

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

FAO No.4454 of 2011

Date of decision: 18.12.2018

Bal Mukand

.... Appellant

Versus

Ashok Kumar and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr.Vinod K.Kanwal, Advocate
for Mr.Ashit Malik, Advocate
for the appellant

Mr.Namit Sharma, Advocate
for respondents No.1 and 2

Mr.Ashwani Talwar, Advocate
for respondent No.3

ARUN KUMAR TYAGI, J. (ORAL)

1. The appellant-claimant has filed present appeal against award dated 08.04.2011 passed by learned Motor Accidents Claims Tribunal, Karnal (for short "the Tribunal") in **MACT case No.107 of 2009** titled as **Bal Mukand Versus Ashok Kumar and others** whereby claim petition seeking compensation for injuries suffered by the claimant in motor vehicular accident, which took place on 03.09.2009, was dismissed.

2. The claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short “the M.V. Act”) on the averments that on 03.09.2009 at about 06:15 P.M. when the claimant was going to his house in Sadar Bazar, Karnal, on his bicycle and reached near Meerut Chowk, Karnal, canter bearing registration No.HR-56A-1114, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 in a rash and negligent manner, came from behind and by coming on the wrong side of the road hit the bicycle of the claimant due to which he fell down and suffered injuries. FIR No.578 dated 04.09.2009 was registered under Sections 279, 337 and 338 of the Indian Penal Code, 1860 (for short “I.P.C.”) at Police Station, City Karnal. After the accident, the injured was taken to General Hospital, Karnal from where due to his serious condition he was referred to PGI but was shifted to Dr.Ashok Gupta’s Hospital at Karnal. At the time of the accident, the claimant was aged about 30 years and was earning ₹10,000/- per month by self-employment as skilled labourer by laying marble floors and fixing tiles. The claimant spent an amount of ₹1,00,000/- on his treatment. Due to the injuries suffered the claimant has become permanently disabled. Therefore, compensation of ₹15,00,000/- with costs and interest be awarded to him.

3. The claim petition was contested by the respondents. In their written statement, respondents No.1 and 2 pleaded that the vehicle in question, which was insured with respondent No.3, was falsely involved in the accident and denied their liability. In its written statement, respondent No.3 took usual legal objections also as to

respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of the Insurance Policy by the insured and pleaded that no such accident took place and the petition has been filed in collusion with respondents No.1 and 2 to extort money from respondent No.3.

4. On the basis of pleadings of the parties, issues were framed and the parties were given opportunity to produce the evidence.

5. On consideration of evidence on record and submissions made by the learned counsel for the parties, the Tribunal held that the claimant had failed to produce any cogent and reliable evidence to connect the vehicle owned by respondent No.2 with the accident and prove the negligence of respondent No.1 in causing of the accident and dismissed the claim petition.

6. Feeling aggrieved, the claimant has filed present appeal.

7. I have heard arguments addressed by learned counsel for the parties and have gone through the material on record.

8. Mr.Vinod K.Kanwal, Advocate for Mr.Ashit Malik, learned counsel for the appellant-claimant has argued that the claimant appeared in the witness box as PW-1 and testified that he suffered injuries in accident caused by rash and negligent driving of canter bearing No.HR-56A-1114 by respondent No.1. The testimony of claimant is supported by copy of report under Section 173 (2) of Code of Criminal Procedure, 1973 (for short "Cr.P.C."). The Tribunal failed to properly appreciate the facts and evidence on record. The findings of the Tribunal suffer from material illegality and the impugned award be, therefore, set aside. The

claimant spent an amount of ₹1,00,000/- on his medical treatment and the claimant also became permanently disabled due to the injuries suffered by him in the accident. The claimant is entitled to compensation payable under all heads permissible in cases of personal injuries and the petition may be allowed accordingly.

