IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 6876 of 2011 (O&M)
Date of decision : 10.12.2019
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Oriental Insurance Company Ltd., Chandigarh
................Appellant

vs.

Swaran Singh and and others
.................Respondents

2) FAO No. 1152 of 2012 (O&M)
...

Swaran Singh
................Appellant

vs.

Umesh Singla @ Happy and and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Jagjit Singh Chatrath, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant in
FAO 6876-2011 and for respondent No. 3 in
FAO 1152-2012

Mr.V.B. Aggarwal, Advocate for respondent No.1 in
FAO 6876-2011 and for the appellant in
FAO 1152-2012
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H. S. Madaan, J.

By this common order, I intend to dispose of FAO 6876-2011, titled as 'Oriental Insurance Company Ltd., Chandigarh vs.

Swaran Singh and and others' and FAO 1152-2012, titled as 'Swaran Singh vs. Umesh Singla @ Happy and and others', as both these appeals have arisen out of the same award.

Briefly stated, Petitioner – claimant Swaran Singh son of Wadhawa Singh, aged 58 years, through his wife, natural guardian and next friend Smt. Surjit Kaur, resident of Alameda, USA, now Ambala City, had brought a claim petition under Section 166 of the Motor Vehicles Act, against respondents i.e. Umesh Singla @ Happy – driver, Pankaj Singla – owner and the Oriental Insurance Company Limited, Ambala – insurer of motorcycle bearing registration No. HR 01 T 6154 (hereinafter to be referred as 'the offending vehicle'), claiming compensation on account of receiving injuries in a roadside accident, which had taken place on 23.5.2006, involving the motorcycle in question.

As per version of the petitioner-claimant on 23.5.2006, the claimant alongwith one Jaspal Singh was going for a walk from his house situated in Basant Vihar towards Central Jail, Ambala City. Both of them were walking on the correct left hand side of the road on its '*kacha*' berm. At about 6.30 A.M. when they had reached near Royal Palace, Ambala City, a motorcycle bearing registration No. HR-01-T-6154, being driven in a rash and negligent manner, driven by Umesh Singla @ Happy – respondent No.1, came from their rear side and struck against the claimant, by coming on the extreme left side of the road. Resultantly, the claimant fell down and suffered multiple serious injuries on his back and head. He was taken to

Kuldeep Hospital, Ambala City, from where he was shifted to K.D. Hospital, Ambala Cantt. Thereafter he was referred to Fortis Hospital, Mohali, where he remained admitted from 23.5.2006 to 29.6.2006. Brain surgery of the claimant was undertaken in that hospital and till the time of filing of claim petition, he was undergoing treatment and a sum of Rs.10 lakhs has already been spent on his treatment. He is in a state of comma and has become permanent disabled. He is a non-resident Indian settled in USA and used to earn 1,22,000 dollars. However, on account of receipt of injuries in the mishap, he is unable to move around and is totally dependent upon others. He prayed that a compensation amount of Rs.10 crores be granted to him payable by the respondents.

On being put to notice, only respondents No.1 and 3 appeared and filed written statements, contesting the claim petition, whereas respondent No.2, did not appear despite service, as such was proceeded against ex parte.

In the written statement filed by respondent No.1, he denied the involvement of the motorcycle in question, in the accident or that the motorcycle was being driven in a rash and negligent manner. Though registration of FIR against respondent No.1 was admitted, but it was contended that the FIR was wrongly recorded against respondent No.1. According to such respondent, the claimant had filed a claim petition earlier. However, it was withdrawn from the Motor Accidents Claims Tribunal, Ludhiana, by making a statement.

In the written statement filed by respondent No.3 –

Insurance company, it denied the accident in question and involvement of the offending motorcycle therein. Such respondent admitted that the motorcycle was insured with it, at the relevant time, but contended that since there was violation of terms and conditions of the Insurance policy, therefore, the Insurance company was not liable to pay any compensation to the claimant.

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

The petitioner – claimant filed replication, controverting the allegations in the written statements, whereas reiterating the averments in the petition.

From the pleadings of the parties, following issues were struck:-

1. Whether accident took place due to rash and negligent driving of Motorcycle bearing registration No. HR-01T-6154 by respondent No.1 Umesh Singla @ Happy resulting into injuries to Swaran Singh as alleged? OPP
2. If issue No. 1 is proved, whether claimant is entitled for compensation, if so, to what amount and from whom? OPP
3. Whether petition is not filed by a proper person? OPR-01
4. Whether the claim petition is a result of collusion between petitioner and respondent Nos. 01 and 02? OPR-03
5. Whether the offending vehicle was being driven in violation of terms and conditions of insurance policy at the time of accident? OPR-03

6. Relief.

Parties were given adequate opportunities to lead evidence in support of their contentions.

