

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

1. FAO No.6592 of 2018 (O&M)
Dated of Decision:29.11.2018
- IFFCO TOKIO General Insurance Company Ltd. Appellant
- Versus
- Sat Prakash and othersRespondents
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2. FAO No.7044 of 2018 (O&M)
- IFFCO TOKIO General Insurance Company Ltd. Appellant
- Versus
- Azad Singh and othersRespondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

LISA GILL, J.

This judgment shall dispose of FAOs No.6592 and 7044 of 2018 as both appeals arise out of common award dated 16.07.2018 passed by Motor Accident Claims Tribunal, Narnaul (for short, the 'Tribunal').

The above said appeals have been preferred by the Insurance Company challenging the award dated 16.07.2018 passed by the learned Tribunal, vide which claimants Sat Prakash and Azad Singh were awarded compensation of Rs.24,25,001/- and Rs.2,28,619/- respectively, on account of injuries sustained by them in a motor vehicle accident on 01.05.2016.

MACT case No.88 of 2016 was filed by the claimant Sat Prakash claiming compensation on account of injuries sustained by him in a motor vehicle accident on 01.05.2016, whereas MACT case No.89 of 2016 was filed by the claimant Azad Singh claiming compensation on account of injuries

sustained by him in the same motor vehicle accident.

Brief facts necessary for adjudication of the case, are that as per the averments in the claim petitions, the claimants were involved in a motor vehicle accident on 01.05.2016 when they were going to Mohindergarh from their house on a motorcycle being driven by Ravinder at a moderate speed. Claimants Sat Prakash and Azad Singh were pillion riders. At about 05.30 p.m., when Ravinder took the motorcycle onto the main road leading from Charkhi Dadri-Mohindergarh to Narnaul and had covered some distance, a Mahindra tractor bearing registration No.HR-34G/3198, being driven by respondent No.1 at a fast speed and in rash and negligent manner coming from Mohindergarh side, took a sudden turn and hit against the motorcycle. All of them fell from the motorcycle and said claimants sustained grievous injuries whereas Ravinder sustained simple injuries. Driver of the offending tractor fled from the spot along with his tractor. Both the claimants were rushed to Civil Hospital, Mohindergarh, where they were medico-legally examined and referred to Civil Hospital, Narnaul. Claimant Sat Prakash was shifted to Pooja Hospital, Narnaul, but because of non-availability of the doctor, he was shifted to Birendra Hospital, Rewari, where he underwent a number of surgeries. FIR Ex.P31 was registered against respondent No.1.

Sat Prakash sustained compound fracture in right femur condyle right side and he was operated upon by Dr. Birender Singh on 04.05.2016 and thereafter, discharged on 12.05.2016. Claimant was again admitted to the hospital on 09.07.2016 and discharged on 22.07.2016. As per Ex.P1, claimant Sat Prakash suffered 60% permanent disability on account of 'foot drop right with equinus deformity right foot with toe claining with stiff knee with unstable knee with non-union fracture supraclaviar femur right with shortening of right limb.'

Claimant Azad Singh was admitted in Life Care Hospital, Rewari on 01.05.2016 and discharged on 04.05.2016. He suffered fracture and dislocation of shaft of femur. Compensation was, thus, prayed for.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending tractor by its driver and awarded a sum of Rs.14,25,001/- to claimant Sat Prakash on account of the injuries and disability suffered by him. Rs.2,28,619/- was awarded to claimant Azad Singh on account of injuries and disability suffered by him along with interest @ 7.5% per annum from the date of filing of the petition till its realization.

Learned counsel for the appellants vehemently argues that it is a matter of record that both the injured/claimants along with one Ravinder were riding on the motorcycle at the relevant time. Thus, contributory negligence is proved on record. Learned Tribunal has wrongly concluded that there was no question of any contributory negligence on the part of the claimants. It is further submitted that there is an unexplained delay in lodging of the FIR. Accident took place on 01.05.2016, whereas the FIR Ex.P31 was registered on 12.05.2016 on the statement of the claimant Azad Singh. There is no explanation as to why the third person, namely, Ravinder, who was driving the motor-cycle, did not immediately inform the police authorities about the accident in question.

