

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

**FAO No.3818 of 2015 (O&M)
Date of decision: 08.09.2017**

Jaswinder Singh and anotherAppellants
Versus

National Insurance Company and anotherRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jagjit Singh, Advocate,
for the appellants.

Mr. Harjinder Singh, Advocate,
for respondent No.1-Insurance Company.

Mr. Rakesh Kumar, Advocate,
for respondent No.3-claimant.

RITU BAHRI J. (Oral)

CM No.11619-CII of 2015

Reply to the application has been filed. Same is taken on
record.

For the reasons mentioned in the application, same is allowed
and delay of 104 days in filing of the appeal is condoned.

CM No.11620-CII of 2015

Reply to the application has been filed.

Heard.

In view of the averments mentioned in the application, same is
allowed and Annexures A-1 and A-2 are taken on record.

FAO No.3818 of 2015

Jaswinder Singh and Gurdial Singh-appellants (owner and
driver of offending vehicle) have come up in appeal against the award

dated 04.10.2014 passed by the Motor Accident Claims Tribunal,

Kapurthala (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.2,50,000/- has been awarded in favour of the claimant-respondent No.2 on account of injuries sustained by him in a motor vehicular accident which took place on 30.11.2012.

Brief facts of the case are that on 30.11.2012, at about 11:30 A.M., Sohan Singh-claimant (respondent No.2) was going from village Barindpur towards his shop at Kapurthala on a motorcycle bearing registration No. PB-09-P-8094. When he reached near village Bahul, an Auto Ricksha bearing Temp. No.PB-08-BD-Temp-0518 (now registration No. PB-09-Q-4980) being driven by Gurdial Singh-respondent No.2 (respondent No.1 in claim petition) in a rash and negligent manner came at a high speed and struck against the motorcycle of claimant, as a result of which, right leg and knee of the claimant was fractured. He was taken to Orthonova Hospital, Jalandhar, where he remained admitted from 30.11.2012 to 06.12.2012. With regard to the accident, FIR No.195 dated 04.12.2012, under Sections 279/337/338/427 IPC was registered at Police Station, Kotwali, Kapurthala. Consequently, the claimant (respondent No. 1 2 herein) filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the claimant had suffered injuries due to a roadside accident which took place on account of rash and negligent driving of offending vehicle(auto rickshaw) by its driver-Gurdial Singh and thus, returned the finding on issue No.1 in favour of the claimant-respondent No. 2. Ultimately, the claim petition was accepted by awarding compensation in favour of the claimant to the following extent:-

Sr. No.	Heads	Amount
1	Permanent disability to the extent of 30% (@ Rs.2000/- per every 1% disability)	Rs.60,000
2.	Medical expenses	Rs.1,52,016/-
3.	Special diet	Rs.5,000/-
4.	Transport charges	Rs.2984/-
5.	Loss of amenities of life	Rs.15,000/-
6.	Pain and sufferings	Rs.15,000/-
	Total	Rs.2,50,000/-

While allowing the claim petition, Tribunal has given finding on issue No.6 against the owner and driver of the offending vehicle, as fitness certificate and route permit had not been proved on record. Hence, in the absence of any evidence, liability to pay the compensation has been imposed upon the insurance company, however, recovery rights have been given to the latter (insurance company) to recover the same from the owner and driver of the offending vehicle.

Feeling dissatisfied with the impugned award, owner and driver of the offending auto rickshaw (appellants) have preferred the present appeal.

I have heard learned counsel for the appellant and perused the case file.

The fact of accident is admitted and proved. It stands established that the injured as received injuries as a result of the accident. Learned counsel for appellants, by way of CM No.11620-CII of 2015, has placed on record route permit of the auto rickshaw bearing registration No. PB-09-Q-4980 as Annexure A-1, a perusal of which shows that this permit was valid till 18.06.2017 and the vehicle was permitted to ply in the area of Municipal Corporation, Kapurthala. Annexure A-2 is the Registration Certificate of this vehicle. In response to this application, reply on behalf of

respondent No.1-Insurance Company has been filed, wherein it has been stated that the route permit was issued for plying the auto rickshaw in the area of Municipal Corporation, Kapurthala, whereas the accident in question had taken place outside the limits of Municipal Corporation, Kapurthala i.e. near village Bahui. Therefore, there was violation of the terms and conditions of the route permit and the insurance policy.

A perusal of the impugned award shows that the accident had taken place on 30.11.2012, when the claimant was going to his shop at Kapurthala from village Barindpur. When he reached in the area of petrol pump near village Bahui, the offending auto rickshaw came at the high speed and hit him in a rash and negligent manner. On a specific query put to learned counsel for respondent No.1, he was not able to tell, as to whether the route permit was given for plying the auto rickshaw in the villages or not. Since the route permit (Annexure A-1) is not being disputed, it is held that on the date of accident, the owner of the auto rickshaw was having a valid route permit. Therefore, the finding given by the Tribunal on issue No.6 are reversed and the Insurance Company is held liable to pay compensation to the claimant.

Resultantly, the impugned award is modified to the extent that the amount of compensation shall be paid by the Insurance Company-respondent No.1 only and it shall not recover the same from the owner and driver (appellants) of the offending vehicle.

Allowed in the aforesaid terms.

(RITU BAHRI)
JUDGE

08.09.2017
ajp