

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

**Date of decision: 23.5.2018**

1.

**FAO No.1976 of 2011(O&M)**

Lalit Goel and another

.....Appellants

VERSUS

Jai Singh

.....Respondent

Present: Mr. Jastej Singh, Advocate for the appellants.

Mr. V.B. Aggarwal, Advocate for the respondent.

\*\*\*\*\*

2.

**FAO No.5883 of 2011(O&M)**

Jai Singh

.....Appellant

VERSUS

Lalit Goel and others

.....Respondents

Present: Mr. V.B. Aggarwal, Advocate for the appellant.

Mr. Jastej Singh, Advocate for the respondents.

\*\*\*\*\*

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

**REKHA MITTAL, J.**

This order will dispose of FAO Nos.1976 and 5883 of 2011 as these have emerged out the same award dated 15.11.2010 passed by the Motor Accidents Claims Tribunal, Yamunanagar at Jagadhri (in short 'the Tribunal') whereby compensation has been assessed in regard to injuries sustained by Jai Singh in a motor vehicular accident that took place on 25.02.2009.

FAO No.1976 of 2011 has been filed by the driver and owner of alleged offending vehicle i.e. Honda Activa bearing No.HR-02P-0625

whereas FAO No.5883 of 2011 has been filed by injured Jai Singh seeking enhancement of compensation.

The injured shall be referred to as 'the claimant' whereas driver and owner of the offending vehicle would be referred as 'the appellants' for the sake of convenience.

The facts relevant for disposal of present appeals are that as per the case set up by the claimant, on 25.02.2009 he had gone to village Khera to attend the marriage of son of his co-employee. After attending the marriage, he along with one Ami Chand came back and stayed for some time near Mini Secretariat, Jagadhari for some personal work. At about 6.30/7 PM, he started from Yamunanagar on foot on kutchra berm on his correct left side. In the meanwhile, Lalit Goel- respondent No.1 while driving Honda Activa bearing No.HR-02P-0625 rashly, negligently and at a high speed came from behind and hit him. As a result, he fell down on the road and sustained multiple injuries on his face and eyes including fracture on his nose and foot. He became unconscious and was taken to Civil Hospital, Jagadhari from where he was taken to Gaba Hospital Yamunanagar and remained admitted up to 04.03.2009. After gaining consciousness, he lodged FIR No.86 dated 27.02.2009 under Sections 279, 337 and 338 of the Indian Penal Code against respondent No.1. He claimed compensation to the tune of Rs.10,00,000/- along with interest.

The respondents (appellants in FAO No.1976 of 2011) filed joint reply and in turn denied the allegations that the claimant sustained injuries due to rash and negligent driving of alleged offending vehicle by respondent Lalit Goel. It is averred that no accident was caused by

respondent No.1 while driving the Aactiva but a false and frivolous case has been registered by the police against him.

The controversy between the parties led to framing of issues reproduced in para 4 of the award.

The parties were permitted to adduce evidence in support of their respective contentions. Jai Singh-claimant appeared in the witness box and examined Manjit Singh, Criminal Ahlmad, Dr. Rajesh Garg, Eye Surgeon PW-3, Dr. Ravinder Singh Gill, Radiologist PW-4, Amarjit Singh, Partner M/s Fair Price Medical Store PW-5, Dr. B.R. Kalra PW-6, Dr. Vandana, Medical Officer, Gaba Hospital PW-7. The claimant tendered into evidence documents Ex.PX and PY.

To rebut evidence of the claimant, Lalit Goel appeared in the witness box.

After having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No.1 in favour of the claimant and he was held entitled to compensation of Rs.81,758 (rounded off to Rs.82,000/-) by deciding issue No.2 in his favour.

