

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

FAO-4379-2005(O&M)

Date of decision:-14.12.2018

Jagdish Ram

...Appellant

Versus

Raj Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Navjot Kaur, Advocate for
Mr.Vishal Gupta, Advocate
for the appellant.

Mr.Harkesh Kumar, AAG, Haryana.

Mrs.Shamsher Kaur, Advocate
for the respondent No.3 – Insurance Company.

H.S. MADAAN, J.

Briefly stated, facts of the case are that petitioner/claimant Jagdish Ram son of Sh.Inder Ram, posted as District Inspector, Yamuna Nagar had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. respondent No.1 - Raj Singh, Constable No.193 – driver, respondent No.2 - Director General of Police, Haryana, Panchkula through Superintendent of Police, Yamuna Nagar – owner and respondent No.3 - National Insurance Company, Yamuna Nagar – insurer of jeep No.HR-02G-3250 claiming compensation to the tune of Rs.3 lacs on account of suffering injuries in a road side accident involving jeep No.HR-02G-3250.

According to the petitioner/claimant, who was aged about 57 years at the time of filing of the claim petition posted as District Inspector, Haryana Police, Yamuna Nagar, a Government employee of State of Haryana, his monthly income has been Rs.12,000/- per month; that on the intervening night of 22/23.8.2001 at about 12:00 night, the petitioner/claimant along with ASI Tej Singh and other police officials was travelling in jeep No.HR-02G-3250 being driven by respondent No.1 – Constable Raj Singh; that they had left the CIA Staff Yamuna Nagar for going to Buria Police Station and when the jeep in question reached near Gurudwara Buria Sahib, then all of sudden a wild cow running from fields appeared in front of the jeep; the jeep was being driven by respondent No.1 at a very high speed, rashly and negligently and he could not control the jeep after seeing the animal, resultantly the jeep turned turtle after hitting the wild cow and fell into ditches of the road side; resultantly the petitioner/claimant suffered injuries including one on his left eye, forehead and other occupants travelling in the jeep also sustained injuries; the petitioner/claimant was taken to Jagadhri from where he was rushed to PGI for treatment of his eye; the petitioner/claimant was admitted in PGI, Chandigarh on 23.8.2001 and was discharged on 4.9.2001; he had to undergo surgery of his left eye thrice, however, he could not recover fully and suffered permanent disability to the tune of 40%, which is permanent in nature; the petitioner/claimant is still under treatment; the claimant had suffered permanent disability while discharging his official duty in the course of his employment; that the claimant has spent more than Rs.25,000/- on his treatment including medicines, hospital charges, x-ray,

hiring taxi, conveyance charges, attendant expenses, special diet/extra nourishment as advised by the doctors; that the claimant has also lost his future earning capacity. He deserves to be compensated on account of pain and suffering and there are definite chances of his spending more on his treatment in future. The petitioner/claimant prayed for acceptance of the claim petition and grant of compensation to him.

On notice, the respondents appeared and filed separate written replies.

In the written reply filed on behalf of respondent No.1, he denied that the accident in question had taken place on account of his rash and negligent driving, rather he contended that the accident was an act of God and he was not at fault for the same; that amount incurred by the claimant on his treatment has been reimbursed to him by his employer i.e. Police Department and he is still in the said service; that there is no loss qua income of the claimant. The remaining assertions in the claim petition were controverted.

Written reply filed by respondent No.2 is almost on the similar lines as that of respondent No.1.

Whereas respondent No.3 by filing written reply took various legal objections including that no FIR qua the accident was got registered despite the fact that the claimant himself was an Inspector in the Police Department and very much conversant with the law knowing that FIR is necessary to be recorded and without it claim petition is not maintainable. The remaining assertions of the claim petition were refuted.

In the end, the respondents prayed for dismissal of the

petition.