9. On the other hand, Mr. Namit Sharma, learned counsel for respondents No.1 and 2 and Mr. Ashwani Talwar, learned counsel for respondent No.3-Insurance Company have argued that the claimant was struck by the canter, allegedly driven rashly and negligently, from behind, therefore, he could not witness the manner of causing accident. The claimant did not produce copy of MLR and did not examine any other witness to identify the offending vehicle and driver thereof. The learned Tribunal on proper appreciation of the evidence rightly dismissed the claim petition. Therefore the appeal, being devoid of any merit, may be dismissed with costs.

10. Mr. Namit Sharma, learned Counsel for respondents No.1 and 2 has alternatively argued that in the eventuality of claim petition being allowed, respondent No.3 is liable to pay the compensation.

11. Mr. Ashwani Talwar, learned Counsel for respondent No.3 has alternatively argued that the claimant has failed to prove his employment and income which would be liable to be assessed on the basis of minimum wages. The disability suffered by the claimant was temporary and not permanent. The amount claimed is, therefore, exaggerated and excessive.

12. In a motor accident claim case, proof of negligence on the part of driver of the offending vehicle is necessary before the owner and the insurer thereof can be held to be liable for payment of compensation. Unlike, criminal cases where negligence has to be proved beyond reasonable doubt, in motor accidents claims cases negligence has to be proved on preponderance of probabilities. Reference in this regard may be made to **Minu B.Mehta and another Vs. Bal Krishan Ram Chandra Nauan and others AIR 1977 SC 1248 and Jacob Mathew Vs. State of Punjab 2005 (3) RCR (Criminal) 837 (SC).**

13. To prove his claim that he suffered injuries in accident caused by rash and negligent driving by respondent No.1 of the canter, owned by respondent No.2 and insured with respondent No.3, the claimant appeared in the witness box as PW-1 and testified as to the facts pleaded by him in his petition. PW-1-Bal Mukand has specifically deposed that on 03.09.2009, after finishing his work in Sector-6, Karnal, he was coming to Sadar Bazar, Karnal, on his bicycle. At about 06:15 P.M., when he reached near Meerut Chowk and was on his due left hand side of the road, canter bearing registration No.HR-56A-1114 driven by respondent No.1 in rash, careless and negligent manner, came from behind without observing the traffic rules and hit against his bicycle by coming on the wrong side of the road. This testimony of PW-1-Bal Mukand cannot be discarded merely because the bicycle of the claimant was hit by the canter from behind as this fact does not by itself exclude the possibility of the claimant having seen the number and driver of the offending vehicle.

14. No doubt, the claimant did not examine any other person alleged to have witnessed the accident to corroborate his testimony. However, in view of apathy of general public and other users of road to attend to victims of road accidents and to appear as witness due to apprehension of harassment by police and also in courts, non-examination of any of the other persons alleged to have witnessed the accident is not of any legal significance. Therefore, testimony of PW-1 claimant is also not liable to be rejected on this ground and has to be judged on its own worth.

15. After the accident the claimant was taken to General Hospital, Karnal, from where he was referred to PGI but was shifted to Dr. Ashok Gupta's Hospital at Karnal. PW-2 Dr. Ashok Gupta has testified about admission of the claimant in his hospital on 03.09.2009 with injuries suffered in road side accident. As mentioned in report under Section 173 (2) of the Cr.P.C., Dr. Ashok Gupta sent medical ruqqa to the police on which ASI Ram Asre went to Dr. Ashok Gupta's Hospital but the injured was opined to be unfit to make his statement. Subsequently, on being declared by the attendant doctor to be fit to make the statement, statement of the claimant was recorded by ASI Ram Asre and FIR No.578 dated 04.09.2009 was registered on the basis thereof. There is no undue, unreasonable, unexplained delay in lodging of the FIR and prompt lodging of the FIR rules out false involvement of the offending vehicle and respondent No.1 by concoction and manipulation.