Counsel for the appellants has assailed findings of the Tribunal on issue No.1 by contending that the claimant failed to produce satisfactory much less cogent and convincing evidence to establish his plea that he sustained injuries in a motor vehicular accident due to rash and negligent driving of Honda Aactiva No.HR-02P-0625 by Lalit Goel, husband of Smt. Sangita Goel, registered owner of the vehicle in question. To bring home his contention, he has pointed out towards facts elicited in cross examination of Jai Singh whereby he had admitted that he had not noted number of the vehicle at the spot nor had he seen driver of the

vehicle at the spot. It is argued with vehemence that if the injured had not noted number of offending vehicle or seen the person driving the vehicle at the time of accident, testimony of Jai Singh is not at all sufficient to connect the vehicle in question with the occurrence much less to establish that accident was the result of rash and negligent driving of the said vehicle by Lalit Goel.

Counsel representing the claimant, on the other hand, has supported findings of the Tribunal on issue No.1 with the submission that testimony of the claimant that he sustained injuries in a motor vehicular accident due to rash and negligent driving of the offending vehicle by Lalit Goel gets fully corroborated from the investigation conducted by the police in the FIR registered by Jai Singh on the basis whereof report under Section 173 Cr.P.C. was submitted in the Court for trial of Lalit Goel qua offences punishable under Sections 279, 337 and 338 IPC, proved by Manjit Singh, Criminal Ahlmad PW-2. It is further argued that the Tribunal, on the basis of materials on record, has rightly held that Lalit Goel is author of the accident while driving the aforesaid vehicle owned by his wife and he was the one who shifted the injured to the hospital as mentioned in the medico legal report Ex.P2. Lalit Goel appeared in the witness box but failed to explain as to the circumstances under which he accompanied Jai Singh to the hospital whose signatures were also obtained with regard to handing over one copy of medico legal report.

Counsel for the claimant has pressed for enhancement of compensation by contending that injured has been rendered disable to the extent of 30%, therefore, he is entitled to loss of future earning by applying multiplier method and extending benefit of future prospects. It is further

argued that compensation awarded under various heads is on lower side and needs enhancement.

Counsel representing the appellants has refuted contention of the claimant for enhancement of compensation. It is argued that the claimant has failed to adduce tangible evidence to prove that he remained on leave without pay on account of sustaining of injuries or is entitled to loss of income on the basis of document Ex.PY.

I have heard counsel for the parties, perused the paper-book and the records.

The Tribunal, on a detailed consideration of evidence both oral and documentary coupled with inferences drawn on the basis of materials on record, had rightly arrived at a conclusion that accident was caused due to rash and negligent driving of Acura in question by Lalit Goel. The Tribunal in para 9 has noticed that plea and statement of respondent No.1 that no such accident was caused is not believable because as per the MLR Ex.P2, it is clear that it was respondent No.1 who had got the injured admitted in the Government Hospital, Jagadhari. He (respondent No.1) has not given any explanation as to why and under what circumstances he had got the injured/claimant admitted in the hospital. His written statement as well as affidavit Ex.RW1/A are silent about this aspect of the matter. Perusal of Ex.P2 with naked eye would reveal that signatures on the MLR as well as on the written statement, affidavit Ex.RW1/A and power of attorney are of one and the same person i.e. Lalit Goel. It has further been held that as such statement of PW1 in his cross examination that he had not seen driver of the Acura at the time of accident is hardly of any consequence. The Tribunal has also taken an

adverse view against the appellants as Lalit Goel had admitted that he was facing criminal trial regarding the accident and has never made any complaint or representation regarding his false implication in criminal case. The Tribunal has relied upon judgments of this Court **Girdhari Lal Vs. Radhey Shyam and others (1993) 2 PLR 109** and **Gurdeep Kaur Vs. Tarsem Singh, 2008(2) RCR (Civil) 774** to hold that accident was caused by Lalit Goel.

Another circumstance taken into consideration is that had the accident been not caused by respondent No.1 while driving the Activa, there was no reason for the claimant to file the petition against him and his wife as he was not inimical towards the respondents. Further held that if the claimant was to implicate some driver of vehicle falsely, then he would have chosen a vehicle insured with an insurance company.

