

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

Date of decision: 15.3.2019

1.

FAO No. 124 of 2010(O&M)

Dalbir Singh

.....Appellant

VERSUS

Kuldeep Singh and others

.....Respondents

Present: Mr. B.P.S. Virk, Advocate for the appellant.

Mr. Lal Singh Sandhu, Advocate for respondent No.1.

2.

FAO No. 2478 of 2010(O&M)

Kuldeep Singh

.....Appellant

VERSUS

Prem Kumar and another

.....Respondents

Present: Mr. Lal Singh Sandhu, Advocate for the appellant.

Mr. B.P.S. Virk, Advocate for respondent No.2.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.124 and 2478 of 2010 as these have emerged out of award dated 7.11.2009 passed by the Motor Accidents Claims Tribunal, Sirsa (in short 'the Tribunal') whereby compensation has been assessed on account of injuries sustained by Kuldeep Singh – appellant (in FAO No.2478 of 2010) in a motor vehicular accident that took place on 27.10.2006.

FAO No.124 of 2010 has been filed by Dalbir Singh arrayed as respondent No.2 in the claim application being owner of tractor No.PB-13H-9724 (alleged offending vehicle) whereas other appeal has been preferred by Kuldeep Singh – injured seeking enhancement of compensation. For facility of reference, Dalbir Singh shall be referred to as the appellant whereas Kuldeep Singh as claimant.

FAO Nos.124 and 2478 of 2010

Counsel for the appellant would argue that Dalbir Singh was not registered owner of the alleged offending vehicle on the date of accident i.e. 27.10.2006, therefore, liability to pay compensation has been wrongly fastened upon him. It is further argued that Jaspal Singh son of Labh Singh was the registered owner of the vehicle and copy of the registration certificate Ex.P36 is available on record and the Tribunal in para 21 of the award has noticed that as per Ex.P36, earlier Jaspal Singh son of Labh Singh was registered owner but it is not certain as to when the said tractor was purchased by Dalbir Singh. The date underneath the seal of the authority is not clearly visible and respondent No.2 did not summon the record of the registering authority to prove this fact.

The second submission made by counsel is that the aforesaid vehicle was falsely indicted in the proceedings in connivance with Prem Kumar, the alleged driver of offending vehicle, as Prem Kumar had some dispute with the appellant. In addition, it is argued that Kuldeep Singh – injured has admitted that he did not possess driving licence and as such he was driving the vehicle without any licence, therefore, contributory negligence is liable to be attributed to him.

Counsel representing the claimant, on the other hand, would argue that evidence adduced by the appellant or his contention that he was not owner of the vehicle cannot be entertained much less accepted as no such plea was raised by the appellant in the written statement who on the contrary admitted himself to be owner of the offending vehicle. The appellant did not examine the witness of the concerned registering authority to prove that on the day of occurrence, Jaspal Singh was registered owner of the offending vehicle. He has also refuted contention of the appellant that the offending vehicle was indicted in the criminal and civil proceedings in collusion with Prem Kumar, driver of the offending vehicle. It is argued that on the basis of criminal proceedings initiated at the behest of Kuldeep Singh – injured, Prem Kumar was put to trial and it is highly difficult to accept that a person would permit his implication in the criminal proceedings and incur liability to pay compensation by way of collusion with the injured/claimant. In addition, it is argued that no such plea of contributory negligence was raised in the written statement filed by the respondents before the Tribunal when otherwise it has been established to discharge onus of issue No.1 that accident is the result of rash and negligent driving of offending vehicle by Prem Kumar.

To substantiate his plea for enhancement of compensation, counsel for the claimant would refer to the testimonies of Dr. Ram Kumar, Consultant Neurosurgeon, Metro Hospital, Hisar PW4, noticed in para 16 of the award and that of Dr. Vineet Bhai, Assistant Professor, Department of Neuro Surgery, PGIMS, Rohtak PW5 who proved disability and disability certificate Ex.P33. It is vehemently argued that as the injured suffered head injury resulting in moderate right sided hemi paresis upper

limb more than lower limb at a young age of 19 years, he is entitle to compensation qua disability by applying multiplier method. Claimant may be allowed compensation for loss of amenities of life, matrimonial prospects, services of an attendant etc. It is argued that compensation allowed by the Tribunal qua pain and suffering and special diet is on lower side and needs enhancement.

Counsel representing the appellant, in reply, would state that he has already paid the compensation along with interest assessed by the Tribunal and the same has been withdrawn by the claimant. He would further argue that the injured has been reasonably compensated by the Tribunal and there is no justification for allowing compensation more than what has been assessed by the Tribunal.

