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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-54-2012 (O&M)

Date of decision : 21.12.2017

Amit Kumar

... Appellant(s)

Versus

Ashok Kumar Jindal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Bansal, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent No.3/Insurance Company.

AMIT RAWAL, J. (ORAL)

The appellant-claimant in an appeal against the Award passed by the Tribunal, whereby the claim petition preferred owing to the injuries suffered in an accident occurred on 19.06.2009, has been dismissed.

Mr. Rajesh Bansal, learned counsel appearing on behalf of the appellant-claimant submits that the Tribunal has committed illegality and perversity by ignoring the valuable piece of evidence brought on record instead heavily relied upon the statement of PW-3 Bhim Singh, eye-witness. In fact, as per the documentary evidence placed on record, the appellant-claimant after having met with an accident on the intervening night of 19/20.06.2009, remained admitted in Civil Hospital, Panipat and thereafter, shifted to Apollo Hospital, Delhi. The medical record/bills brought on record are the testimony of the same. He remained unconscious from 19.06.2009 to 01.08.2009. When he regained his conscious, an FIR bearing

No.185 dated 02.08.2009 against the Driver of the offending jeep bearing Registration No.HR-01P-9850 was registered. Even the report under Section 173 Cr.P.C. was lodged, in essence, the driver faced the criminal prosecution. Delay in lodging of the FIR cannot be fatal to the decision of the case as involvement of the vehicle is to be examined on the touch-stone of the evidence brought on record. Learned Tribunal has ignored the testimony of RW-1, who in unequivocal terms, admitted the accident. In this regard, he has drawn the attention of this Court to the Statement of RW-1, Pawan Kumar and also PW-7 Suraj Singh, who submitted that *roznamcha* under Section 174 of the Criminal Procedure Code was recorded on 20.06.2009. For the sake of brevity, statements of PW-7 coupled with statement of the appellant-claimant Amit Kumar-PW-8 read as under:-

“PW-7 ASI Suraj Singh, No.3692/D, PS Sarita Vihar, South East District New Delhi.

I have brought the summoned record of roznamcha dt. 20.6.09 of P.S. Sarita Vihar, New Delhi, Ex.47 is the certified copy of DD No.7A and Ex.P48 is the certified copy of DD No.22A and application dt. 1.8.09 is Ex.P49. I have received the rukka at about 2.40 a.m. On 20.6.09 and after receiving the rukka, I along with constable reached at Apolo Hospital, I received the MLC No.278/09 of Amit Kumar s/o Sh. Ishwar Singh copy of which is Ex.P19 which was received by me on the same day and after that original copy of MLC has been received by P.S. Sadar, Panipat on 6.8.09. Copy of MLC remained in P.S. Sarita Vihar till 6.8.09.

XXXX by the counsel for the respondents.

I have not recorded the statement of the injured and his attendant with the reason that place of occurrence does not fall in the jurisdiction of Delhi Police. I have only got the MLC from the hospital and same was handed over to P.S. Sadar,

Panipat. Except this I have not done any investigation in this case. I have conducted the proceedings only on 20.6.09 and submitted the documents with ACP, P.S. Sarita Vihar, Delhi."

PW-8 Amit Kumar s/o Ishwar Singh r/o Arya Nagar, Panipat

On 19.6.2009 at about 7.30 p.m., I along with my cousin brother Bhim Singh was going from Panipat to Sonipat in our car. When we reached near Passina Kala turn our car got punctured and after that we have changed the stepny. I went for urinating towards Passina Kalan turn. After urinating, when I came towards my car offending Jeep No.HR01P-9850 came from the Panipat side without blowing any horn in a rash and negligent manner and suddenly turned his jeep towards Passina turn and hit me from front side and I fell down on the road. Due to this accident, I received serious injuries on my both legs and other parts of the body. Driver of the Jeep stopped his jeep for a moment and ran away from the spot. My brother Bhim Singh took me firstly to Civil Hospital Panipat where the doctor referred me to Prem Hospital Panipat. Doctor of Prem Hospital gave me first aid treatment and referred to High Care Centre Delhi. I got admitted in Appollo Hospital Delhi as indoor patient from 20.6.2009 to 3.8.2009. The police had recorded my statement on 2.8.2009 in Appollo Hospital Delhi. I became unconscious after the accident. My cousin brother Bhim Singh told me about the incident, and also disclosed me that driver of offending vehicle was Pawan son of Lachhman Dass. Certified copy of report u/s 173 Cr.P.C. is Ex.P8, formal FIR is Ex.R1. Copy of mark sheet of BA IIInd year is Ex.P50. My father has spent ₹ 35,00,000/- on my treatment. Due to this accident, my future has been spoiled. I am still under treatment.

