

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

FAO-7337-2010(O&M)

Date of decision:-19.7.2019

Barkha

...Appellant

Versus

Jagdish Saini and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. R.S. Mamli, Advocate,
for the appellant.

Mr.Naveen Thakur, Advocate
for respondent No.1.

None for respondent No.2.

H.S. MADAAN, J.

Petitioner/claimant Barkha son of Mansa Ram, resident of village Chanarthal, Tehsil Thanesar, District Kurukshetra had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Jagdish Saini – driver-cum-owner and New India Assurance Company, Kurukshetra – insurer of car bearing registration No.HR-05P-6128 (hereinafter referred to as the offending vehicle), claiming compensation on account of suffering injuries in a motor vehicular accident before the Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal).

Briefly stated, facts of the case as per version of the claimant

are that on 10.2.2008 at about 9:00 a.m. he along with Phool Singh was standing on village Ishargarh turn on G.T. Road on the left hand side of the road; in the meanwhile a car bearing registration No.HR-05P-6128 being driven in a rash and negligent manner and at a very high speed by respondent No.1 – Jagdish Saini came and struck against the claimant, resultantly he suffered injuries; thereafter the respondent No.1 stopped his car for some time and then ran away, however, Phool Singh had noted down the registration number of the car; that he was taken to LNJP Hospital, Kurukshetra where he was medically treated; that an FIR No.50 dated 15.2.2008 for the offences under Sections 279 and 338 IPC regarding the accident was registered at Police Station Sadar, Thanesar on the basis of statement of the claimant. According to the claimant, he was aged about 45 years at the time of accident and was working as a labourer earning Rs.4,000/- per month and as a result of suffering injuries in the accident including fracture of right leg, he has become physically disabled and is unable to do any work; that he had spent about Rs.1 lakh on his treatment and the treatment is still continuing. Therefore, the petition be accepted and compensation of Rs.6 lakhs be granted to him.

On notice both the respondents appeared and filed written statements.

In the written statement filed by respondent No.1, he had admitted the factum of accident but came up with a plea that he was not rash or negligent and as a matter of fact the claimant himself was responsible for the accident since he was crossing the road without observing traffic rules.

Whereas in the written statement filed by the respondent No.2 – insurance company, it had denied the factum of accident coming up with a plea that respondent No.1 was not having a valid and effective driving licence on the date of accident and terms and conditions of the insurance company had been violated absolving the insurance company of its liability to pay any compensation. It was pleaded that the alleged accident had taken place on 10.2.2008 though medico legal report was prepared on 13.2.2008 and FIR was registered on 15.2.2008; that the claim petition had been filed by the claimant in collusion with respondent No.1. Other assertions in the claim petition were controverted.

In the end, both the respondents prayed for dismissal of the claim petition.

Issues on merits were framed. Both the parties were afforded adequate opportunities to lead evidence.

After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 7.4.2010, which left the claimant aggrieved and he has filed an appeal before this Court, notice of which was issued to the respondents.

I have heard learned counsel for the parties besides going through the record and I find that the award in question is not sustainable and is liable to be set aside.

The claimant had brought enough oral as well as documentary evidence on record to prove his version that the accident in which he had suffered injuries had been caused by respondent No.1 – Jagdish Saini by his rash and negligent driving of the offending car. In

that regard, he had got his own statement recorded as PW1 besides examining Phool Singh eye-witness as PW2. The claimant having suffered injuries in the accident is a stamped witness and his presence at the spot cannot be doubted. Similarly, the presence at the spot of Phool Singh comes out to be natural and probable. In his cross-examination, his credibility could not be shattered on any material point. The FIR regarding the accident had been registered and on completion of investigation, respondent No.1 was forwarded to face trial. PW3 Dr.Bimla Gauri had proved the disability certificate of claimant as Ex.P1 vide which he was opined to have permanent disability of 37%. Copy of bed head tickets of the claimant issued by LNJP Hospital, Kurukshetra was also placed on the file. In rebuttal, the respondent No.1 had not led any evidence, whereas respondent No.2 had tendered in evidence copy of insurance policy as Mark R1. Therefore, evidence adduced by the claimant had virtually gone unrebutted. However, the Tribunal wrongly disbelieved such evidence giving reasons, which are highly unconvincing.

Learned Tribunal proceeded to decide the issue as if it was dealing with a criminal case and not a petition for compensation under Section 166 of the Motor Vehicles Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of

probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice.

Merely on the basis of conjectures and guesswork, the Tribunal has observed that involvement of car in question is not proved and the claim petition appears to have been filed by claimant in collusion with respondent No.1 to fictitiously claim compensation from respondent No.2 – insurance company. These observations seems to be without any substance. Solely for the reason that respondent No.1 in the written statement had admitted the accident though stating that he was not responsible for the same and as a matter of fact claimant himself was negligent leading to the accident is no ground to hold him as a colluding party. The fact has to be taken into consideration that in the criminal case he had been arrested and thereafter sent up to face trial. No person would take the risk of arrest and facing trial in the Court of law just to help some one in claiming compensation. It has to be kept in mind that the insurance company many a times get the matter investigated through private investigators and if the insurance company had any doubt regarding involvement of the car in question in the accident and claimant as well as respondent No.1 playing a friendly match, that could have been very