At the very outset, it is pertinent to mention that records of the case have burnt in a fire incident, therefore, the documents which were produced before the Tribunal and marked as such are not available for appreciation. However, a copy of registration certificate of the offending vehicle has been appended with FAO No.124 of 2010 filed by Dalbir Singh – appellant. Perusal of the written statement, a true copy whereof is available on record as Annexure A-2 makes it evident that the appellant has admitted himself to be owner of the offending vehicle in various paras of reply on merits. In one of the preliminary objections, it is averred that petition is bad for misjoinder and non-joinder of necessary parties but in the succeeding para 7 it has been specifically mentioned that owner of the scooter was a necessary party. As the appellant did not raise an issue that he was not owner of the offending vehicle on the day of occurrence, his statement during the course of evidence that Jaspal Singh was registered

owner of the vehicle has rightly been discarded by the Tribunal more particularly in the circumstances that endorsement with regard to transfer of vehicle in the name of appellant was made in the Registration Certificate but the date of such endorsement was not legible and the appellant did not bother to examine a witness from the concerned registering authority to prove, on the basis of record, that registration of the vehicle was not transferred in his name prior to the accident in question. In this view of the matter, the appellant cannot be heard to say that either he was not registered owner of the vehicle on the date of accident or liability to pay compensation has wrongly been fastened upon him.

So far as plea of the appellant with regard to collusion between the claimant and Prem Kumar, driver of the offending vehicle, it is difficult to accept to reason that Prem Kumar incurred the risk of criminal proceedings at the cost of siding with the claimant to get compensation even against Dalbir Singh – appellant. The contention of the appellant that injured can be attributed contributory negligence is patently misconceived in view of the fact that no such plea has been raised by the respondents in the written statement. This apart, merely because the injured was not possessing a driving licence ipso facto does not amount to contributory negligence on his part. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Sudhir Kumar Rana Vs. Surinder Singh, 2008(3) RCR (Civil) 265.**

This brings the Court to compensation assessed by the Tribunal and plea of the claimant for enhancement thereof.

The Tribunal has awarded Rs.1,83,171/- detailed hereunder;-

On account of 50% permanent
disability vide P33

Rs.1,00,000/-

Medial bills	Rs.63,171/-
Pain and suffering	Rs.15,000/-
Diet money	Rs.5,000/-

As has been noticed hereinbefore, while noticing the contentions raised by counsel for the claimant, the injured examined Dr. Ram Kumar, Consultant Neuro Surgeon, Metro Hospital, Hisar PW4 and Dr. Vineet Bhai PW5. Dr. Ram Kumar has deposed that injured was admitted on 28.10.2006 and discharged on 20.11.2006 and his CT scan head showed fracture right temporal bone with diffuse brain edema with sub arachnoids hemorrhage in posterior inter hemispheric fissure. MRI brain revealed non-hemorrhagic contusion edema right fronto temporal cortex and he was on ryles tube feed at the time of discharge. He produced on record CT scan report Ex.P24, copy of MRI report Ex.P25, copy of discharge summary Ex.P27, copy of prescription slip Ex.P28, copy of progress report Ex.P29, copy of registration data Ex.P30, copy of x-ray report Ex.P31 and copy of treatment chart Ex.P32. However, in his cross examination, he stated that possibility of sustaining such type of injury due to fall on hard surface cannot be ruled out.

Dr. Vineet Bhai PW-5 stated that on 28.01.2008, Kuldeep Singh came with history of head injury with moderate right sided hemi paresis upper limb more than lower limb for assessment of disability and from neuro surgery point of view his disability was assessed as 50%, permanent in nature and certificate is Ex.P33. The injured was 19 years old young boy at the time of accident that rendered him 50% disable neurologically because of moderate right side hemi paresis upper limb more than lower limb. There is no clear evidence on record as to how this

disability is to be computed for the purpose of disability to the whole body. Taking a reasonable view, functional disability is assessed at 20% for the purpose of computing loss of future income. The minimum wage of an unskilled worker at the relevant time was approximately Rs.2400/- per month. A multiplier of 18 would be applied and the same is calculated at Rs.1,03,680/- (Rs.2400 x 12 x 18 x 20%). The claimant is awarded a sum of Rs.20,000/- for loss of amenities of life and matrimonial prospects. Compensation for medical expenses, pain and suffering and special diet allowed by the Tribunal are confirmed. Claimant is awarded additional sum of Rs.10,000/- for services of an attendant, transportation and loss of income.

In view of the above, total compensation is Rs.2,16,851/- and additional amount is Rs.33,680/- payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be paid jointly and severally by the respondents before the Tribunal.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

MARCH 15, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no