

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 16.04.2018

FAO-5301-2014 (O&M)

Ram Kumar Garg

... Appellant

versus

Rohit Garg & ors.

... Respondents

FAO-5302-2014 (O&M)

Parveen Kumar

... Appellant

versus

Rohit Garg & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Gopal Soni, Advocate for
Mr. Akshay Jindal, Advocate
for the appellant.

Mr. Manish Deswal, Advocate
for respondent Nos.1 and 2.

Mr. Abhishek Goyal, Advocate for
Mr. Pardeep Goyal, Advocate
for respondent No.3.

Hari Pal Verma, J.(Oral)

This order shall dispose of two FAO Nos.5301 and 5302 of 2014, which have arisen from a common award dated 17.12.2013 passed by Motor Accident Claims Tribunal, Kurukshetra (in short 'the Tribunal'). However, for brevity, the facts have been taken from FAO No.5301 of 2014.

The appellant-claimant – Ram Kumar Garg had filed a claim petition under Section 166 of Motor Vehicles Act, 1988 so as to claim compensation on account of injuries suffered by him in the motor vehicular

accident, which took place on 23.08.2011. On the relevant date, the claimant and his son along with clerk Braham Pal was travelling in a car bearing registration No.HR-07P-7500 and coming from Chandigarh to Shahabad (Markanda). However, when car reached near Bhushan Factory, Dera Bassi a dumper bearing registration No.HR-68-A-2903 driven by respondent No.2 was going ahead of the car. The driver of the dumper turned the vehicle towards right side and due to rash and negligent act of the driver of the dumper, the car dashed in the dumper. Though driver of the car tried his best to avoid the accident, but still the accident took place. FIR No.194 dated 26.08.2011 under Sections 279, 337, 338, 427 IPC was registered against respondent No.2. The other claim petition was filed by Parveen Kumar on account of damage to the vehicle.

So far as the claim petition filed by Ram Kumar Garg on account of injuries suffered by him in a motor vehicular accident is concerned, the same was declined on the ground that the claimant had not examined any doctor to prove that he was admitted in the hospital, nor any other person was summoned to prove the record regarding admission in the hospital. However, the claim petition filed by Parveen Kumar for damage to the vehicle was accepted. The Insurance Company has paid an amount of Rs.1,64,090/- for damage caused to the vehicle against the claimed amount of Rs.2,16,188/- on the ground that in the cross-examination, PW1 – Avtar Singh had deposed that the claimant had accepted compensation of Rs.1,64,090/- as full and final settlement of the claim and the consent letter was submitted by Parveen Kumar with his free will and without any pressure.

Not satisfied with the award passed by the Tribunal, the

appellants have filed the present petitions.

Learned counsel for the appellant has argued that though accident took place on 23.08.2011, the claimant Ram Kumar Garg suffered multiple serious and grievous injuries including fracture of neck, femur and dislocation of left hip. The injuries were on the whole body of the claimant, which led to abdominal complications. Similarly, the claimant Parveen Kumar is entitled for damage caused to the vehicle to the extent of Rs.2,16,188/- instead of Rs.1,64,090/- and the claimant can claim compensation on account of damage to the car from two insurance companies and in support of his contention, learned counsel for the appellant has relied upon ***Dr. A.C.Mehra vs. Behari Lal and anr., 1997 (1) ACC 657.***

Learned counsel for the insurance company has argued that claimant – Ram Kumar Garg has failed to prove injuries while the other claimant Parveen Kumar has already been awarded damages by United India Insurance Company, therefore, the claimant Parveen Kumar has not been compensated by New India Insurance Company with which the car was insured. The claimant cannot claim damages from the other insurance company with which the dumper was insured. It would tantamount to undue enrichment to the claimant, as he has already been compensated by the United India Insurance Company.

I have heard learned counsel for the parties and perused the record with their assistance.

Findings recorded in paragraphs 20 and 21 of the award passed by the Tribunal is clear answers to the arguments put-forward by the counsel for the appellant, which are reproduced as under:

“20. From the above said testimony, it is very clear that the claimant could have claimed compensation on account of damage to the car only from one company. Since the claim was satisfied by United India Insurance Company Ltd. this claim petition is not maintainable.

21. Now coming to the claim petition of Ram Kumar Garg. He (PW4) deposed that in the accident multiple serious and grievous injuries including fracture of neck, femur and dislocation of left hip. There were injuries on the whole body, which led to abdominal complications. No doctor has been examined from Alchemist Hospital to prove that he was admitted in the hospital nor any person from the hospital was summoned to prove the record. The accident took place on 23.08.2011. He was admitted in Alchemist Hospital on 26.08.2011 and the reason for admission has been mentioned as constipation in the document Ex.P6/7. He was discharge on 29.08.2011. Ex.P8 is the medication record of Alchemist Hospital. Ex.P9 is a consent form for admission in Fortis Hospital. The document Ex.P9 to Ex.P12 relate to Fortis Hospital. In the column of illness, it has been mentioned that patient was admitted with c/o abdominal distention since past 3 days. Constipation x 3 days. No h/o vomiting/fever/jaundice no c/o bleeding Per Rectum.”

Admittedly, the claimant Ram Kumar Garg though deposed that he received multiple serious and grievous injuries and these injuries further led to abdominal complications, but no doctor was produced by the claimant. The Tribunal has rightly declined the claim viz-a-viz the injuries suffered by the claimant. Similarly, for damage to the car, the claimant has already been awarded compensation by the United India Insurance Company Ltd., therefore, he cannot be allowed to claim damages from another insurance company with whom the dumper was insured. The

judgment upon which learned counsel for the appellant has placed reliance is not applicable in the present case.

Thus, when the claimant has failed to prove that he suffered injuries in the accident and was treated from the Alchemist Hospital or any other hospital, this Court finds that the claimant has miserably failed to prove the injuries suffered in the accident and the doctor treating him for the injuries. The claimant has also not summoned any other person from the hospital to prove the record of his admission in the hospital because of injuries suffered by him in the accident.

Accordingly, both the appeals are dismissed being devoid of any merit.

16.04.2018
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(HARI PAL VERMA)
JUDGE

1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No