easily got detected by appointing some investigator to probe the matter and then submit the report to the insurance company but it was not so done. The Tribunal seems to be smelling collusion everywhere between claimant and respondent No.1 and then between claimant, local police and respondent No.1 for registering the FIR and introducing the car in question. Then the Tribunal found collusion of insurance company with claimant and respondent No.1 in order to cheat and defraud the Court. In that way, the Tribunal found collusion everywhere which is certainly not borne out from the record. Normally one should not be of such a suspicious nature doubting everybody of cheating and playing fraud. The involvement of car in question and respondent No.1 was found after police investigation and then respondent No.1 was forwarded to face trial. Therefore, in my view the whole approach of the Tribunal in suspecting the parties to the claim petition of collusion and local police also joining them in doing so is misconceived and wrong. The delay in lodging of FIR in this case is not very material.

Therefore, finding of the Tribunal on issue No.1 is reversed and the same is decided in favour of the claimant against the respondents holding that the accident in question in which claimant Barkha had suffered injuries had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1 – Jagdish Saini.

Now coming to issue No.2. The finding on that issue is also reversed and this issue is decided in favour of the claimant and against the respondents holding that he is entitled to get compensation on account of suffering injuries in the road side accident. The liability to pay

compensation of both the respondents being joint and several in view of the insurance policy taken by respondent No.1 insured from respondent No.2 – insurance company with regard to the offending vehicle, which was effective and operative on the day of accident.

The claimant had received injuries in the accident. He was hospitalized and got treatment from the hospital. Under the circumstances, he is entitled to recover pecuniary as well as non-pecuniary damages. Under the head pecuniary damages, he is entitled to be reimbursed for the money spent by him on his medical treatment. The claimant has placed on file several bills and invoices with regard to purchase of medicines and other articles with regard to his medical treatment. The total of such bills comes out to Rs.15,796.68/- say Rs.15,800/-. It is a matter of common knowledge that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost. Thus I award a compensation of **Rs.20,000/-** under that head.

The claimant would be required to undergo further treatment of course spending money on that account. He needs to be compensated for future medical treatment. A sum of **Rs.10,000/-** is awarded to him for that purpose.

The complainant appearing as PW1 in his affidavit Ex.PW1/A has contended that he had suffered multiple serious and grievous injuries on the various parts of the body, especially there was compound fracture on his right leg, left forearm, left lower leg, left thigh bone, face, left and right knee and on the other parts of the body; that he

had suffered fracture of both knees including left thigh bone, left lower leg; that he remained admitted in LNJP Hospital, Kurukshetra for thirty days, thereafter he was shifted to Dr.Nagpal Hospital, Karnal, where he was operated upon and was admitted as indoor patient for 15 days; that blood infusion was given to him and rods and plates were inserted in his leg, then he was shifted to Apna Hospital, Kurukshetra where he was operated upon and was admitted there as indoor patient for 30 days; that he is getting treatment as outdoor patient for a long time after discharge from the hospital. According to the claimant, he was working as a labourer and earning Rs.4,000/- per month. He has not been able to work from 10.2.2008 till date. To compensate the claimant for loss of income being unable to do any work, he is awarded a sum of **Rs.50,000/-**.

As deposed by PW3 Dr.Bimla Gauri, on 9.9.2009, she along with Dr.Mukesh Kumar, SMO and Mrs.Madhu Sharma as acting Civil Surgeon, Kurukshetra examined Barkha Ram; that it was a case of fracture both bone right leg. The total disability was assessed as 37%, which was due to following injuries:

1. Malunited fracture fibula right side with non functional deformity – 6%.
2. Bone loss right tibia upper part with chronic osteomyelitis – 9%.
3. Moderate restriction of movements at right knee with swelling – 15%.
4. Mild restriction of movements at right ankle joint - 7%.

This witness proved the disability certificate as Ex.P1 stating that due to these injuries Barkha Ram cannot work like a normal person.

In her cross-examination, she stated that all the disabilities are qua particular limb and not qua whole body and if these disability qua whole body, this will reduce to some extent.

Therefore, the total disability qua the entire body can be taken to 25%.

Considering the income of the claimant to be Rs.4,000/- per month, on account of permanent disability, if the same get reduced by $\frac{1}{4}^{\text{th}}$ it comes to Rs.1,000/- per month i.e. Rs.12,000/- per month and considering the age of the injured at the time of accident to be 36 years, keeping in view his life expectancy, multiplier of 15 is to be applied. Therefore, the total loss to him in monetary terms comes out to **Rs.1,80,000/-** (12,000 x 15).

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.25,000/-** under that head.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.25,000/-** is accordingly awarded to the appellant/claimant on that score.

In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the

pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.30,000/-** under that head.

The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. Under the heads loss of amenities and loss of expectation of life, I award a sum of Rs.30,000/- each(total **Rs.60,000/-**).

The total compensation payable is worked out to Rs.4,25,000/-, payable by both the respondents jointly and severally.

Thus finding on issue No.2 is modified accordingly.

No violation of any term and condition of the insurance policy comes out to be there. Thus finding on issue No.3 is also reversed and it is decided against the respondent No.2.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.4,25,000/- with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimant payable by both the respondents jointly and severally.

19.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No