XXXX by counsel for respondents.

Jeep was not struck with car No.HR06R-2829. After the accident, I became unconscious. I do not know on which

vehicle I was shifted to the hospital. Jeep was came from Panipat side. I had gone towards the other side of road for urinating. I did not viist the place of occurrence with the police. My cousin brother had disclosed me about the registration number and the name of the driver of jeep after 2½ months. At that time, I was admitted in Appollo Hospital, Delhi. Bhim Singh was accompanied with me in the Hospital. Bhim Singh and my father were present with me in the hospital during the treatment. Police came to the Appollo Hospital. Bhim Singh did not receive any injury in the accident. Bhim Singh is educated upto 10th Class. My brother Bhim Singh told my father about the accident. I do not know whether the doctor had given any fitness certificate or not for recording my statement. I do not know the driver of the jeep before the accident. I do not know whether Bhim Singh had gone to Police Station for registration of the FIR of this case. Bhim Singh is resident of Karnal. Car was driven by me. I was having driving licence. The parentage address of the Pawan Kumar respondent No.2 was also disclosed by Bhim Singh. Bhim Singh had told me that one or two persons were travelling in the jeep but I did not saw them. I do not know what was happened after the accident. When police came in the hospital Bhim Singh was also present there. I have not seen the driver of jeep till today. After recording my statement police never met me again. It is wrong to suggest that my car and Bhim Singh my cousin brother were not with me at the time of accident. It is wrong to suggest that Bhim Singh has falsely cited as witness in the false criminal case. It is wrong to suggest that I was negligent when I was crossing the road at the time of accident. It is wrong to suggest that other vehicle hit me and ran away from the spot. I and no body had noted down the registration number of the unknown vehicle. It is wrong to suggest that I, my father and Bhim Singh in collusion with the respondent Nos.1 and 2 and police involved Jeep

No.HR01P-9850 falsely in this case to get compensation from insurance company of the jeep. It is wrong to suggest that Bhim Singh had also made a false statement being my close relative. It is wrong to suggest that I intentionally did not make the statement to the police immediately after the accident due to the fact that we could arrange the present jeep for involving in false case due to reason that the expenses of my treatment are lacs of rupees. It is wrong to suggest that driver of jeep Pawan Kumar did not cause any accident. It is wrong to suggest that all the criminal proceedings as well as the present claim petition proceedings are totally false on behalf of myself and Bhim Singh. It is wrong to suggest that I am deposed falsely.”

Thus, it was a fit case, where the Tribunal ought to have assessed the compensation. The appellant-claimant has suffered 70% permanent disability as per the Certificate dated 21.05.2014 issued by the Board of Doctors.

On the contrary, Ms. Vandana Malhotra, learned counsel appearing on behalf of the respondent(s)-Insurance Company submits that the finding of the Tribunal cannot be tinkered with as the appellant-claimant failed to prove the involvement of the jeep in the accident, therefore, the Insurance Company cannot be fastened upon with the liability. It is a public money being collected for the payment to the agreed and affected parties actually involved in the accident and cannot be distributed as largesse, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

On perusal of the statements of PW-7 and PW-8 *ibid*, it is clear that *roznamcha* dated 20.06.2009 was registered with Police Station Sarita

Vihar, New Delhi and thereafter, FIR, as noticed above, was registered on 02.08.2009, when the claimant regained unconsciousness. Learned Tribunal, in my view, has committed illegality and perversity in not referring to the statement of the Driver Pawan Kumar-RW-1, who admitted that the appellant-claimant had met with an accident. The question would arise that whether the claimant had crossed the road as he stopped the vehicle for replacement of deflated tyres and for urination, when the offending jeep hit him. All these factors, in my view, were required to be redetermined, but the fact of the matter is that the jeep, aforementioned, was involved in the accident. For the sake of brevity, the statement of RW-1 Pawan Kumar, Driver, reads as under:-