While not raising any serious objection as regards compensation awarded to claimant Azad Singh, it is submitted that the learned Tribunal, has wrongly assessed the disability of claimant-Sat Prakash to be 60% and calculated loss of income accordingly. Disability as mentioned in the disability certificate (Ex.P1) is qua the limb and not the whole body. Therefore, excess compensation has been awarded by the learned Tribunal on his count. It is

prayed that the impugned award in both the cases be set aside.

I have heard learned counsel for the appellant and gone through the record with his able assistance.

The argument raised to the effect that there is contributory negligence on the part of the respondents, merely on the ground of triple riding of the motor-cycle is not tenable. As per FIR (Ex.P31) registered on the statement of Azad Singh, it is specifically mentioned that he along with Ravinder and Sat Prakash were proceeding from Charkhi Dadri-Mohindergarh to Narnaul. The offending tractor driven by respondent No.1 came from Mohindergarh side itself in a rash and negligent manner at a high speed and while taking a sudden turn, hit against the motorcycle. The claimants received grievous injuries. Ravinder received simple injuries. Respondent/driver fled from the spot along with tractor. It is not in dispute that the offending vehicle was coming from the same side as the claimants along with Ravinder. As per the FIR, the claimants along with Ravinder were going on the motorcycle at a moderate speed. The offending tractor was stated to be coming from Mohindergarh side at a high speed being driven in a rash and negligent manner by respondent No.1. It took a sudden turn and hit against the motorcycle. There is nothing on record to indicate that the motorcycle on which claimants and Ravinder were riding, was being driven in a rash and negligent manner. Negligent and rash act cannot be presumed merely on the ground of triple riding of the bike. It has been held by Hon'ble Supreme Court in Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others 2015 (1) SCC (Civil) 570, that mere fact of triple riding would not make any difference and it cannot be taken as a ground to presume contributory negligence on the part of the claimants, unless there is specific evidence to the contrary. Therefore, conclusion of the learned Tribunal on this count does not call for any

interference.

It is further argued that delay in lodging of the FIR is fatal to the case of the claimants and it proves that the vehicle in question has been falsely involved only for the purpose of claiming compensation. The said argument is also devoid of any merit for the reason that delay in lodging of the FIR is clearly explained. Accident in question took place on 01.05.2016. FIR Ex.P31 was registered on the statement of the injured Azad Singh on 12.05.2016. It is specifically recorded in the police proceedings that information regarding the accident was received by the police authorities on telephone, from the hospital, on the same day as the accident itself i.e. 01.05.2016. Police officials reached Civil Hospital, Mohindergarh, but it transpired that the injured were shifted to some other hospital. Claimant Azad Singh has stated in the FIR that he was under the treatment at Life Care Hospital, Rewari, therefore, the FIR could not be registered at the earliest. In this situation, the appellant cannot derive any benefit from Ravinder not having come forward to lodge an FIR immediately. After investigation, report under Section 173 Cr.P.C. was presented against the respondent/driver and charge was framed against him. Charge-sheet is available on record as Ex.P34. Respondent/driver did not step in the witness box. He was proceeded against ex parte. Therefore, the claimants have duly proved on the touchstone of preponderance of probabilities that the accident in question took place due to the rash and negligent driving of the offending tractor by respondent/driver.

It is further vehemently argued that disability of the claimant Sat Prakash has been wrongly assessed at 60% though as per the disability certificate Ex.P1 reference is of 60% disability qua the limb and not the whole body. At this stage, it is relevant to note that Sat Prakash has claimed to be a labourer earning his living by use of camel cart. Injuries suffered by Sat

Prakash are duly proved on record by PW5 Dr. Lav Kumar. The nature of injuries is clearly delineated in the evidence of PW4 Satish Kumar who proved the medical report of Sat Prakash. It is stated that Sat Prakash sustained compound fracture right femour condyle right side and was operated upon by Dr. Birender Singh on 04.05.2016. As per the disability certificate, 60% permanent disability had been caused on account of 'foot drop right with equinus deformity right foot with toe claining with stiff knee with unstable knee with non union fracture supraclaviar femur right with shortening of right limb'. There is no denial to the factum of Sat Prakash being a labourer, working with his camel cart. In this view of the matter, functional disability of the claimant cannot be assessed to be less than 60%.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in award dated 16.07.2018 which calls for any interference in these appeals preferred by the Insurance Company.

No other argument has been raised.

The appeals are accordingly dismissed with no order as to costs.

November 29, 2018.
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(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No