In order to prove the case, wife of claimant examined herself as PW-15, besides examining Jaspal Singh as PW-1, Dr. Manmeet Singh as PW-2, Kamal Kumar as PW-3, Nalini Gaur, Additional Ahlmad as PW-4, Dr. Kuldeep as PW-5, Dr. Arvind Malhotra as PW-6, Dr. Ravi Kant Sharma as PW-7, Sushil Ahuja as PW-8, Manish Mittal as PW-9, Deepanshu Aggarwal as PW-10, Dr. Anupam Jindal as PW-11, Dr. S.S. Ahluwalia as PW-12, Onkar Chand as PW-13, Constable Harish Kumar as PW-14, Balbir Chand as PW-16, Head Constable Sukhdev Raj as PW-17 and thereafter closed the evidence after proving certain documents.

On the other hand, respondent No.1 tendered documents Mark R-2 and Mark R-3 and closed the evidence.

The Insurance company examined A.S. Vaish as RW-1, Kashmir Singh as RW-2 besides proving documents Exhibits R-1, R-2 and Mark R-1 and closed its evidence.

After hearing the arguments, the Tribunal decided issue No.1 holding that the accident in question was result of rash and negligent driving of the offending vehicle by respondent No.1, in which claimant received multiple injuries and the claim petition filed by him through his wife, on the same cause of action, was very much maintainable. The petitioner – claimant was found entitled to recover compensation and vide award dated 14.9.2011, the claim petition was accepted and a compensation of Rs.10,12,065.85 P was ordered to be paid to the petitioner – claimant by all the three respondents, jointly and severally with interest @ 9% per annum from the date of filing of claim petition till actual realization.

The petitioner -claimant was dissatisfied with the amount of compensation awarded to him by the Tribunal, whereas respondent - Insurance company was unhappy with the amount of compensation awarded to the claimant. Both of them have filed two separate appeals. Notice of the appeals was given to the respective respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

FAO-1152-2012

Taking up the appeal filed by the claimant first, the Tribunal, on appreciation of the evidence adduced before it, has come to the conclusion that respondent No.1 Umesh Singla @ Happy, was author of the accident by his rash and negligent driving of motorcycle No. HR-01T-6154, in which Swaran Singh had received injuries. Such finding returned on issue No.1 is proper and appropriate and does not call for any interference.

Resultantly, the driver, owner and the Insurance company of the motorcycle in question were rightly found to be liable to pay compensation to the petitioner -claimant, their liability being joint and several.

With regard to the quantum of compensation, the petitioner claimant had brought oral as well as documentary evidence. Wife of claimant Smt. Surjit Kaur appeared as PW-15, claimant examined Dr. Manmeet Singh as PW-2, Kamal Kumar as PW-3, Nalini Gaur, Additional Ahlmad as PW-4, Dr. Kuldeep as PW-5, Dr. Arvind Malhotra as PW-6, Dr. Ravi Kant Sharma as PW-7, Sushil Ahuja as PW-8, Manish Mittal as PW-9, Dr. Deepanshu Aggarwal as PW-10, Dr. Anupam Jindal as PW-11, Dr. S.S. Ahluwalia as PW-12, Onkar Chand, Senior Billing Assistant as PW-13, besides producing documents Exhibits P-15 to P-70 and Exhibits P-74 to P-77.

Dr. Manmeet Singh PW-2 had stated that he had attended the claimant from August 2006 to February 2008 and charged Rs.86,000/-. However, the Tribunal has partially accepted his version and has granted a sum of Rs.15,000/- only. However, I find that there was no reason to disbelieve the witness on any point and curtail the amount received by him, from the claimant. Keeping in view the nature of accident and injuries suffered by the claimant and period of his hospitalization, the sum of Rs.86,000/- charged by PW-2 Dr. Manmeet Singh, cannot be said to be on higher side. Therefore, such amount is awarded to the claimant.

PW-2 Dr. Manmeet Singh had further stated that he had deputed physiotherapist Salamat, for physiotherapy of the claimant, who had charged some money from the claimant. He had proved certificate Exhibit P-3 but the Tribunal came to the conclusion that it cannot be stated that Salamat used to attend the claimant during the period of hospitalization w.e.f. August 2006 to June 2007. This justification does not make any sense. Therefore, the amount in that regard deserves to be allowed. A sum of Rs.30,000/- is awarded to the claimant on the count.

The Tribunal has awarded a sum of Rs.45,000/- to the claimant as attendant charges. Since the petitioner – claimant is in the state of comma, he would be requiring constant attendant during his remaining life to look after him. Therefore, for that reason an amount of Rs.45,000/- is enhanced to Rs. 1,00,000/-.