Counsel for the appellants has not made any submissions to assail factual findings recorded by the Tribunal in para 9 of the award with regard to the injured being shifted to the Government Hospital by Lalit Goel and signatures of Lalit Goel on the medico legal report copy of which is Ex.P2. The various circumstances taken into consideration by the Tribunal to record findings against the appellants are well founded. The proceedings before the Tribunal are summary in nature and do not admit of strict principles of law of evidence. The factum of accident is to be decided on the basis of balance of probabilities as against proof beyond reasonable doubt required in a criminal trial. The factual findings recorded by the Tribunal do not suffer from an error much less illegality warranting intervention. Accordingly, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

This brings the Court to plea of the claimant for enhancement of compensation. As has been noticed hereinbefore, the Tribunal has awarded compensation of Rs.81,758/- (rounded off to Rs.82,000/-) detailed hereunder:-

|                                                         |             |
|---------------------------------------------------------|-------------|
| Medical expenses                                        | Rs.14,158/- |
| Pain and sufferings                                     | Rs.15,000/- |
| Expenses on conveyance, attendant and special diet      | Rs.10,000/- |
| Compensation qua disability                             | Rs.20,000/- |
| Loss of income for 3 ½ months<br>@ Rs.3,600/- per month | Rs.12,600/- |

Dr. Vandana, Medical Officer, Gaba Hospital, Yamunanagar PW-7 has deposed that Jai Singh was admitted in Gaba Hospital on 25.02.2009 with alleged history of roadside accident. His MLR and treatment was done in Civil Hospital, Jagadhari. Patient was having head injury, right eye injury, fracture Tibia of left side. His CT Scan of head revealed bi lateral, frontal lobe hemorrhagic contusion with pneumocephalus with fracture of frontal bone, nasal bone and anterior wall of left maxillary sinus with scalp haematoma. The patient was discharged from the hospital on 11.03.2009. The claimant examined Dr. Ravinder Singh Gill, Radiologist and Dr. B.R. Kalra of Dr. B.R. Kalra Eye & General Hospital, Model Town, Yamunanagar to prove nature of injuries, treatment and period of hospitalization etc. The injured sustained injuries on 25.02.2009 and remained under treatment as an indoor patient till 11.03.2009 i.e. for a period of about 20 days. The Tribunal has reimbursed the medical expenses on the basis of bills/receipts etc marked as exhibits.

There is nothing on record suggestive of the fact that subsequent to his discharge from the hospital, the injured remained under treatment or incurred medical expenses. In the given circumstances, compensation awarded by the Tribunal with regard to medical expenses is ordered to be affirmed.

The Tribunal awarded an amount of Rs.15,000/- towards pain and sufferings. Dr. Vandana has explained the number and nature of injuries sustained by the victim. Keeping in view the nature of injuries sustained coupled with period of treatment as indoor patient, interest of justice would be served if compensation for pain and sufferings is enhanced to Rs.20,000/- (addition of Rs.5,000/-). The Tribunal has awarded an amount of Rs.10,000/- for expenses on transportation, special diet and attendant charges. In view of the above, compensation under the aforesaid heads is enhanced to Rs.15,000/- (addition of Rs.5,000/-).

Dr. Rajesh Garg, Eye Surgeon, Civil Hospital, Yamunanagar was examined to prove extent and nature of disability as well as disability certificate Ex.P3. He had deposed that Jai Singh suffered 30% visual disability due to right eye chronic macular edema with old history of trauma. Disability certificate was marked as Ex.P3. The Tribunal has assessed functional disability at 10% by taking it to be 1/3<sup>rd</sup> qua whole body and awarded an amount of Rs.20,000/- at the rate of Rs.2,000/- per percent by relying upon judgment of this Court **Piara Singh and others Vs. Satpal Kumar and others, (2007) 2 PLR 143.**

The question that calls for consideration is whether the claimant is entitled to compensation qua disability by applying multiplier

method and further extending benefit of future prospects as has been contended by counsel for the claimants.

