

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

FAO No.1722 of 2011 (O&M)

Date of Decision: 23.09.2019

Baljit Singh (since deceased) through his LRsappellants

Vs.

Ritish and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Yogesh Gupta, Advocate, for the appellants.

None for respondent Nos.1 and 2.

Mr.Rajbir Singh, Advocate, for
Mr.Sanjeev Goyal, Advocate, for
respondent No.3/Insurance Company.

DR. RAVI RANJAN, J. (Oral Judgment)

I have heard learned counsel for the appellants as well as the respondent No.3-Insurance Company. The respondent Nos.1 and 2, though are being represented in the case by a counsel, however none has chosen to appear at the time of hearing. On September 02,2019, it appears that the name of counsel for respondent Nos.1 and 2 was not being printed in the cause list and a direction was given to the office to do the needful. However, on the next date also when the matter was taken up by this Court on September 11, 2019, none had appeared on behalf of respondents No.1 and 2. On the subsequent date also, i.e., on 13.09.2019, it appears that none had appeared on behalf of the respondents then a direction was given by this Court that on the next date of hearing, i.e., on 23.09.2019, all the sides should be well represented and no further adjournment would be given on any count. Today also when the matter is taken up, there is no

counsel for respondents No.3 (Insurance Company) is present.

In the aforesaid background, I have heard the appellant and respondent No.3. Since respondents No.1 and 2 have chosen not to appear for the reasons best known to them, the matter has been heard in their absence.

The appellant has assailed the decision dated 14.12.2010 of the Motor Accident Claims Tribunal (FTC), Ropar, by which the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “an Act”) has been dismissed on the ground that rash and negligent driving by the alleged offending vehicle could not be proved by the claimant and as such, issue Nos.1 and 2, i.e., whether the motor vehicular accident inflicting injury on the claimant-Baljit Singh rendering him 100% permanent disability as per Doctor's Certificate (Ex.P-5), was result of rash and negligent driving by the driver of the offending vehicle as well as whether in view thereof, the injured claimant was entitled to receive compensation, were decided against him holding, since negligence on the part of the vehicle or even involvement of that vehicle in the motor vehicular accident does not stand proved, as such, there would be no question of grant of compensation.

The facts, which would be necessary for consideration of *lis*, are narrated as under:

The claimants filed an application under Section 166 of the Motor Vehicles Act, 1988, stating that, on 07.10.2019, when he was returning from Randhawa Petrol Pump to his village driving a motorcycle at slow speed on the left side of the road, along with one Harjeet Singh who

No.HP-12-B-7761 came from behind at high speed in a rash and negligent manner being driven by respondent No.1, without blowing any horn and struck against their motorcycle, as a result of which, the claimant and Harjit Singh received multiple and grievous injuries. They were taken to Government Hospital from where they were referred to PGI Chandigarh. The claimant, who was ex-serviceman was referred therefrom to Command Hospital, Chandi Mandir from where he was again referred to Fortis Hospital, Mohali. The claimant further stated that, as per the report of the disability certificate granted by the doctor (Ex.P-5), the claimant received 100% permanent injury resulting in loss of his earning and loss of even earning capacity and also several medical expenses were suffered by him due to the said motor-vehicular accident. Thus, the claimant-appellant claimed compensation to the tune of Rs.25 Lacs.

The respondents appeared in the proceeding. The respondents No.1 and 2 being driver and owner filed their joint written statement raising diverse objections refuting that any accident had taken place by the concerned car and also stating that driver has falsely been implicated in the criminal case with the sole purpose of getting illegal compensation.

The insurance company also contested the case by filing written statement and, apart from the identical grounds which were taken by the driver and owner, also took a ground that the driver of the alleged offending car was not holding a valid licence and car in question was not having a valid route permit and fitness certificate. It has further been stated that claimant has filed this claim petition in connivance with the driver and the owner only with a purpose to extract compensation from the Insurance Company.

Upon consideration of the rival pleadings, the Tribunal has framed following issues:

1. Whether claimant Baljit Singh sustained injuries in a motor vehicle accident that occurred on 07.10.2009 at about 11AM near Randhawa Petrol Pump at village Boothgarh, District Mohali due to rash and negligent driving of car bearing registration No.HP-12-B-7761 by respondent No.1?OPP
2. Whether claimant is entitled to receive the compensation on account of injuries received by him? If so, to what extent and from whom?OPP.
3. Whether respondent No.1 was not holding a valid and effective driving licence and valid route permit or fitness certificate of the vehicle in question, at the time of alleged accident? If so what effect OPR-3.
4. Whether the claim petition is bad for misjoinder of necessary parties?OPR
5. Whether the claim petition is not maintainable in the present form? OPR.
6. Relief.

