incorrect that I have not suffered any injury on my left leg and knee or that I am quite well and do my work properly or that I was not labourer or that not earning anything. It is incorrect that I was not the earning member of my family. I have no record regarding my income. I do not as to whether any motor cycle was insured or not. I have valid driving licence. It is incorrect that my motor cycle was insured and I the money from the said company. It is incorrect that I spent minor amount on my standard. I cannot read and write English. It is incorrect I have given a false affidavit just to grab money from the insurance. Police recorded my statement after 15-16 days of the accident in hospital at Chandigarh.

*RO&AC.
Ram Pal*

*-sd-
(Arum Kumar Singal)
MACT, Kurukshetra
21.4.2011”*

The tenor and mode of the cross-examination reveals that the tractor in question was involved in the aforementioned accident, as to a specific question in the cross-examination, the aforementioned witness stated that he disclosed the number of the offending vehicle and also the fact that he became conscious after 15 days of the accident, therefore, the delay in registration of the FIR of 20 days cannot be fatal. The insurance company has not brought on record any other evidence except tendering insurance policy Ex.R4, report of driving licence Ex.R5, copy of site plan Ex.R4, copy of mechanical report of tractor Mark R5 and Mark R6, copy of medical ruqqa Mark R7 and thereafter, closed the evidence. Mechanical report Mark R-5 has not been proved through the author of the report to establish the involvement of the vehicle. That was the clincher for the

Tribunal to form an opinion that the offending vehicle was involved in the accident. Neither this Court has been apprised of the fact whether in the criminal case, the claimant, who was the eye-witness, had turned hostile, much less, the author of the FIR suffered a statement in favour of the driver. It is not a case of death, therefore, non-examination of the Chattar Singh, author of the FIR, cannot be said to be fatal.

The disability certificate issued by the Board of Doctors whereby, the disability to the extent of the limb is assessed as 85% permanent in nature, has been proved on record, thus, in my view, plea of the insurance company of non-involvement of the vehicle is wholly misplaced and hereby rejected.

Now coming to the point of enhancement *viz-a-viz* the amount of compensation, the bills Ex.P11 to Ex.P35 produced on record showed that the claimant had spent ₹27,939/- on his treatment. Regarding pain and suffering a meager sum of ₹5000/- has been provide, besides ₹1,50,000/- for loss of future income and loss of amenities of life and ₹5,000/- for transportation, special diet and attendant charges, in total a compensation of ₹1,87,939/- awarded.

Admittedly, the claimant-Ram Phal was 25 years old at the time of accident. His statement was recorded on 21.04.2011 whereas the accident had taken place on 06.03.2010. In my view, the aforementioned compensation is on lesser side and the same is liable to be increased on account of loss of amenities and future loss of income. The claimant has proved the permanent disability to the extent of 85% vide Ex.P36 disability certificate. Therefore, I will take the income of the injured as ₹4000/- per month and apply multiplier of 18 to assess the loss of future income for

85% permanent disability as ₹7,34,400/-. I will further provide ₹50,000/- towards pain and suffering. The claim of ₹1 lac for transportation is rejected in the absence of any evidence on record. However, I will provide ₹5000/- each towards special diet, attendant charges and transportation and retain the amount of ₹27,939/- for medical expenses as provided by the Tribunal.

In total, the compensation payable shall be ₹8,27,339/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The liability to pay the compensation shall be on the insurance company.

The award passed by the Tribunal is modified to the above extent. Resultantly, the appeal filed by the insurance company is dismissed and the appeal filed by the claimant is allowed.

(AMIT RAWAL)
JUDGE

November 21, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes