

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

FAO-1082-2001 (O&M)

Date of decision : 12.7.2019

R.S. Yadav

.....Appellant

Versus

Bijender and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Mohit Aneja, Advocate for
Mr. K.S. Dhaliwal, Advocate for the appellant.

Mr. Sandeep Verma, Advocate for
Mr. M.S. Yadav, Advocate for respondent No. 1.

KULDIP SINGH, J (ORAL)

Appellant who is the owner of the maruti car bearing registration No. HR-26-A-0505 has filed the present appeal against the award dated 28.11.2000 passed by Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') vide which compensation to the tune of Rs. 70,000/- was awarded to claimant-respondent No. 1 namely Bijender along with interest @ 12% per annum from the date of institution of the claim petition till its realization.

Facts of the case are that on 1.9.1997, claimant-Bijender along with his friend Nand Kumar was going from Gurgaon to Mehrauli on his scooter bearing registration No. HR-12-A-9976. When they reached near ITI, a maruti car bearing registration No. HR-26-A-0505 came from the opposite side being driven by respondent No. 1-Ramesh Kumar in a zig zag

manner in a very fast speed and while coming to the wrong side of the road, hit the scooter. As a result of the accident, claimant fell down along with scooter and suffered fracture of his leg along with some other injuries. He was removed to Kalyani Hospital by Nand Kumar with the help of some passers by. A criminal case was registered at Police Station City, Gurgaon. Claimant claimed that he was also treated at Rao Tula Ram Memorial Hospital, Delhi and Deen Dayal Upadhaya Hospital New Delhi and AIIMS, Delhi and has spent Rs. 1.00 lac on his treatment.

The name of driver-respondent No. 1 was struck off by the Tribunal on the statement of learned counsel representing the claimant. Since the car was not insured, the name of Insurance Company was also struck off. Owner of the car in the reply took the plea that car has been falsely involved. No accident took place with his car bearing registration No. HR-26-A-0505.

From the pleadings following issues have been framed: -

1. Whether injuries were caused to Bijender by rash and negligent driving of vehicle No. HR-26-A-0505 driven by Ramesh Kumar driver as alleged? OPP.
2. If issue No. 1 is proved to what amount petitioner is entitled to receive compensation? OPP.
3. Relief.

The Tribunal while deciding issue No. 1 held that car was involved in the accident and was driven in rash and negligent manner. While deciding issue No. 2, the Tribunal granted Rs. 60,000/- as general damages and Rs. 10,000/- as special damages. Hence, the total amount of compensation to the tune of Rs. 70,000/- was awarded to the claimant-

Bijender.

Heard, learned counsel for the appellant-respondent, learned counsel for claimant-respondent and perused the case file as well.

Learned counsel for the appellant has vehemently argued that in this case FIR was lodged promptly in which name of the car is not mentioned. It is stated that the statement of the claimant-appellant as well as his eye-witness-Pardhuman Singh is not dependable to hold that the car was involved. It is stated that the police had not taken the car into possession. Nand Kumar who is a pillion rider also appeared as PW-6 and his statement is also not dependable.

A perusal of the FIR (Ex. P3) shows that though in the FIR number of the car is not mentioned but it is described as maruti car 800 CC of white color. Respondent-Dr. R.S. Yadav while appearing as RW-1 has not denied that his maruti car is 800 CC and is of white color. He has stated that he never employed any driver. Police never came and took his car into possession nor the police ever came to investigate the matter.

It comes out that respondent-Dr. R.S. Yadav is a doctor by profession and if, the police for one or the other reason decided not to approach him and take his car into possession that cannot be taken as an adverse inference against the claimant-Bijender. Respondent never submitted his car for mechanical examination before any authority so as to show that his car never met with an accident.

It further comes out that Pardhuman Singh, AW is a lecturer by profession in a government college. He has also stated that the offending car came from behind and after overtaking the scooter turned back and hit the

scooter. Claimant-Bijender as well as eye-witness Nand Kumar has given the number of car.

The evidence on file shows that claimant-Bijender suffered fracture of the left leg. There is no reason for him to falsely involve the car of the respondent. Therefore, the lapse is on the part of the investigating agency cannot help the respondent. The evidence of two eye witnesses produced by the claimant-Bijender was rightly believed by the Tribunal. The proceedings before the Tribunal are in the nature of summary inquiry and the strict provisions of Code of Civil Procedure are not applicable. Hence, the findings on issue No. 1 are affirmed.

Coming the quantum of compensation, this Court finds that the claimant-Bijender got himself treated from different hospitals. There is a 30% disability. The fracture of leg was there. Therefore, allowing Rs. 60,000/- on account of injury including fracture, disability, pain and suffering, mental shock under the general damages is not excessive and Rs. 10,000/- for special damages are also not excessive.

Learned counsel for the appellant has argued that the interest @ 12% per annum is excessive. Considering the rate of interest in the year 2000, the rate of interest allowed by the Tribunal is reduced from 12 % to 9 % per annum.

With the above noted modification in the rate of interest, appeal is dismissed.

(KULDIP SINGH)
JUDGE

12.7.2019
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