

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

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Date of Decision : 28.08.2018

1. FAO No.1138 of 2001 (O&M)

Rajinder

..... Appellant

Versus

Ram Bhagat and others

..... Respondents

2. FAO No.393 of 2000 (O&M)

Ram Bhagat

..... Appellant

Versus

Rajinder and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sandeep Kotla, Advocate
for the appellant (FAO No.1138 of 2001)
for respondent No.1 (FAO No.393 of 2000).

Mr. Y.P.Malik, Advocate
for the appellant (FAO No.393 of 2000)
for respondent No.1 (FAO No.1138 of 2001).

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two appeals. As common question of facts and law are involved the facts are being taken from FAO No.1138 of 2001.

These two appeals have been filed against the award of the Motor Accident Claims Tribunal, Hisar. FAO No.1138 of 2001 has been filed by the claimant for enhancement while FAO No.393 of 2000 has been filed by the driver/owner.

The brief facts are that on 07.07.1995 when the claimant-Rajinder was going on foot alongwith Surinder and Dharampal towards octroi post on Jind by-pass a scooter which was stated to be driven by Ram Bhagat rashly and negligently came and hit him, causing him injuries and hence he prayed for compensation. The case of Ram Bhagat on the other hand was that infact the accident had been caused by some other vehicle but on the asking of Sarpanch-Ram Kishan he had taken Rajinder to the hospital in a rickshaw after parking his scooter. After having admitted Rajinder in the hospital when he came back he found that the police had taken away his scooter and later came to know that Rajinder had lodged his perfidious FIR against him even though he had helped him only out of humanitarian grounds. The tribunal believed the version of Rajinder and held that Ram Bhagat had caused the accident and awarded compensation of Rs.1,20,000/- and that is how both the parties are in appeal.

Counsel for Ram Bhagat-respondent No.1 has argued that the statement of Ram Bhagat and Ram Kishan clearly show that no accident had taken place with Ram Bhagat. The tribunal has discussed these statements and had noticed that the presence of Dharam Pal was admitted by Ram Bhagat but there was no evidence to prove the presence of Ram Kishan. The tribunal also noticed that the statements of Dharam Pal and Rajinder were more consistent while that of Ram Bhagat was inconsistent as

Bhagat made no representation to any authority that he had been falsely implicated in FIR. Counsel for Ram Bhagat has argued that in the criminal case he was acquitted since none appeared to give evidence against him.

In my opinion, the acquittal of Ram Bhagat would not be determinative. Having gone through the testimony and the findings of the tribunal, I find that the tribunal has rightly held that Ram Bhagat had caused the accident.

Consequently, the appeal bearing FAO No.393 of 2000 is dismissed.

Coming to the appeal filed by the claimant-Rajinder, learned counsel has argued that once there was deformity it was incumbent upon the tribunal to have awarded some amount on account of permanent disability.

Counsel for the respondent No.1 has argued that there was no permanent disability because if there had been any permanent disability a disability certificate would have been placed on record and in the absence thereof it would not be the province of the Court to determine whether there was permanent disability or the extent thereof.

In my considered opinion, the argument of learned counsel for Ram Bhagat is more weighty and consequently the finding of the tribunal that there was no permanent disability is upheld. The tribunal has awarded a sum of Rs.1,20,000/- to claimant-Rajinder for fracture of both bones, tibia and fibula lower third which did not result in any permanent disability. I find there is no scope for enhancement.

Appeal bearing FAO No.1138 of 2001 also stands dismissed.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

28.08.2018
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No