IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 4367 of 2014
Date of Decision : 26.02.2018

Amandeep ....Appellant

Versus

Tejpal and others ....Respondents

2. FAO No. 5589 of 2014

Tejpal ....Appellant

Versus

Amandeep @ Sonu ....Respondent

3. FAO No. 6290 of 2014

Narwair Singh ....Appellant

Versus

Tejpal and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Naveen Mandhan, Advocate
for Mr. Pankaj Bali, Advocate
for appellants in FAOs No. 4367 & 6290 of 2014
for respondent in FAO-5589-2014.

Mr. Vinod Gupta, Advocate
for respondent no. 3 in FAOs No. 4367 & 6290 of 2014.

Mr. Nonish Kumar, Advocate
for the appellant in FAO-5589-2014 and
for respondent no. 1 in FAOs No. 4367 & 6290 of 2014.

Surinder Gupta, J.

Above mentioned three appeals have been taken up together for disposal as these arise from the same accident and award passed by the Motor Accident Claims Tribunal, Karnal.

2. As per case of claimants, Amandeep (appellant in FAO-

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4367-2014) and Narwair Singh (appellant in FAO-6290-2014), both the claimants, on 09.06.2010 were going on motorcycle bearing registration no. HR-05R-2731, which was being driven by Amandeep and Narwair Singh was pillion rider. At about 07.30 p.m., they reached 1½ kms. ahead from village Ramba towards village Shamgarh, when the offending vehicle (HR-75-1027) being driven by Tejpal (appellant in FAO-5589-2014) at a very high speed and in a rash negligent manner came from opposite side i.e. from the side of village Shamgarh, hit against motorcycle of Amandeep, who fell on the ground and suffered serious injuries.

3. Appellant-Tejpal (FAO-5589-2014) driver of offending vehicle has given his own version of the accident in claim petition filed by him and alleged that on the fateful day at about 07.30 pm., when he reached 1½ kms. ahead of village Ramba from village Shamgarh, Amandeep with pillion rider Narwair Singh came on motorcycle bearing registration no. HR-05R-2731. Amandeep was driving the motorcycle at a very fast and high speed in a rash, negligent and zig-zag manner. When Amandeep reached near motorcycle of Tejpal, he left handle of the motorcycle and Narwair Singh stood on rear seat of the motorcycle as a result of which motorcycle of Amandeep dashed against motorcycle of Tejpal, who fell down and suffered multiple serious and grievous injuries.

4. The Tribunal vide award dated 21.02.2014 allowed compensation of ₹87000/- to Amandeep and ₹62000/- to Narwair Singh for the injuries suffered by them. However, claim petition filed by Tejpal was dismissed. While Amandeep and Narwair Singh have filed appeal claiming enhancement of compensation, Tejpal has challenged the

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dismissal of his claim petition.

5. Firstly, I take the appeal filed by Tejpal.

6. Learned counsel for the appellant-Tejpal has argued that in order to prove that accident was caused due to rash and negligent driving of motorcycle by Amandeep, claimant-Tejpal besides appearing in person, has examined PW-9 Ram Sarup and PW-10 Santu @ Satnam Singh, who have supported the version of appellant-Tejpal that the accident was caused by Amandeep due to rash and negligent driving of his motorcycle. The Tribunal has discarded the version of appellant-Tejpal on the ground that police has registered the FIR regarding this accident and also found him guilty in investigation and presented challan against him. He has argued that appellant-Tejpal after the injuries was admitted in hospital and was lying unconscious. The police has not recorded his statement. Later on he contacted the police with the request to take action against the culprit but the police instead of recording his version regarding the accident, presented challan against him. The complainant had to file complaint wherein Amandeep has been ordered to be summoned by the trial Court to face the trial for offences punishable under Sections 279, 337 and 338. The Tribunal while recording the finding that accident was caused due to rash and negligent driving of his motorcycle by appellant-Tejpal, ignored above facts.

7. I have carefully considered the submissions of learned counsel for the appellant-Tejpal and have also perused the Tribunal file.

8. Before proceeding further, it will be relevant to take note of following facts:-

(i) Date of accident is 09.06.2010

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(ii) Appellant-Tejpal admitted in the hospital on 09.06.2010

(iii) Discharged from hospital : 19.06.2010.

(iv) FIR relating to accident registered on 15.06.2010 (FIR No. 144, P.S., Taraori.

(v) Appellant was arrested on 02.08.2010.

(vi) Challan filed in Court on 06.09.2010

(vii) Charges framed against the appellant on 16.12.2010.

(viii) Claim petition by Tejpal filed on 23.12.2010.

(ix) Criminal complaint filed on 23.12.2010

9. Above facts show that after his discharge from hospital on 19.06.2010, appellant-Tejpal was aware that FIR had been registered against him. On his arrest on 02.08.2010, he came to know that the police is proceeding against him. After filing of challan and framing of charge-sheet, there remained no doubt that he had to face trial for the accident, rash and negligent driving of his motorcycle and causing injuries to Amandeep and Narwair Singh. Till that date, he had not filed any complaint regarding the accident in question. It was on the day he filed petition under Section 166 of the Motor Vehicle Act that he filed criminal complaint against Amandeep. His silence for a period of about 6 months shows that he has filed the complaint giving different version of the accident under some legal advice. Otherwise, he could have immediately moved the police or the Court with his version regarding the accident. The Tribunal while discarding the version of appellant-Tejpal has observed in para 23 of the award as follows:-

> *"23. A perusal of the aforesaid evidence shows that all the injured-claimants namely Amandeep Singh, Narvair Singh and Tejpal, who are also eye-witnesses of the*