On account of medical treatment, the Tribunal has awarded as sum of Rs.1,51,948.85 P. to the claimant. Is is a matter of common knowledge that many a times, chemists do not issue bills/cash memos for the purchase of medicines and some times these bills and cash memos get lost/misplaced. Furthermore, with such type of injuries, the petitioner claimant would be requiring further treatment also. Therefore, on account of medical treatment received and future medical treatment, a sum of Rs2,50,000/- is awarded to the claimant.

A sum of Rs.4,90,517/- has been awarded to the claimant on account of receiving treatment from Fortis Hospital, Mohali. This amount seems to be reasonable and proper.

Another sum of Rs.34,600/- has been awarded for taking treatment from Dr. S.S.Ahluwalia. That amount is also approved.

Due to receiving of injuries the claimant has become permanently disabled. As per version of the claimant at the time of accident he was working in USA and was earning Rs.60 lacs per annum. Though he has placed on file the supporting documents as

Exhibits P-79 to P-81, but those documents have not been proved in accordance with law. The Tribunal has noted that claimant has three children, who are staying in USA, doing their own work. He was allowed a sum of Rs. 1,00,000/- as just compensation, being loss of income. While allowing that amount he has to be compensated for future also. Thus exact income of the claimant could not be proved by the claimant by producing the supporting documents in accordance with law, but it can safely be stated that the claimant being aged around 60 years and his monthly income can at least be taken to be Rs.20,000/-, annual income Rs.2,40,000/-. He being totally unable to do any work, even if multiplier of 7 is used, which is applied in a death case when the deceased was in the age group of 61 to 65 years, the amount is calculated as Rs.2,40,000 x 7 = Rs.16,80,000/-

The total compensation, in this way comes out to Rs. 86,000 + 30,000 +1,00,000 + 2,50,000 + 4,90,517 + 34,600 + 16,80,000 = Rs.26,71,117/-.

The Tribunal has awarded a compensation of Rs. 10,12,065.85 P to the claimant. Thus the claimant is held entitled to additional compensation of (Rs.26,71,117 – 10,12,065.85P) Rs.16,59,051.15 P, rounded of to Rs.16,59,000/-. The claimant would be entitled to get interest @ 7.5% per annum on this amount from the date of filing of appeal till actual realization. Liability to pay the additional compensation shall remain the same as mentioned in the original award.

With above modification in the impugned award, the appeal filed by the claimant i.e. FAO 1152-2012 is allowed partly, with costs.

FAO 6876-2011

With regard to the appeal filed by the Insurance company, though learned counsel for the Insurance company had argued that the accident had taken place on 23.5.2006 but the FIR was registered after a period of 14 days on 6.6.2006, without there being any explanation, which goes to show that the vehicle in question was wrongly involved in the accident, just to gain compensation.

This contention is vehemently opposed by learned counsel for the respondents.

After hearing learned counsel for the parties, I do not find any force in the submission made by learned counsel for the Insurance company.

The claimant had examined Jaspal Singh as PW-1, Nalini Gaur Additonal Ahlmad as PW-4, Smt. Surjit Kaur as PW-15. PW-1 Jaspal Singh had provided eye witness account of the accident, deposing in consonance with the case of the claimant. It was he who had set the criminal machinery into motion by reporting the matter to the police by lodging the FIR Exhibit P-84. Version in the FIR is on the similar lines as in the deposition of Jaspal Singh PW-1 and case of the claimant. PW -1 Jaspal Singh had not shown any reason to depose falsely against the respondents. Version given by him appears to be cogent and convincing. His presence at the spot comes out to be natural and probable. He stood his cross examination well.

From the statement of PW-4 Nalini Gaur, Additional Ahlmad, it comes out that respondent No.1 was challaned for causing the accident. He has been charged sheeted, faced trial and has been convicted for offence under Sections 279, 337 and 338 IPC. Though judgment of criminal court is not binding upon the civil court or Motor Accidents Claims Tribunal, but it is a relevant piece of evidence. It being so, the contentions raised by learned counsel for the appellant-Insurance company that there has been delay in lodging the FIR etc., pales into insignificance.

With regard to the Tribunal not giving much importance to the reports by investigator as Exhibits R-1 and R-2 by examining the investigator; these reports cannot supersede the evidence produced before the Tribunal. The Tribunal is to reach its own conclusion, on the basis of evidence adduced before it and such report by the investigator cannot carry much significance.

In view of the above discussion, the appeal filed by the Insurance company i.e. FAO 6876-2011, stands dismissed.

(H.S. Madaan)
Judge

10.12.2019
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Whether speaking / reasoned Yes / No
Whether reportable Yes / No