IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-10067-2014(O&M)

Anil Kumar

...Appellant

Versus

Mahender Singh Devra and others

...Respondents

(2) FAO-7931-2017(O&M)

Suresh Chander Rajora

...Appellant

Versus

Anil Kumar and others

...Respondents

Date of Decision:-14.5.2019

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

Present: Mr.Prateek Mahajan, Advocate and
Ms.Bahaar Ghuman, Advocate
for the appellant in FAO-10067-2014 and
for respondent No.1 in FAO-7931-2017.

Mr.Ashish Saini, Advocate for the appellant in
FAO-7931-2017 and for respondent No.2
in FAO-10067-2014.

Mr.Varun Sharma, Advocate for
Mr.S.P. Dhamija, Advocate
for respondent No.3 in both appeals.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-10067-2014(O&M) filed on behalf of appellant - Anil Kumar and FAO-7931-

2017(O&M) filed on behalf of appellant – Suresh Chander Rajora, which have arisen out of the same accident.

Briefly stated facts of the case are that petitioner/claimant Anil Kumar had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Mahender Singh – driver, Suresh Chander Rajora – owner and Reliance General Insurance Company Ltd. - insurer of truck trailer bearing registration No.RJ-09GA-3311(hereinafter referred to the as the offending vehicle), claiming compensation to the tune of Rs.2 lacs.

As per the case of the claimant on 25.3.2010 at about 8:30 p.m., he was driving his motorcycle bearing registration No.HR-21A-0816 and while he was in the area of Liquor Vend of village Milakpur, then the offending vehicle being driven by respondent No.1 – Mahender Singh in a rash and negligent manner hit his motorcycle, with the respondent he fell down on the road and suffered multiple injuries on his person; that the accident was witnessed by the nephew of petitioner namely Satish Kumar, who was following the motorcycle of the petitioner; that after the accident the petitioner was removed to Medicity Neuro Care Centre, Hisar, where he was medico-legally examined on 26.3.2010; that formal FIR No.51 dated 26.3.2010 was registered with Police Station Bawani Khera for the offences under Sections 279, 337, 338 IPC against the respondent No.1 – Mahender Singh Devra on the basis of statement of Satish Kumar. According to the claimant, he has already spent a sum of Rs.5 lacs on his treatment, which is still going on and prior to the accident, he was earning Rs.20,000/- per month by doing dairy farming and agricultural work.

Notice of the petition was given to the respondents, who put in appearance. Respondents No.1 and 2 filed a joint written statement whereas respondent No.3 filed a separate written statement. In the joint written statement filed on behalf of respondents No.1 and 2, they have denied that respondent No.1 by driving the offending vehicle in a rash and negligent manner had caused the accident. According to the answering respondents, respondent No.1 has been falsely involved in a criminal case in collusion with the police just to get compensation and further respondent No.1 was having a valid driving licence and the truck trailer in question was insured with respondent No.3 – insurance company, which is responsible for all kinds of compensation.

In the written statement filed on behalf of respondent No.3 – insurance company, while denying the material assertions in the claim petition it was pleaded that the insured-owner of the vehicle in question had breached the terms and conditions of the insurance policy by allowing respondent No.1 to drive the vehicle while he was not holding a valid and effective driving licence. The answering respondent denied its liability to pay compensation to the claimant on behalf of the respondent – insured.

All the three respondents prayed for dismissal of the claim petition.

On the pleadings of the parties following issues were framed:

1. Whether the accident took place on 25.3.2010 at 8:30 PM caused injuries to petitioner due to rash and negligent driving of Trala bearing registration no.RJ-09GA-3311 by respondent No.1? OPP.

2. If issue No.1 is proved, whether the petitioner is entitled for compensation, if so, to what amount and from whom? OPP.
3. Whether petition is not maintainable in present form? OPR.
4. Whether the petitioner has no locus standi or cause of action to file the present petition? OPR.
5. Whether the driver of the offending vehicle was not holding valid driving licence on the date of accident? OPR.
6. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR
7. Relief.

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimant got recorded his statement as PW6 besides examining Sh.Satish Kumar as PW1, Dr.Jagdish Sethi as PW2, Dr.R. Kumar as PW3, Sh.Kuldeep Singh, Record-keeper, PGIMS, Rohtak as PW4, Sh.Diwan Chand as PW5, Sh.Suresh Kumar as PW7 and this PW again as PW8.

On the other hand the respondent No.3 tendered in evidence copy of Cover note as Ex.R1.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioner and against the respondents, issues No.2 in favour of the petitioner and against the respondents, issue No.5 in favour of respondent No.3 and against respondents No.1 and 2, issues No.3, 4 and 6 against the respondents and in favour of the petitioner. Resultantly, the claim petition was partly allowed with costs and compensation to the tune of Rs.5,88,068/- along with interest @ 6% per annum from the date of filing of the petition till the date of actual realization was awarded to the claimant, payable by respondents No.1 and 2 jointly and severally. However, respondent No.3 – insurance company was not made liable to pay any compensation for the reason that respondent No.1 was not having a valid and effective driving licence at the time of accident.

The claimant and respondent No.2 – Suresh Chander Rajora were dissatisfied with the said award dated 22.7.2014 and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

Firstly coming to FAO-10067-2014 filed on behalf of the claimant seeking enhancement of compensation.

Learned counsel for the claimant has referred to authorities i.e. ***Anant son of Sidheshwar Dukre Versus Pratap son of Zhamnnappa Lamzane & another, 2018(4) RCR(Civil) 124, Naresh Kumar Versus Kartar Singh and Ors., 2014(37) RCR(Civil) 70*** and ***Raj Kumar Versus Ajay Kumar and another, 2011(2) RCR(Civil) 101***.