16. Pursuant to registration of the FIR, the police investigated the case. On completion of the investigation, on finding the evidence to

be sufficient to prove commission of offences punishable under Sections 279, 337 and 338 of the I.P.C. by respondent No.1, S.H.O., Police Station City Karnal filed report copy Ex.P-3 under Section 173(2) of the Cr.P.C. against him. The fact that on investigation the police found that the accident took place due to rash and negligent driving of the canter by respondent No.1 lends credence to the testimony of PW-1-Bal Mukand (claimant).

17. Respondent No.1 did not appear in the witness box and respondents No.1 and 2 did not examine any other person alleged to be present at the place of accident to depose either that the accident did not take place with the canter or that the accident was not caused due to rash and negligent driving of the canter by respondent No.1. Respondent No.3 pleaded the claim petition to be collusive between the claimant and respondents No.1 and 2 but respondent No.3 did not make any complaint to S.P. Karnal or SHO, Police Station City Karnal, regarding such collusion between the claimant and respondents No.1 and 2 and has not produced any other evidence to prove the same. Consequently, respondents No.1 to 3 have failed to rebut the evidence of the claimant which having gone virtually un-rebutted and un-challenged ought to have been relied and acted upon by the Tribunal.

18. It follows that the claimant suffered injuries in motor vehicle accident caused on 03.09.2009 by rash and negligent driving by respondent No.1 of canter bearing registration No.HR 56A 1114, owned by respondent No.2 and insured with respondent No.3 and the Tribunal did not properly appreciate the evidence on record. Since, the findings

of the Tribunal are contrary to the material evidence on record, the same are liable to be and are set aside accordingly.

19. In personal injury cases compensation can be awarded under the following heads:

(1) **Pecuniary damages (Special damages)-**

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure;
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising
 - (a) Loss of earning during the period of treatment; and
 - (b) Loss of future earnings on account of permanent disability; and
- (iii) Future medical expenses

(2) **Non-pecuniary damages (General damages)**

- (i) Damages for pain, suffering and trauma as a consequence of the injuries;
- (ii) Loss of amenities (and/or loss of prospects of marriage); and
- (iii) Loss of expectation of life (shortening of normal longevity).

(See Raj Kumar Versus Ajay Kumar and another (2011)

1 Supreme Court Cases 343 and R. D. Hattangadi Versus Pest Control (India) Limited and others 1995 ACJ (SC) 366).

20. To prove the expenses incurred on his medical treatment, the claimant appeared in the witness box as PW-1 and examined

Dr.Ashok Gupta as PW-2. PW-1-Bal Mukand (claimant) testified that he incurred an amount of ₹1,00,000/- on his medical treatment and produced bills totaling to ₹52,053/-. Testimony of PW-1-Bal Mukand is corroborated by PW-2-Dr.Ashok Gupta who has testified that he medically treated the claimant and charged ₹34,000/-vide bill exhibit P-2. Other bills produced by the claimant were not required to be proved by examination of the concerned doctors/chemists and in the absence of any challenge to genuineness thereof could be taken into consideration for computing the amount of expenses incurred on medical treatment. **(See Rajinder Kumar Versus Haryana State through Collector, Hisar and others 1997(1) P.L.R. 410 (Punjab and Haryana High Court) and Smt. Parsanni Versus Sube Singh (2011)-2) PLR 764 (Punjab and Haryana High Court).** The claimant has proved by producing cogent and reliable, oral and documentary evidence that he has spent an amount of ₹52,053/- on his medical treatment. Therefore, the claimant is entitled to award of compensation of ₹52,053/- towards amount spent on his medical treatment.

21. Since, the claimant has not examined any doctor to prove that he requires any future medical treatment, he is not entitled to payment of any compensation towards future medical treatment.

22. Even though the claimant did not produce any bills to prove the amount spent on his transportation, special diet and attendant but it is common knowledge that expenses are incurred by an injured under these heads and therefore on the basis of guess work justified in such cases, it would be appropriate to award an amount of ₹2500/- towards

transportation, ₹5,000/- towards special diet and ₹2500/- towards attendant.

