

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : 13.11.2018

1. FAO No.964 of 1999 (O&M)

Bhushan

..... Appellant

Versus

Anil Kumar and others

..... Respondents

2. FAO No.965 of 1999 (O&M)

Krishna

..... Appellant

Versus

Anil Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ashok Kumar Khubbar, Advocate
for the appellants.

Mr. R.K.Bishamboo, Advocate
for respondent No.3-insurance company.

AJAY TEWARI, J. (Oral)

These two appeals have been filed against the judgment and award dated 04.02.1999 passed by the Motor Accident Claims Tribunal Kurukshetra whereby the two claim petitions filed by the appellant/s on account of injuries they had received in an accident dated 26.05.1997 were dismissed.

The case of the appellants was that on the fateful day they were travelling in a Jeep owned by respondent No.2, driven by respondent No.1 and insured by respondent No.3 and due to the rash and negligent driving of that vehicle the accident was caused.

The case of respondents on the other hand was that infact the accident had not taken place as a result of the rash and negligent driving of the Jeep but had taken place as a result of the rash and negligent driving of an un-identified tractor and the case had been falsely foisted against the Jeep owner and driver. During the evidence the two injured-claimants examined Shish Pal, Inderjit, Krishna Devi and Mohinder. All four were co-passengers in the Jeep and all four testified that the accident had taken place as a result of rash and negligent driving of the Jeep. The respondents placed on record the FIR which was lodged on the next day of the accident and also examined respondent No.1-Driver. The tribunal held that as per the FIR which was lodged by AW-2 Inderjit, the accident had taken place because of rash and negligent driving of a tractor and the evidence of respondent No.1 was to the same effect. On the basis of this testimony the tribunal held that the appellants had not been able to prove that the accident had taken place because of the rash and negligent driving of the Jeep and consequently dismissed the petition and hence the present appeals.

Learned counsel for the appellants has argued that the tribunal erred in giving undue importance to the FIR and to the testimony of respondent No.1 who was an interested witness and wrongly ignored

the testimony of the witnesses of the claimants while counsel for the respondents has defended the decision.

In my opinion, the arguments of learned counsel for the appellants have more weight. An FIR can not be taken to be substantive evidence and in the present case it can not be lost sight of that the author of the FIR was an illiterate person who was at that time lodged in a hospital when the FIR was recorded. He also stated that this FIR was wrongly recorded because respondent No.2 was also present and was able to manage it. Further the testimony of respondent No.1 has to be taken with a pinch of salt. On the standard of preponderance of probability, I am convinced that the balance is in favour of the appellants and consequently, reverse the finding of the tribunal on this account.

Coming now to the quantum of compensation, the tribunal has computed the compensation at Rs.35,000/- and Rs.28,000/-. As regards, Bhushan, he was admitted in hospital for 15 days and suffered 10% permanent disability where the disfigurement of right frontal region scalp and bones as a result of the accident. Krishna also suffered 7% permanent disability because she lost the tip of her right small finger.

Having heard the learned counsel for the appellants, I deem it appropriate to enhance the compensation of Bhushan by Rs.20,000/- and Krishna by Rs.22,000/-.

The entire compensation shall carry interest @12% per annum from the date of filing of claim petition till the date of payment in view of the judgment passed in ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal***

No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018.

Appeals are allowed in the above terms and the award is modified accordingly.

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

13.11.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

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