

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

FAO No.1867 of 1999 (O&M)

Date of decision: 06.04.2018

Gurchet Singh

... Appellant

Versus

Krishan Singh (Deceased) thr. LRs and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Manpreet Singh, Advocate for the appellant.

Mr. Paul S. Saini, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The injured is in appeal to challenge the award dated 11.02.1999 passed by the Motor Accidents Claims Tribunal, Ropar whereby application for compensation on account of receipt of injuries in a motor vehicular accident on 05.05.1996, was dismissed.

The facts relevant for disposal of the present appeal are that as per case of the claimant, on 05.05.1996, he along with Kuldeep Singh was going on scooter No.PB-24-1385, as a pillion rider. When they reached near Charan Ganga Bridge, maruti van bearing No.PB-12-A-7441 came from Anandpur Sahib in a rash and negligent manner and stuck against the scooter. As a result, Kuldeep Singh and the claimant fell down on the road and received multiple injuries. They were shifted to Civil Hospital, Anandpur Sahib and the claimant was later shifted to Civil Hospital, Ropar.

Right leg of the claimant got fractured. He spent Rs.50,000/- on his treatment. He is unable to move and walk properly. He claimed compensation to the tune of Rs.3 lakh with interest.

Respondents No.1 and 2 filed the written statement and in turn, admitted the factum of accident but denied that the accident took place due to negligence of respondent No.2. It was averred that the accident occurred due to sole negligence of the scooter driver.

Respondent No.3 filed reply and averred that drivers of the van and scooter were not holding valid licences. It was denied that any accident as alleged had taken place.

The Tribunal framed the following issues on 14.01.1997:-

- “1. Whether Ranjit Singh while driving maruti van No.PB-12-7481 rashly and negligently caused the injuries to the claimant?OPP*
- 2. Whether the claimant is entitled to the recovery of compensation? If so, to what extent and from which of the respondents?OPR*
- 3. Whether Ranjit Singh respondent was holding a valid driving licence at the time of alleged accident? If not its effect?OPR*
- 4. Whether the claim petition is bad due to non-joinder of the necessary parties?OPR.*
- 5. Whether the driver of scooter No.PB-24-1385 was holding a valid driving licence at the time of accident? If not its effect?OPR*
- 6. Relief.”*

To prove his case, the claimant examined Kuldip Singh PW1,

Didar Singh PW3, Dr. Surjit Singh PW4 and himself appeared as PW2. He tendered into evidence copy of the MLR Ex.P1, disability certificate Ex.P2, school leaving certificate Ex.P3 and copy of the DDR Ex.P4.

To rebut evidence of the claimant, Ranjit Singh respondent No.2 examined himself. The respondents tendered into evidence copy of driving licence Ex.R1, investigation report Ex.R2 and copy of insurance policy Ex.R3.

After having heard counsel for the parties in the light of materials on record, the learned Tribunal answered issue No.1 against the claimant and consequently the application for grant of compensation was dismissed with no order as to costs.

Feeling aggrieved, the instant appeal was filed by the injured in 1999 and came up for hearing now.

Before advertng to the submissions made by counsel for the parties, it is pertinent to mention that records have been burnt in a fire incident and this Court has to rely upon copies of documents made available by counsel for the parties during the course of hearing.

Counsel for the appellant has assailed findings of the Tribunal on issue No.1 by contending that testimony of Gurchet Singh claimant with regard to accident having been caused due to rash and negligent driving of maruti van No.PB-12-A-7481 stands duly corroborated from testimony of Kuldeep Singh, driver of scooter PB-24-1385 on which the injured/claimant was travelling as a pillion rider. It is argued with vehemence that the

Tribunal was wrongly swayed by the contents of DDR No.11 dated 06.05.1996 purportedly lodged by Kuldeep Singh PW1 though Kuldeep Singh has cleared his position as to the circumstances under which the police prepared the DDR after obtaining signatures of Kuldeep Singh on a blank paper. It is further argued that the Tribunal has rightly held that DDR is not a substantive piece of evidence and contents of the DDR, at best, could be used for the purpose of contradiction or corroboration to the statement of its maker, recorded before a Court of law.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 with the submission that neither Kuldeep Singh nor Guruchet Singh raised any grievance much less complained against any illegality committed by the police official who recorded the aforesaid DDR at the instance of Kuldeep Singh. Further argued that the claimant himself tendered into evidence copy of the DDR marked as Ex.P4, therefore, the Tribunal has rightly relied upon the first version of Kuldeep Singh in order to negate plea of the claimant that accident was caused due to rash and negligent driving of alleged offending vehicle i.e. maruti van.