"RW-1 Pawan Kumar s/o Lachhman Dass aged 23 years, OCC, Driver r/o Khatik Basti Old Gohana Road, Panipat. On 25.7.09 I along with the family members of owner of the jeep going from Panipat to Pasina for personal work. When turned the jeep towards pasina mod injured immediately come in front of our jeep bearing No.HR-01-P9850. The accident took place due to the negligence of injured Amit Kumar. The police of P.S. Sadar has falsely implicated me in false case. The offending jeep is only for personal use. I and my owner of offending jeep never used the jeep as commercial use. Certified copy of DL is Ex.R7 which is valid upto 1.1.2026 and authorized to drive car, jeep, M/cycle, Scooter issued by Licensing Authority, Panipat and certified copy of RC of offending vehicle is Ex.R8 which is issued by MV Authority Ambala.

XXXX by the counsel for claimant.

It is correct that a criminal case is pending against me in the Court of Ld. ACJM, Panipat which is fixed for 4.6.11 for PWs, pertaining to FIR NO.185 dated 2.8.2009 U/Ss 279/337/338

IPC, P.S. Sadar, Panipat. The offending jeep has been released on superdari.

XXXXXX by the counsel for respondent No.3.

I have studied upto 5th class. Now a days I am jobless. I have no proof regarding my employment as driver with Ashok Kumar Jindal. Ashok Kumar Jindal used to go office at Naultha Bas Stand and he is an agriculturist. At the place of accident there was parked tempo at that time. I was going from Panipat to Pasina. It is correct that when we go from Panipat to Pasina, the village Pasina falls on the left side of the road. Ashok Kumar was not travelling in the jeep at that time. Two ladies and two gents were travelling in the jeep. Ashok Kumar was using the jeep for household work. I had worked with him for about two months, till the date of accident. Ashok Kumar is residing at Village Naultha. He has two sons. Amit claimant received injury on his head and on his legs. I had ran away from the spot along with vehicle and come to my house at Khatik Basti, Panipat. After the accident I met Ashok Kumar Jindal after ten days. Ashok Kumar Jindal took me to the police station. I do not remember the date. I had gone to the police after one and half month. I alighted from the jeep and when tempoo driver run towards me then I ran away along with my jeep. Ashok Kumar disclosed the name of d river and number of jeep to the police. Police never visited at my house. Today I come to attend the Court at the instance of son of Ashok Jindal and he told me to meet the Advocate Swami. My counsel Swami is contesting my criminal case in the trial Court. I did not work as driver at taxi stand. Bhim Singh was not accompanying me in the jeep. I know the meaning of commercial. I told the police that I am innocent. Except this I never told anybody else. I do not know my surety in criminal case. I have only son. I am jobless for the last 2/3 months. Prior to 2/3 month I was driver with one Nareinder Nath r/o Model Town, brother of Dr. Ravinder. It is wrong to suggest

that I was not employed as driver by Ashok Kumar Jindal till today. It is wrong to suggest that jeep bearing No.HR-01P-9850 did not cause any accident on 19.6.09 as driven by me. It is wrong to suggest that Ashok Kumar Jindal and claimant Amit Kumar made collusion in regard to falsely involve the jeep in question with the help of police in criminal case. It is wrong to suggest that the claimant Amit Kumar and owner of the jeep hired me only specifically for criminal case to face trial only, in this regard, I had got sufficient amount for this work. It is wrong to suggest that I had made statement before the court as tutored by Ashok Kumar Jindal. It is wrong to suggest that all the criminal proceedings against me are false as no accident caused by me. It is wrong to suggest that the false involvement of jeep and me in criminal case only in order to help the claimant to get the false compensation from the insurance company of the jeep. It is wrong to suggest that I have deposed falsely."

On going through the entire Award rendered by the Tribunal, there is no reference to the statement of RW-1 as non-reference to the statement is a perversity.

Keeping in view the aforementioned facts and circumstances, the findings of the Tribunal viz-a-viz the Issue No.1, whereby it has been held that the aforementioned jeep was not involved in the accident, are set aside and the matter is remitted to the Tribunal concerned, which shall decide the matter viz-a-viz the compensation on the basis of preponderance of evidence.

Learned counsel for the parties as well as the parties are directed to appear before the Motor Accident Claims Tribunal, Panipat on 22.01.2018.

Let the entire exercise be done within a period of six months

from the date of the receipt of the certified copy of this order.

Records of the Tribunal be also sent back.

With the aforesaid observation, the present appeal stands disposed of.

21.12.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No