The claimant examined himself as PW-1 and also examined PW-2 Satya Pal, PW-3 Dr.Jagjit Singh, PW-4 Dr.Gursharan Singh, PW-5 Khemkaran Singh. Apart from the oral evidence, some documentary evidence were also brought on record such as final police report submitted by the police to the Court concerned under Section 173 of Cr.PC. as Ex.P30, FIR as well as Mechanical report, disability certificate and others documents including medical bills, prescription etc. Chaman Lal who is Clerk from Registration Department has been examined as RW1 and he has brought on record the copy of the registration certificate as Ex.R2, Driving Licence brought on record as RW3 and Insurance Policy as Ex.R4. Respondent No.3

has also brought on record copy of insurance policy as Ex.R5. The Tribunal, while deciding the issues Nos.1 and 2, has taken into notice that number of the Alto Car has been recorded as HP-12-B-7711 whereas its actual number is HP-12-B-7761 and also that, in fact, the vehicle having registration number 7711 is a tractor registered in the name of one Sita Ram. It has also noticed that there is delay of 16 days in registration of FIR. It has further been noticed that the submission raised on behalf of the Insurance Company that neither the author of the FIR who was a pillion rider nor Jagtar Singh, who happens to be uncle of the injured and who had brought both the injured to the hospital, were examined as a witness. As per the FIR, the car was allegedly left on spot by the driver as he ran away from the scene after the accident took place but the same could not be taken into custody by police immediately as the same was done after registration of FIR. There is no explanation on part of the police for this omission as to why the car remained there for 15 days on spot without being seized. The Tribunal came to the conclusion that the aforesaid facts raise serious doubt regarding the involvement of vehicle in question in the concerned motor-vehicular accident as it appeared to the Tribunal that claim petition has been filed in collusion with the owner of the car along with the police by changing the vehicle involved in the accident as such, claimant was not found entitled for any compensation. Accordingly, issues No.1 and 2 were decided against the claimant. So far as issue No.3 is concerned, it has been decided in favour of the claimants by holding that on perusal of the copy of driving licence, it appears that it was valid and registration certificate of car was also on record and no route permit was required for the vehicle as the alleged offending

decided in favour of claimant and against the respondents as no evidence could be led by the respondents with respect to those issues.

In the aforesaid background of factual matrix, I have heard the appellant and the respondent No.3-Insurance Company.

Learned counsel has submitted that it would be apparent from FIR i.e., Ex.P-37 that it was in a typed form in which the name of the driver and the owner as well as the make and model of the car have been entered, however, there appears to be a typographical error in recording the registration number of the vehicle as the same has been recorded as 7711 in place of 7761. The accidental mechanical test report, which has also been brought on record as Ex.P35, shows heavy dent and damage in the Alto Car concerned. That apart, it is contended that the document by which the vehicle has been released in favour of the owner also consist of the correct registration number and the same is there in the charge-sheet also submitted by the police also. Therefore, there was no crisis of identification of the vehicle as even if the FIR is taken to be correct then there appears that in place of “61”, “11” has been entered as two last digits of the registration number but it is nobody's case regarding the involvement of any tractor in the concerned accident.

Secondly, it is contended that though there is delay of 16 days in lodging the FIR but considering the fact that the claimant was seriously injured and was taken to several hospitals for treatment, during the aforesaid period, attention of all the family members, relations and friends and others would be towards providing him medical aid and treatment first. Thus, there may be a possibility of *bona fide* delay due to that. Learned counsel for the

Apex Court rendered in **Ravi Vs. Badrinarayan and others 2011 AIR(SC) 1226** to demonstrate that delay in lodging in FIR of three months in that case was noticed and then held that it would not be fatal because the concerned have been able to demonstrate that there were cogent reasons for such delay.

Per contra, learned counsel appearing for the respondent-Insurance Company has vehemently argued in support of the decision of the Tribunal. It is urged that non-examination of the informant and the pillion rider and also the uncle of the injured namely Jagtar Singh, who had brought the injured to the hospital, gives fatal blow to the case of the claimant and in view of the fact that even the number of the registration vehicle was wrongly written in the First Information Report and in the claim petition also, the claim petition was rightly dismissed by the Tribunal. It has further been argued on behalf of respondent that though the injured was first taken to Civil Hospital, Bhootgarh and then PGI Chandigarh, and thereafter, the Command Hospital but no record of his treatment at Civil Hospital, Bhootgarh, PGI, Chandigarh has been brought on record.