On the pleadings of the parties, following issues were framed:

1. Whether the accident which took place on the intervening night of 22/23.8.2001 resulting into injuries to the claimant was the result of rash and negligent driving of respondent No.1 while driving the offending Jeep No.HR-02-G-3250 in rash and negligent manner?OPP.
2. Whether the claimant is entitled to compensation, if so, to what amount and from whom?OPP.
3. Whether the claim petition is not maintainable? OPR.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of his case, the claimant had examined as many as seven witnesses i.e. HC Shree Ram as PW1, Vikram Singh, Establishment Clerk/Assistant, Office of Superintendent of Police, Yamuna Nagar as PW2, Constable Rajender Singh as PW3, ASI Tej Singh as PW4, claimant Jagdish Ram as PW5, Jiwan Kumar as PW6 and Rajesh Chopra, Taxi owner as PW7.

On the other hand, respondents had examined respondent No.1 – Raj Singh as RW1 and Nar Singh, Registration Clerk, Office of Sub Divisional Magistrate, Jagadhri as RW2.

After hearing arguments, the Tribunal decided issue No.1 in favour of the claimant and against the respondents, issue No.2 in favour of

the claimants and against respondent, issue No.3 against the respondents, resultantly vide award dated 24.5.2005, the tribunal found the claimant entitled to compensation of Rs.1,16,000/- on account of injuries sustained by him in the accident for which all the three respondents were jointly and severally liable. The claim petition was allowed with interest @ 9% per annum on the compensation amount awarded from the date of filing of claim petition till realization besides cost of the proceedings. It was observed that interest for 71 days i.e. from 11.2.2005 to 22.4.2005 would be paid by respondent No.1. The compensation awarded was as per details below:

i)	Compensation for future loss of income and future loss of amenities and expectations of life due to permanent physical disability to the extent of 40%.	Rs.80,000/-
ii)	Compensation on account of expenditure on medical treatment.	Rs.2,078/-
iii)	Compensation on account of transportation charges	Rs.28,550/-
iv)	Compensation on account of pain and suffering due to grievous injuries	Rs.5,000/-
	Total	Rs.1,15,628

The amount was rounded off to Rs.1,16,000/-.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal, notice of which was given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

I find that on account of 40% disability, the claimant has been awarded compensation of Rs.80,000/-, which I find to be fair and

equitable. The appellant/claimant being a government servant to whom the medical expenses are reimbursed, has been awarded a sum of Rs.2,078/- being balance of the amount actually incurred by him and reimbursed to him by the Government. No interference with the same is called for. On account of transportation charges, he has been awarded a sum of Rs.28,550/-, which I find to be equitable.

However, on account of pain and suffering due to injuries suffered by the appellant/claimant, he had been awarded Rs.5,000/- only. In my view considering the number of injuries suffered by the claimant, period of hospitalization and number of surgeries performed on left eye of the appellant/claimant, the amount awarded is on lower side. It is very difficult to quantify the pain and suffering undergone by a person suffering injury that too on vital parts of the body requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I am of the view that compensation awarded on that account is on lower side, which calls for enhancement. Therefore, the same is enhanced to Rs.20,000/-.

The appellant/claimant has not been granted any compensation for special diet. A person suffering such type of injuries does need special diet for early and proper recovery. A sum of Rs.10,000/- is awarded to him on that account.

On account of the help needed by the appellant/claimant during the period of his hospitalization, while going to hospital for follow up check-up and for being looked after at home, he needs to be compensated and a sum of Rs.10,000/- is awarded to him for service of

attendant.

Thus, the appeal succeeds partly and in addition to the compensation awarded by the Tribunal vide award dated 24.5.2005, the appellant/claimant is awarded a further sum of Rs.35,000/- as compensation as detailed above payable by all the three respondents jointly and severally. The appellant/claimant would be entitled to get interest @ 9% per annum from the date of institution of appeal till the actual payment.

With such modification, the appeal is allowed partly.

14.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No