The Tribunal has awarded compensation of Rs.1,69,728/- towards medical treatment taking into view the medical bills, which were proved on record. However, many bills could not be exhibited and were just marked. There is nothing to show that those are fabricated documents. Even otherwise it is not possible to keep record of each and every penny spent on purchase of medicines etc. Taking a general and realistic view in the matter and further that keeping in view the nature of injuries, the claimant would be required to undergo further treatment, it would be proper and adequate to award a sum of Rs.2,00,000/-. Therefore, the amount of Rs.1,69,728/- is enhanced to Rs.2,00,000/-.

The amount awarded to the claimant to the tune of Rs.5,000/- for special diet is on very lower side. The same is enhanced to Rs.20,000/-.

Similarly the amount of Rs.10,000/- awarded under the head pain and suffering is on lower side. The same is enhanced to Rs.25,000/-.

For transportation charges, Rs.5,000/- was awarded, which to my mind under the circumstances is quite meagre and the same is enhanced to Rs.25,000/-.

On account of loss of work, the Tribunal had assessed the annual loss of income to be Rs.26,556/- considering the minimum wages of unskilled labourer in the year 2010 to be Rs.4,426/- However, this amount requires to be enhanced. The same is increased to Rs.40,000/-. Thus the compensation under that head comes out to Rs.6,00000/-(40,000 x15).

The Tribunal has not awarded any amount under the head of attendant charges. The claimant having suffered multiple grievous injuries requiring hospitalization and confining to bed must have required services of an attendant to look after him and to accompany him to the doctor for follow up treatment etc. A sum of Rs.25,000/- is awarded to the claimant under that head.

Since the claimant is said to have suffered 50% permanent disability and he would not have able to walk, run and live like a normal human being as he used to do earlier, he needs to be compensated in that regard for loss of amenities. A sum of Rs.40,000/- is awarded to the claimant under that head.

Thus the total compensation comes out to Rs.9,35,000/-.

The Tribunal has awarded a sum of Rs.5,88,068/-. In that way, the enhanced amount comes to Rs.3,46,932/-(9,35,000 - 5,88,068). The appellant/claimant would be entitled to interest at rate of 7.5% per annum from the date of filing appeal till actual payment.

With such modification, the ***FAO-10067-2014*** is allowed partly.

As far as ***FAO-7931-2017*** filed on behalf of owner – Suresh Chander Rajora, the Tribunal has observed that respondent No.1 was not having a legal and valid driving licence. Merely for the reason that respondents No.1 and 2 had been proceeded against ex-parte, the approach of the Tribunal in that regard was faulty and erroneous. Respondents No.1 and 2 in the joint written statement filed by them had specifically stated that respondent No.1 was having a legal and valid driving licence, whereas plea taken by respondent No.3 in the written statement was that respondent No.1 was otherwise. The Tribunal had framed issue No.5 in that regard placing the onus upon respondents. Since it was respondent No.3 insurance company, which had alleged that respondent No.1 was not having a valid and effective driving licence, onus of proving that fact ought to have been placed upon such insurance company. Though the Tribunal has not specified as to on which of the respondents the onus was placed but obviously it was on respondent No.3 insurance company in view of the position explained above. Respondent No.3 – insurance company was expected to lead evidence to discharge onus of proof, which it failed to do. It has not brought on record even iota of evidence to discharge that onus. Rather as it transpires it did not lead any oral evidence and had tendered copy of cover note Ex.R1, thereafter closing its evidence. As such it was failure on the part of the respondent No.3 – insurance company to show that respondent No.1 was not having a legal and valid driving licence to drive the offending vehicle, which resulted in violation of terms and conditions of the insurance policy absolving respondent No.3 – insurance company of its liability to pay compensation. Learned counsel for the appellant – owner has referred to authority by Division Bench of this Court i.e. ***The Oriental Insurance Co. Ltd. Versus Smt.Paro and others, 1995(1) ACJ 558*** wherein it was observed as under:

> *6. In our view, in view of the law laid down by the apex Court that it is for the insurance company to prove the breach of the condition, the onus of proving the same lays on the insurance Company cannot be inferred that the vehicle was not being driven by the duly licenced driver. The onus of proving the same continues on the company, though the burden of proof may shift in the facts and circumstances of each case. No law in general terms can be laid down that non-production of the driving licence or non production of any evidence of having a valid driving licence would automatically result in a presumption of the vehicle being driven by a unqualified*

> *driver. We are further of the considered view that in view of the facts in the present case, the burden of proof was on the insurance company which led no evidence to discharge that burden. During the course of arguments also nothing has been pointed out to show that the insurance company had led any evidence to discharge that burden. Thus, in our considered opinion, the finding of the Motor Accidents Claims Tribunal against the insurance company cannot be interfered with. With respect we cannot agree with the law laid down by the Single Bench in Surinder Paul's case (supra) and the same cannot be permitted to hold good, and is, therefore, overruled.*

Therefore, the finding of the Tribunal in that regard is wrong and is set aside and issue No.5 is decided against the respondent No.3 – insurance company. Resultantly, the liability to pay the compensation shall be of all the three respondents jointly and severally and respondent No.3 – insurance company shall indemnify the respondent No.2 of the amount of compensation payable by him to the claimant under the Award.

Thus, ***FAO-7931-2017*** filed on behalf of the owner – Suresh Chander Rajora stands allowed, accordingly.

14.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No