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accident, have been examined to prove the accident, mode and manner of the accident. However, the FIR was lodged against Tej Pal because the police after thorough investigation came to the conclusion that the accident took place due to rash and negligent driving of motorcycle No. HR-75-1027 by Tej Pal who by coming on the wrong side of the road struck his motorcycle against the motorcycle no. HR-05R-2731 being driven by Amandeep. As far as the mode and manner of the accident is concerned, it has been brought out that both the claimants Amandeep and Narvair Singh were going towards village Shamgarh whereas Tej Pal claimant was coming from village Shamgarh on his motorcycle. From the copy of site plan Ex. P48 placed on record by learned counsel for claimants Amandeep and Narvair Singh, it is clear that Tejpal while driving his motorcycle struck his motorcycle by coming on the wrong side from front side due to which they fell down on the road and received injuries. Coming on wrong side is prima facie proof of negligence. Still further, a criminal case has been registered against respondent no. 1 claimant Tej Pal vide FIR No. 144 dated 15.06.2010. The registration of criminal case is also prima facie proof of negligence. Reliance in this regard can be placed upon ***Girdhari Lal versus Radhey Shyam and others,***

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> ***1993 (2) PLR (Punjab and Haryana)*** *109. Though, claimant Tej Pal has moved applications Ex. P70 and Ex. P71 to SHO, Police Station Taraori and S.P. Karnal for his false involvement in the case but the said applications were filed on 17.07.2010 after about one month of the accident in question. Though, claimant Amandeep has been summoned on a complaint filed by Tej Pal vide order dated 6.1.2014 Ex. PX to face trial under Sections 279, 337 and 338 IPC for causing this very accident but that order has not attained the finality and no reliance can be placed on order Ex. PX. The contention of learned counsel for claimant Tej Pal that the FIR was lodged after a period of six days is devoid of merit because PW4 Amandeep in his cross-examination deposed that a talk of compromise was going on between the parties and when no settlement could be arrived at then the present FIR was got registered. Therefore, it is safe to conclude that accident took place due to rash and negligent driving of motorcycle by respondent no. 1/claimant Tej Pal driver of the motorcycle no. HR-75-1027...."*

10. I find no merit in the contention of learned counsel for appellant-Tejpal (FAO No. 5589-2014) that police has not recorded his version regarding the accident and has falsely implicated him. A person, who has been falsely implicated, arrested and then charge-sheeted by the

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Court will not remain silent till he is advised to file petition claiming compensation for injuries suffered by him. Besides, statement of both the injured, the police during investigation has also found him *prima facie* guilty of causing the accident. Site plan of the place of occurrence produced on file as Ex. P-48 also records that Tejpal had hit motorcycle of Amandeep by coming on wrong side of the road. Appellant has not filed appeal against award passed in favour of Amandeep and Narwair Singh by Tribunal, where their version regarding manner of accident was accepted and the award in their favour has attained finality.

11. In view of above facts, I find no reason to interfere with the conclusion drawn by the Tribunal that accident was caused due to rash and negligent driving of the appellant-Tejpal. Consequently, appeal (FAO No. 5589-2014) filed by appellant-Tejpal has no merit.

12. As per evidence on record, claimant-Amandeep (FAO No. 4367 of 2014) had suffered 16% disability qua his left lower limb, which as per Dr. Vinod Kumar could be taken as 8% disability qua whole body. This disability has certainly resulted in loss of future prospects and enjoyment of amenities of life. The Tribunal has awarded compensation of ₹16,000/- for the disability suffered by claimant-Amandeep, which I feel is on lower side. By applying the multiplier as per age of claimant at the time of accident and taking his income as ₹4500/- per month, compensation to which claimant is entitled on this score works out to be ₹73,440/- rounded off to ₹73500/-. Claimant is also entitled to compensation of ₹20000/- towards loss of amenities of life. Compensation allowed by the Tribunal for pain and suffering, loss of income, future medical expenses, transportation and special diet is

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adequate and reasonable, which call for no interference.

13. In view of above discussion, compensation to which claimant-Amandeep (appellant in FAO-4367-2014) is entitled works out as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Medical expenses as awarded by the Tribunal	₹31000
(ii)	Compensation towards 8% disability	₹73500
(iii)	Compensation towards loss of amenities of life	₹20000
(iv)	Loss of Income as awarded by the Tribunal	₹20000
(v)	Compensation towards pain and suffering, future medical expenses, transportation and special diet as awarded by the Tribunal	₹20000
Total		**₹164500**

14. Appellant-Narwair Singh in FAO No. 6290 of 2014 had suffered seven injuries in the accident. He was unconscious when brought to hospital, where he remained admitted from 14.06.2010 to 19.06.2010. He has not suffered any permanent disability. The Tribunal has computed amount of compensation allowed to appellant-Narwair Singh, as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Treatment including medicines	₹22000
(ii)	Loss of income	₹20000
(iii)	Pain and suffering and future expenses, transportation and special diet etc.	₹20000
Total		**₹62000**

15. Keeping in view the nature of injuries suffered by appellant-Narwair Singh, I find no reason to interfere with the compensation

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awarded to him by the Tribunal.

16. As a sequel of my above discussion, the appeal (FAO No. 4367 of 2014) filed by appellant-Amandeep has merit and is accepted. Award of the Tribunal is modified and the compensation allowed for the injuries suffered by him is enhanced from ₹87,000/- to ₹1,64,500/- The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the claim petition till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the enhanced amount of compensation awarded to claimant-appellant (Amandeep) in his bank account or pay the same through demand draft.

17. Appeals (FAO No. 5589 and 6290 of 2014) filed by appellants, namely, Tejpal, driver of the offending vehicle and Narwair Singh, have no merit and are dismissed.

February 26, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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