However, after giving anxious consideration to the rival pleadings, I find force in the submission raised on behalf of appellants.

There are catena of evidence available on record to show the involvement of the vehicle. First document is the FIR itself in which, though there may be slight misprint in recording the registration number of the offending vehicle but the name of the driver and make and modal of the car has rightly been disclosed. That apart, the document of Command Hospital, which is of the same date of the accident, also goes to show that the information given to the hospital was that the accident was with a car

number as stated in FIR is no where in the scene at all. Even the mechanical examination report also endorses involvement of the car. Apart from the above, the injured himself has deposed and has been cross-examined at length but he appears to have been withstood the same. The request for release of the concerned vehicle, the *superdari* report and seizure memo report both show the correct registration number of the offending vehicle and same is the case with the final report submitted by the police after investigation. When the Tribunal questions that, from the materials available on record, it appears that the claimant was in connivance or collusion with the driver and owner of the vehicle as well as police for ulterior motive has deliberately involved the concerned vehicle and driver, it completely forgets that the basic principle of proving fraud is that there should be specific pleading regarding that. A vague pleading in that regard would not be sufficient. There is no pleading as to how and in what manner they were in connivance and when such meeting of mind took place and how it was given effect to and which police office was involved in it along with the claimant as well as driver and owner of the vehicle. As there is no evidence led on behalf of the respondent at all on that count, no prudent person can come to the conclusion only on the basis of estimation that such thing could have happened. In my view, the Tribunal has committed a serious error in not considering the unimpeachable documents which were already on record showing involvement of the offending vehicle and negligence on the part of the driver concerned. After FIR and the mechanical report as well as final report submitted under Section 173 Cr.P.C., nothing else was required to prove that. A reference in this regard

Vs. Rajasthan State Road Transport Corporation and Anr. 2019(2)

R.C.R.(Civil) 209, in which the Hon'ble Supreme Court, after considering several previous decisions, has come to the conclusion that even in the case of acquittal later on, if aforesaid document were already on record, that would be enough to prove the involvement of vehicle and negligence on part of the driver. Apart from above, who could have been the best person to say that the concerned vehicle was not involved in the accident? Obviously, they would have been the driver and owner of the vehicle. They were required to present themselves for examination after taking such stand in the written statement denying the involvement of vehicle and to prove their pleading but they did not had courage to come and depose and submit themselves to be test of cross-examination. In such a situation, since the strict proof of issues as required in criminal trial, would not be required in the matter of enquiry for assessment of compensation amount, i.e., in a case filed under Section 166 of the Act, only course open to the Tribunal was to accept that there was negligence on the part of the driver and involvement of offending vehicle was also writ large.

Thus, having regard the aforesaid discussion, I am of the view that the concerned motor vehicular accident was result of rash and negligent driving by the driver by the respondent No.1 and in which the offending vehicle having registration Number HP-12-B-7761 was involved. Accordingly, the finding recorded by the Tribunal is reversed to the aforesaid extent.

Since no flaw has been found in the driving licence or the registration certificate of the vehicle, though all the respondents would have

to be held jointly and severally liable to pay the compensation amount, the

first charge would be on the Insurance Company to indemnify the insured by paying the compensation amount. However, since the Tribunal has dismissed the case on the ground of lack of evidence proving negligence of the driver and involvement of the vehicle concerned and it did not deal with the issue of computation of compensation amount, thus, the matter is remanded back to the Tribunal to assess such compensation amount in accordance with law on the basis of evidence which have already been led by the parties.

So far the request of the appellant that the injured has died during the pendency of the appeal which was result of the injury itself is concerned, if they make such request before the Tribunal, the Tribunal will decide the said issue on its own merit and in accordance with law as to whether the appellants should be allowed to lead further evidence or not with respect to that as this Court has not formed or expressed any opinion regarding that. It is expected that Tribunal will consider the matter and come up with a final pronouncement expeditiously preferably within a period of three months from the date of receipt of the copy of this order.

In the result, this appeal is allowed to the extent as indicated above.

(DR. RAVI RANJAN)
JUDGE

23.09.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No