23. The claimant-Bal Mukand has testified in his affidavit as PW-1 that he was earning ₹10,000/- per month by self employment as expert in laying of floor marbles and fixing of tiles but his testimony is not supported by any other oral or documentary evidence and does not deserve any credence. However, the claimant must be deemed to be earning amount of ₹3914/- per month equal to minimum wages notified to be payable to unskilled labour in the State of Haryana by the Labour Department.

24. PW-2 Dr.Ashok Gupta has testified that the claimant remained admitted in his hospital from 3rd September 2009 to 2nd October, 2009. The claimant suffered from fractures and must be considered to have remained on rest for the recovery period of about 3 months. Therefore, the claimant will be entitled to amount of ₹11,742/- towards loss of earnings during the period of treatment.

25. So far as the claim for compensation for permanent disability is concerned, even though the claimant has, as PW-1, testified that he became permanently disabled due to injuries suffered in the accident and the claimant has also produced disability certificate Exhibit P-32 but the claimant did not examine any of the members of the Medical Board to prove his functional permanent disability and the consequent loss of earning capacity. Further, in Disability Certificate Exhibit P-32, it was mentioned that 50% disability was temporary and the condition was likely to improve. In these facts and circumstances, the

claimant must be held to have failed to prove that he suffered from any loss of future earning capacity due to permanent functional disability caused by injuries suffered by him in the accident and the claimant is not entitled to any compensation for the same.

26. However, in view of the nature of injuries and the fractures suffered by him, it would be appropriate to award to the claimant amount of ₹25,000/- towards pain and suffering and amount of ₹25,000/- towards loss of amenities. Since, the claimant cannot be said to have suffered from any shortening of longevity of life, the claimant is not entitled to any compensation under the head of loss of expectancy of life.

27. It follows from the above discussion that the claimant is entitled to payment of compensation as calculated under the following heads :-

Sr. No.	Head	Compensation
1.	Expenses relating to medical treatment, hospitalization and medicines	₹52,053/-
2.	Future medical treatment	-nil-
3.	Expenses relating to Transportation, Special Diet and Attendant	₹10,000/-
4.	Loss of earnings during the period of treatment	₹3914/- (monthly income) x 3 months = ₹11,742/-
5.	Loss of earning capacity due to permanent disability	-nil-
6.	Pain and suffering	₹25,000/-
7.	Loss of amenities	₹25,000/-
8.	Shortening of longevity of life	-nil-
9.	Total Compensation	₹1,23,795/-

28. Admittedly the offending vehicle is owned by respondent No.2 and insured with respondent No.3. The onus to prove the invalidity

of the driving license of respondent No.1 and the breach of the terms and conditions of the Insurance Policy by respondent No.2 was on respondent No.3. Respondent No.3 has not produced any evidence to discharge the onus of proof lying on it in this regard. Since respondent No.1 was having valid and effective driving license and respondent No.2 cannot be said to have committed breach of the terms and conditions of insurance policy, respondent No.3 is liable to indemnify respondent No.2 for payment of compensation payable to the claimant.

29. In **Puttamma and others Vs. K.L.Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443**, Hon'ble Apex Court observed in para 60 as under :

“This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

30. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

31. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

32. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to award interest at the rate of 9% per annum. Accordingly, the claimant will be entitled to payment of compensation amount of ₹1,23,795/- with interest at the rate of 9% per annum from the date of filing of the petition till realization.

33. In view of the above discussion the appeal is allowed and impugned award dated 08.04.2011 is set aside. Accordingly, the claim petition is allowed and the respondents No.1 to 3 are directed to pay amount of ₹1,23,795/- to claimant No.1 jointly and severally with costs and interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

18.12.2018
Kavneet Singh

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No