

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: March 10, 2017

1. FAO-9284-2014

LAL SINGH

....APPELLANT...

VERSUS

DALBIR SINGH AND OTHERS

....RESPONDENTS...

2. FAO-2321-2015

SHRI RAM GENERAL INSURANCE CO. LTD.

....APPELLANT...

VERSUS

LAL SINGH AND OTHERS

....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.K. Yadav, Advocate for
Mr. Sanjeev Kodan, Advocate,
for the appellant (in FAO-9284-2014) and
for respondent No.1(in FAO-2321-2015).

Mr. M.S. Chahal, Advocate,
for respondent No.1 (in FAO-9284-2014) and
for respondent No.2 (in FAO-2321-2015).

Mr. Rajbir Singh, Advocate,
for remaining respondent(s).

JASPAL SINGH, J.

CM-15262-CII-2015

This is an application moved under Order 22 Rule 2 read with
Section 151 CPC and under Rule 2 Volume 5 Chapter 1-C of Punjab and
Haryana High Court Rules and order, for impleading the legal representatives of

Lal Singh-appellant on record.

Undoubtedly, appellant has been taken away by the nature during the pendency of lis. Learned counsel for respondent(s) have no objection, in case, instant application is allowed. Accordingly, application is allowed and legal representatives of appellant-Lal Singh as mentioned in para No.2 of the application are taken on record. Consequently, application stands allowed.

Amended memo of parties is taken on record.

Main case

By virtue of this common judgment, this Court intends to dispose of two separate appeals bearing FAO No.9284 of 2014, titled as “***Lal Singh vs. Dalbir Singh and others***” and FAO No.2321 of 2015, titled as “***Shri Ram General Insurance Company Ltd. vs. Lal Singh and others***”, as both these appeals are out-come of one and the same award dated 05.07.2014 passed by Motor Accident Claims Tribunal, Jhajjar (for short “Tribunal”) and common question is involved for its determination.

2. Lal Singh-claimant has preferred the appeal bearing FAO-9284-2014 challenging the inadequacy of compensation awarded by the Id. Tribunal vide impugned award dated 05.07.2014 on account of injuries sustained by him in a vehicular accident occurred on 31.07.2011 involved truck bearing HR-63B-2649 whereas insurance company has preferred the appeal bearing FAO-2321-2015 alleging that the compensation awarded by the Id. Tribunal is on higher side.

3. The contention of learned counsel for the appellant is that in order to establish that appellant-Lal Singh sustained injuries in a vehicular accident involving truck bearing registration No. HR-63B-2649 being driven in a rash

and negligent manner by its driver-Dalbir Singh-respondent No.1, he has examined Mahabir Singh PW-1, an eye witness of the accident and author of FIR, who has reiterated the version Ex.PW1/A. The case of the claimant is that on 31.07.2011 at about 10:00 p.m., he was present at the time and place of accident in front of the house of applicant-Lal Singh. Truck bearing HR-63B-2649, being driven by respondent No.1 in a rash and negligent, that too, in a zig-zag manner, struck against Lal Singh-claimant. On account of the impact of the accident, Lal Singh sustained multiple injuries on different parts of his body. He was shifted to Civil Hospital, Jhajjar, where after providing him a first-aid, he was referred to PGIMS Rohtak. He remained admitted there w.e.f. 31.07.2011 to 26.09.2011. Even thereafter, he visited the hospital number of times for his treatment. FIR No, 168, dated 31.07.2011, under Sections 279, 337 and 427 IPC, Police Station Beri, District Jhajjar was also registered against driver of offending vehicle by Mr. Mahabir. PW-2 Bimla Devi is also one of the eye witness of the accident. Though, Bimla Devi PW-2 has tried to corroborate the version of Mahabir PW-1, but it has emerged during cross-examination that she did not witness the accident. However, she testified that her husband Lal Singh has rendered 100% physical disability on account of the injuries sustained by him in the accident. It has also been deposed by her that due to the injuries sustained by her husband, he cannot speak properly. Moreover, Dr. S.S. Chauhan (PW3), who has proved the disability certificate and was one of the members of the medical board, which assessed the disability of Lal Singh, has categorically stated that disability of Lal Singh has been assessed to the extent of 100% on account of injury on cervical spine suffered in a road side accident on 31.07.2011.