I have heard counsel for the parties, perused the paper book and the documents made available during the course of hearing.

Kuldeep Singh, author of DDR Ex.P4 was examined as a witness before the Tribunal. A relevant extract from his examination-in-

chief reads as follows:-

“When we reached Charan Ganga Bridge, a van bearing No.PB-12-A-7481 came from opposite side which was being driven rashly and negligently and stuck against the scooter on the opposite side. The accident had taken place due to negligence of driver of maruti van. I got my statement recorded to the police on the next day wherein I had stated the van number to the police. My statement was recorded at the spot. My signatures were obtained on a blank paper. We had requested the police official for correction in the FIR but they did not agree for the same.”

A casual reading of the aforesaid extract does not make it clear if the police recorded statement of Kuldeep Singh or only obtained his signatures on a blank paper. It further appears that Kuldeep Singh wanted to convey that he had disclosed van number to the police and in this regard a request was made for correcting the FIR. He had nowhere stated that whatever has been mentioned in the DDR Ex.P4, the same does not represent the statement made by him to the police. Indisputably, no FIR was registered in this case nor the injured initiated any criminal proceedings against driver of the maruti van. Statement of Kuldeep Singh is conspicuously silent as to how the maruti van was driven rashly and negligently resulting in the accident. Under the circumstances, it can be safely held that Kuldeep Singh has failed to explain in clear terms qua first version recorded in the DDR Ex.P4.

Gurchet Singh, injured examined himself and deposed that Kuldeep Singh took the scooter to katcha portion on the left side of the

road. The van came and struck against the scooter. He fell down and became unconscious. To counter testimonies of Kuldeep Singh and Guruchet Singh, Ranjit Singh, driver of the van appeared as a witness. He has testified that the scooterist was driving the scooter in a rash and negligent manner and struck against his van. He was driving his van on the left side of the road with proper care and caution and at slow speed. Said Guruchet and Kuldeep Singh fell down at the spot. He removed both of them to Civil Hospital, Anandpur Sahib. In his cross examination, he has reiterated that he had taken his vehicle on katcha portion of the road to the extreme left in order to avoid accident but the scooterist struck against his van. He had denied the suggestion that he was driving the van at very fast speed and struck against the scooter without blowing horn. Nothing has been suggested to Ranjit Singh as deposed by Guruchet Singh that the scooter driver took the scooter to the katcha portion on the left side of the road and the van came and struck the scooter.

In the first version recorded in DDR No.11 dated 06.05.1996, it has been mentioned that on account of strong lights of the van coming from Anandpur Sahib, he was unable to see and his scooter went towards right side of the road and struck against the van. Taking a cumulative view of the materials on record namely the first version recorded in DDR Ex.P4, testimonies of Kuldeep Singh PW1, Guruchet Singh PW2 and Ranjit Singh RW1, I find it difficult to differ with findings of the learned Tribunal that the claimant has failed to prove even on the basis of balance of

probabilities that accident took place due to rash and negligent driving of maruti van by Ranjit Singh. That being so, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

As the claimant has failed to discharge onus of issue No.1, he cannot press for grant of compensation in respect of injuries sustained in the occurrence. Nevertheless, the claimant shall be entitled to Rs.25,000/- under 'no fault liability' by invoking Section 140 of the Motor Vehicles Act, 1988, payable by the respondents jointly and severally. In this context, reference can be made to judgments of this Court **National Insurance Company Ltd. Vs. Harjit Singh and another, 2016(1) PLR 735** and **National Insurance Company Ltd. Vs. Bimla Devi and others, FAO No.7901 of 2014, decided on 26.03.2018.**

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms.

06.04.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No