Jai Singh- injured tendered into evidence his affidavit Ex.PW1/A by way of examination in chief. In para 4 of the affidavit, he has stated that he was employed as a Technician Guard in Northern Railway, Jagadhri Workshop, Yamunanagar and had been earning Rs.22,000/- per month. Due to accident and permanent disability, he is unable to work and requires attendant 24 hours for his day to day work. He is silent if his job as Technician Guard in Northern Railway, Jagadhri Workshop is regular/permanent or otherwise. Nothing has been made clear as to when he would retire from Northern Railway Jagadhri Workshop Yamunanagar. However, claimant tendered into evidence documents Ex.PX and PY by way of statement recorded on 25.03.2010 whereby he closed his evidence. Document Ex.PX makes reference to the claimant's having got pre-mature retirement in September 2009. The claimant did not examine a witness from his department to prove the documents Ex.PX and PY. Statement of the claimant recorded in December 2009 by way of affidavit Ex.PW1/A neither makes reference to his having availed any leave nor to the factum of his having got pre-mature retirement. Counsel for the claimant has not advanced any argument to say something if the claimant continued in service despite injury to his eye rendering him disabled to the extent of 30% in one eye or that disability did not create any hindrance in rendering his services as an employee in the workshop of Northern Railways. As the claimant failed to lead clear, cogent and convincing evidence with regard to what happened to his job with the Northern Railways, it is difficult to accept contention of the

claimant that he is entitled to future loss of income by applying multiplier method on the basis of salary depicted in Ex.PY much less by extending the benefit of future prospects as well. On the contrary, if the claimant continued in service of Northern Railway despite disability of 30% to one of the eyes, there is no question of claimant having suffered loss of future income attributable to disability of 30% as deposed by Dr. Rajesh Garg. This apart, Dr. Rajesh Garg in his examination in chief has deposed that disability may be due to injuries sustained on eye. In his cross examination, he has deposed to the following effect:-

"I cannot tell the duration of the injury. I cannot say as to how the patient had suffered injuries on his eye"

When the facts deposed by the witness in his examination in chief and cross examination are read in conjunction, it is difficult to conclude that visual disability to the extent of 30% in the right eye is actually the result of injury sustained in the occurrence in question. In this view of the matter, compensation qua disability assessed by the Tribunal does not justify enhancement.

The Tribunal has awarded an amount of Rs.12,600/- towards loss of income for a period of 3 ½ months at the rate of Rs.3,600/- per month. Jai Singh in his statement on oath has not deposed that he remained absent from duty for a particular number of days on account of accident. Later he tendered into evidence document Ex.PX, an application purported to be filed by Jai Singh in order to seek a report with regard to the leave availed by him. The application Ex.PX also makes reference to pre-mature retirement on 30.09.2009. The injured remained hospitalized till 11.03.2009. As per Ex.PX, he remained on leave till 07.06.2009.

There is no medical evidence that the injured was advised rest after discharge from the hospital. However, the Court can take judicial notice that injured would have taken some time to recover from his condition even after discharge from the hospital. If the injured sought voluntary retirement and there was no loss qua the period of absence from duty w.e.f 25.02.2009 to 07.06.2009, there is no question of the injured being entitled to loss of income qua the leave period on the basis of document Ex.PY. In this view of the matter, loss of income qua the period of treatment and recovery allowed by the Tribunal is affirmed.

The injured has suffered visual disability to the extent of 30%. In view of discussion made hereinbefore, it is not very clear if the disability is on account of injury sustained in the occurrence in question. Taking a sympathetic and reasonable view, claimant is awarded compensation of Rs.10,000/- towards loss of amenities of life on account of disability. The additional amount of Rs.20,000/- shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

For the foregoing reasons, FAO No.1976 of 2011 is dismissed. However, FAO No.5883 of 2011 filed by the claimant is partly allowed in the aforesaid terms. No order as to costs.

**MAY 23<sup>rd</sup>, 2018**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | yes/no |
| Whether reportable        | : | yes/no |