4. On the other hand, learned counsel for the respondent(s) has submitted that it has been wrongly and illegally held by the Tribunal that accident has taken place due to rash and negligent driving of offending truck bearing HR-63B-2649. However, there is no cogent and convincing evidence brought on record by claimant-Lal Singh. The findings recorded by the Id. Tribunal in this respect is only on the basis of presumption and assumption as well as on account of registration of FIR against driver of the offending vehicle.

5. However, this Court has not inclined to accept the submission made by learned counsel for the respondent-insurance company in view of the trustworthy evidence and deposition made by PW1-Mahabir Singh, who was present at the time of accident and witnessed the same. Not only this, he got registered the FIR No. 168, dated 31.07.2011, under Sections 279, 337 and 427 IPC against the driver. He has categorically deposed about the manner of accident and the sustaining of injuries by Lal Singh. There is no rebuttal to the testimony of Mahabir Singh PW-1, author of FIR. In addition to the testimony of PW-2 Bimla Devi, the medical evidence is also suggestive of the fact that injuries were sustained by Lal Singh in a road side accident, which have made him crippled and 100% disabled.

6. Here, it would also be pertinent to mention that respondent(s) have not led any evidence. Since, respondent No.1-driver of the offending vehicle has remained away from the witness box, an adverse inference can be drawn against him to the effect that he was rash and negligent in driving the truck, which has resulted into causing of accident, in which, claimant/appellant Lal Singh sustained injuries.

7. Thus, this Court is of the considered view that the findings on issue

No. 1 have been recorded correctly by ld . Tribunal and are based upon the cogent and convincing evidence available on record and the same do not call any interference by this Court, rather, are affirmed.

8. It is well settled proposition of law that when a person fails to appear in person, in support of his version, then the presumption of law shall go against that person. As the factum of negligence of the offending vehicle was in his personal knowledge, therefore, his non-appearance as witnesses in the witness-box is a material circumstance, which stabs their case fatly and further it can be presumed that respondent No.1 has nothing to say about the accident and is liable for causing the accident. Reliance, in this connection, has been place on ***“Hanuman Parshad v. Ram Kishan and others”, 2007(1) ICC 560.***

9. The next contention raised by learned counsel for appellant-Lal Singh is that the compensation awarded by the ld. Tribunal vide impugned award dated 05.07.2014 is highly unjust and inadequate.

10. But this Court is not inclined to accept this contention of learned counsel for the appellant, as just and adequate compensation has already been awarded by ld. Tribunal while taking into consideration the expenses incurred by appellant-claimant Lal Singh on account of medicines, transportation, nourishing food, attendant, loss of future earnings, permanent disability, loss of amenities and on account of pain and sufferings, totaling ₹8,00,100/-. It would be appropriate to reproduce para No. 23 of the Award for the proper appreciation of the compensation awarded under the various heads:-

Sr. No.	Heads	Amount
1.	On account of expenses on medicines	₹44,100/-
2.	On account of the expenses on transportation, nourishing food, attendant etc.	₹25,000/-

3.	On account of future medical expenses on estimate basis (no proof has been given in this regard)	₹35,000/-
4.	On account of loss of income during the treatment period i.e. one month; w.e.f. 12.03.2012 to 13.04.2012	₹30,000/-
5.	On account of loss of future earnings on account of permanent disability	₹4,86,000/-
6.	On account of loss of amenity for 100% disability (claimant suffered 100% disability on account of injury on cervical spine and cervical injury with complication quadriplegia with bowel bladder involvement)	₹1,50,000/-
7.	On account of pain and sufferings	₹30,000/-
	Total	₹8,00,100/-

11. On the other hand, learned counsel for the respondent-insurance company has challenged the amount of compensation alleging that the same is on higher side and further contended that on one hand, ld. Tribunal has awarded ₹4,86,000/- on account of future earnings and permanent disability and on the other hand ld. Tribunal awarded a sum of ₹1,50,000/- on account of loss of amenities for 100% disability. The grant of compensation on the same point of disability is erroneous and perverse and the impugned award is liable to be set aside.

12. But this contention of learned counsel for the respondent-insurance company is not acceptable especially in the circumstances that Lal Singh has become a crippled person having sustained 100% disability. He is bed ridden. He cannot move and speak properly. The plight of the appellant even cannot be imagined as to how he is surviving. The grant of compensation referred to above in para No.10, is just and adequate and is not on higher side. Thus, no interference by this Court is legally and factually justified. No other point was urged by learned counsel for the parties.

13. In the light of what has been discussed above, this Court does not find any merit in both the appeals. As such, both these appeals are dismissed.

14. No order as to costs.

March 10, 2017
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No