

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2424 of 1998 (O&M)

Date of Decision : 26.03.2019

Malkiat Singh

....Appellant

Versus

Jaswant Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. T.P.S. Tung, Advocate
for the appellant.

Mr. Parminder Singh Kanwar, Advocate
for respondents no. 1 and 3.

Ms. Madhu Sharma, Advocate
for respondent no. 2.

Surinder Gupta, J.

This is appeal against award dated 15.12.1997 passed by Motor Accident Claims Tribunal, Hoshiarpur, dismissing petition filed by claimant-appellant under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries suffered by him on 28.01.1994 in an accident with Maruti Van bearing registration no. DID-6395 (later referred to as 'the offending vehicle').

2. Facts of the case as narrated in para 24 of the claim petition are as follows:-

“That on the fateful day i.e. on 28.01.1994 the injured applicant alongwith his friend Opinderdeep Singh son of Gurdeep Singh was coming from Haryana town to his village Adowal Garhi on the motorcycle of the cousin of Opinderdeep Singh (new Hero Honda) and when they reached near bridge of Sherpur Katcha on Hoshiarpur-Dasuya Main Road, a Maruti Van bearing registration no. DDI-6395 came from the side of Hoshiarpur at a very high speed which was being driven by respondent no. 3 in a rash and negligent manner, first struck against the another

motorcycle which was coming ahead of the Maruti Van and after striking this motorcycle the driver of the Maruti Van i.e. respondent no. 3 became perplex and could not control the Maruti Van and came towards the wrong side of the road i.e. towards the motorcycle of the applicant and struck against him. Both the applicant and Opinderdeep Singh received injuries and thereby both the lower bones of right leg and the upper right femur of right leg, got fracture besides injuries to his right eye. The accident was witnessed by Harjinder Singh son of Harbans Lal and Sardara Singh, who were also coming on their scooter at that time and they took the applicant and the other injured to civil hospital, Haryana where after first aid both of them were referred to civil hospital Hoshiarpur where they remained admitted as an indoor patient till 03.03.1994 and was still under treatment. The respondent no. 3 being driver of Maruti Van had caused injuries while driving the vehicle in a rash and negligent manner and thereby liable to pay compensation to the tune of ₹5,00,000/- to the applicant.....”

3. Claim petition was originally filed against Jaswant Singh and Oriental Insurance Co. Ltd., insurer of the offending vehicle. In reply filed by respondent no. 1-Jaswant Singh, he took preliminary objection that at the time of alleged incident the offending vehicle was being driven by his son Inderpal Singh. He, however, denied the accident alleging that at the relevant time he was going with his son from Hoshiarpur to Dasuya one motorcycle after colliding with another motorcycle struck against the side of van. The accident had taken place due to the fault of driver of the motorcycle.

4. In reply filed by respondent no. 2-Insurance Company, insurer of the offending vehicle, the accident was denied. In the alternative it was pleaded as follows:-

“24.As per the verification made by the Insurance Company, no accident has taken place with the above-said Maruti van and the applicant has filed application with

respondent no. 1. It is further denied that the respondent no. 3 was driving van at the time of alleged accident. In para no. 24 of the claim petition it has been specifically pleaded by the applicant that at the time of alleged accident Maruti Van was being driving by respondent no. 1 in rash and negligent manner. Hence, they are estopped by their act and conduct to take plea that the van was being driven by respondent no. 3. This plea was taken by the respondent no. 1 on the preliminary objection taken by the insurance company in the written statement as respondent no. 1 was not in possession of valid driving licence, and as such the application has been filed with collusion and in order to shift the liability on the insurance company the objection has been taken by respondent no.1. Moreover, the driver of the motorcycle was also not in possession of valid driving licence at the time of accident and was driving motorcycle against the provisions of Motor Vehicles Act and is liable for the alleged accident.”

5. An objection was also taken that driver of the offending vehicle was not in possession of valid driving licence at the time of accident.

6. Respondent no. 3 in his separate written statement also denied the accident with the offending vehicle and took the plea as taken by his father, respondent no.1.

7. Pleadings of parties led to framing of the issues as follows:-

- (1) Whether the accident took place due to rash and negligent driving by respondent no. 3 while driving Maruti Van No. DID-6395? OPA.
- (2) Whether the claimant received injuries in the said accident which took place on 28.01.1994? OPA
- (3) Whether respondent no. 3 was having valid driving licence at the time of accident? OPR.
- (4) Relief.

While deciding issue no. (1), Tribunal observed that claimant has

failed to prove that the accident took place due to rash and negligent driving of the offending vehicle by respondent no. 3. While arriving at the above conclusion, the Tribunal took note of daily diary report (Ex. RZ), registered by the police on the statement of Opinderdeep Singh, driver of the motorcycle, who has stated that the accident had not taken place due to negligence of driver of the offending vehicle.

9. I have perused the daily diary report (Ex. RZ) with the assistance of learned counsel for parties, wherein driver of the motorcycle, with whom the appellant was pillion rider, has stated that when they were coming towards Hoshiarpur offending vehicle crossed a motorcycle but he was not aware if side of the Van hit that motorcycle. Thereafter, driver of the offending vehicle took right side turn and it hit his motorcycle as a result of which he and pillion rider fell down and suffered injuries. In the end he has stated that the accident had taken place all of sudden without any fault on the part of driver of the offending vehicle. From the *rapat*, it is evident that the accident had taken place due to negligence of driver of the offending vehicle who after hitting another motorcycle took right side turn and hit the motorcycle of claimant-appellant. Opinderdeep Singh has not been examined by driver and owner of the offending vehicle. After reporting the matter the police had not swung into action or had even recorded the statement of claimant, who was one of the victim. This DDR entry, which was relied upon by the Tribunal, lend support to testimony of claimant that the offending vehicle after hitting another motorcycle colluded motorcycle on which claimant was a pillion rider resulting in injuries on his person. Tribunal has not taken note of contents of DDR entry while concluding that this document absolves respondents no. 1 and 3.

driver of other motorcycle hit by the Maruti Van, was not produced. This observation cannot be a reason to absolve respondents no. 1 and 3. Claimant could not know as to who was occupant of that motorcycle. He had suffered injuries and was immediately shifted to hospital, where he remained admitted from 28.01.1994 to 03.03.1994. It is option of the driver and owner of that motorcycle to lodge the complaint with the police or to proceed against driver of the offending vehicle. If he has not opted to proceed against driver of the offending vehicle or the driver of the motorcycle on which claimant was a pillion rider has effected the compromise with respondents no. 1 and 3, it does not effect the right of appellant in any manner. It is proved on record that the accident took place and the same was caused by driver of the offending vehicle due to his rash and negligent driving. I find observations of Tribunal on issue no. (1) as unsustainable and not based on evidence on record, as such, the same are reversed.

ISSUE NO. (2)

11. The Tribunal observed that the appellant has suffered injuries in the accident and computed the amount of compensation to which he is entitled as follows:-

1.	Actual expenses spent on treatment including price of plate w.e.f. 28.01.1994 to 03.03.1994	₹21442.00
2.	For pain, shock, and suffering, for loss of amenities of life and also 5% permanent disability	₹25000.00
3.	For special diet	₹2500.00
	Total	₹48942.00
	Round figure	₹48900.00

12. The Tribunal observed that the claimant is entitled to compensation of ₹48900/- from the respondents. The quantum of compensation as assessed by the Tribunal has not been disputed by learned

counsel for the appellant.

13. On issue no. (3) as to whether respondent no. 3 was having a valid driving licence, the Tribunal observed that driver of the offending vehicle was not holding a valid driving licence at the time of accident. The Tribunal accepted the submission of learned counsel for insurance company that this claim petition has been filed by claimant in collusion with respondents no. 1 and 3 and gave reasons for the same as follows:-

- (i) Earlier claimant filed claim petition against Jaswant Singh, respondent no. 1, alleging him to be driver of the offending vehicle. When he denied this fact his son was impleaded. The Tribunal observed that at the time of filing of claim petition, claimant was not sure as to who was driving the offending vehicle.
- (ii) In application seeking amendment of claim petition to add respondent no. 3 as party, claimant has submitted that he was apprised of owner and driver of the Maruti Van by eye-witness as Jaswant Singh.
- (iii) In his testimony, respondent no. 3-Inderpal Singh has stated that his father was not holding the valid driving licence to drive the van, which shows that the necessity to replace Jaswant Singh with Inderpal Singh arose as respondent no. 1 was not holding a valid driving licence.

14. Above observations of Tribunal are not based on evidence on record. Claimant while appearing as PW-1 has stated that the accident took place due to rash and negligent driving of the driver of the offending vehicle. In reply to question put by counsel for insurance company, he stated that Inderpal Singh was driving the van at the time of accident.

15. The mere statement of Inderpal Singh that his father was not holding any driving licence cannot be taken as a reason for substituting respondent no. 3 in place of respondent no. 1. Insurance Company in its

written statement has specifically stated that the matter was got verified by the insurance company and it was found that no such accident had taken place. The report of detective engaged by the insurance company though not proved but has been placed on file, perusal of which shows that detective engaged by insurer found that Jaswant Singh was driver of the offending vehicle. He also observed that contention of claimant about accident of the offending vehicle with the motorcycle was correct.

16. The testimony of claimant and RW-1 Inderpal Singh, proves on file that at the time of accident he was driving the offending vehicle. The presumption drawn by the Tribunal that respondent no. 3 has been replaced in place of respondent no. 1 as he (respondent no. 1) was not having a valid driving licence is just presumptive and not supported by any evidence. The onus was on insurer of the offending vehicle to prove that at the time of accident it was respondent no. 1, who was driving the offending vehicle. The mere fact that respondent no. 1 was not holding any driving licence cannot be a reason to draw the presumption that he was driving the offending vehicle at the time of accident, rather the presumption to the contrary could be drawn that he was not driving the offending vehicle as he was not holding a valid driving licence. The findings recorded by Tribunal, as such, on issue no. (3) are not sustainable and are set aside.

17. It is pertinent to mention here that even if this finding of Tribunal is sustained that the offending vehicle at the time of accident was being driven by respondent no. 1 instead of respondent no. 3, claimant could not be denied right to recover the compensation for the injuries suffered by him in the accident. In case respondent no. 1 is held to be driving the vehicle, the Tribunal could allow the compensation to be recovered from respondent no.1

it is proved that the vehicle at the time of accident was being driven by respondent no.3, who was holding a valid driving licence. Respondents no. 1 and 3 being owner and driver of the offending vehicle are liable to pay amount of compensation as computed by the Tribunal and respondent no. 2, insurer of the offending vehicle, is liable to indemnify the owner as per terms and conditions of the insurance policy.

18. As a sequel of my above discussion, this appeal has merit and the same is allowed. Claimant-appellant is awarded compensation of ₹48900/- with costs of claim petition and this appeal. Claimant shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till the date of actual payment (rate of interest @ 9% has been awarded as the claim petition pertains to the year 1994, when rate of interest being allowed by the banks was quite high). Counsel fee is assessed as ₹10,000/-.

March 26, 2019

jk

Whether speaking/reasoned

Whether reportable

(SURINDER GUPTA)

JUDGE

Yes/No

Yes/No