

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

FAO-10611-2014 (O&M)
Date of decision: 09.12.2019

Jaswant Singh @ Ladi

...Appellant

Versus

Garib Dass and others

...Respondents

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

Present: Mr. M.S. Kundu, Advocate for
Mr. J.S. Cooner, Advocate for the appellants.

Mr. R.S. Sharma, Advocate for respondent No.2.

Mr. Vinod Chaudhri, Advocate for respondent No.4.

H.S. MADAAN, J.

Petitioner/claimant Jaswant Singh @ Ladi had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Garib Dass-owner, The New India Assurance Company Ltd., Bilaspur, H.P-insurer of truck No.HP-23A-9021 (for brevity 'the truck') as well as Pavit Pal Singh-owner and The Oriental Insurance Company Ltd., Khanna, District Ludhiana-insurer of Canter No.HR-37-A-5273 (for short 'the canter') claiming compensation on account of injuries suffered by him in a motor vehicular accident, which took place on 22.07.2008 at about 10/10.30 AM in the area of Village Patrehri Tehsil Naraingarh, District Ambala on Saha to Shahzadpur road. As per version of the claimant, on 22.07.2008, he was

going from Delhi to Chandigarh via Panchkula while driving the canter on correct left hand side of the road, at a normal speed. At about 10/10.30 AM when he reached near area of Village Patrehri, Tehsil Naraingarh, District Ambala on Saha to Shahzadpur Road, in the meanwhile, the truck in question being driven by its driver at a very high speed came from opposite side and hit the canter of the claimant by going on wrong side of the road. Resultantly, driver of the truck, namely, Onkar Singh died in the accident, whereas, claimant suffered multiple simple as well as grievous injuries on right leg, fracture of right thigh, fracture of right hip joint, fracture of left leg, besides other injuries on his body. He was taken to Civil Hospital, Naraingarh from where he was referred to PGI, Chandigarh. He remained admitted there from 22.07.2008 to 14.08.2008 and from 14.08.2008 to 14.12.2008 at Amandeep Hospital, Amritsar and several operations for nailing, plating and affixing implantation as well as operation for flash grafting were done; that right leg below knee of the claimant was amputated and a sum of Rs.1,45,000/- was spent on treatment of claimant, including transportation, medicines, tests, diet etc. He had to purchase artificial limb worth Rs.2 lacs; that the police recorded the statement of claimant but registered the FIR against the claimant with regard to the accident in question. The accident took place on account of use of truck which was being driven by Onkar Singh, since died and canter being driven by claimant Jaswant Singh @ Ladi. The claimant was aged about 30 years at the time of accident and he was working as a driver with Pavit Pal Singh, earning Rs.3300/- per month.

On account of suffering injuries in the accident, he has become permanently disabled. He prayed for grant of compensation of Rs.25 lacs with interest @ 18% p.a.

On getting notice, respondents put in appearance and contested the claim petition by filing written statements. In the written statement submitted by respondent No.1, he raised preliminary objections that the petition against him is not maintainable, since no alleged accident had occurred with the vehicle owned by him. On merits, this very plea was reiterated, contending that as a matter of fact, claimant himself was at fault in happening of the accident.

In the written statement filed by respondent No.2, it took up preliminary objections that truck in question was not possessing valid documents at the time of alleged accident and the alleged accident is result of head on collision between the truck and canter. As such, driver of the truck cannot be held liable for the alleged accident; the claimant was not possessing a valid driving licence at the time of accident. On merits, assertions in the petition were controverted, while praying for dismissal of the claim petition.

In the written statement filed by respondent No.3, he denied the accident, contending that the claimant had got registered a false FIR No.58 dated 22.07.2008, under Sections 279, 337 and 304-A IPC with a view to lay a false claim against respondent No.3. Such respondent also prayed for dismissal of the claim petition.

In the written statement filed by respondent No.4, it took up

various legal objections and statutory defences, contending that the driving licence of respondent No.1 is invalid; claimant has colluded with respondents No.1 & 2 and has not approached the Court with clean hands. On merits, such respondent controverted the assertions in the claim petition, praying for its dismissal.

On pleadings of the parties, the following issues were framed:-

1. Whether the claimant suffered injuries on his person due to rash and negligent driving of offending truck No.HP-23-A-9021 by its driver Onkar Singh (since deceased)? OPP
2. Whether claimant is entitled for compensation, if so to what extent and from whom?OPP.
3. Whether respondent No.1 was not holding valid and effective driving licence at the time of accident? OPR
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Gurdaspur, (for brevity 'the Tribunal') vide award dated 07.07.2014, accepted the claim petition and awarded compensation of Rs.3,73,347/- to the claimant with interest @ 6% p.a from the date of filing of claim petition till actual realization, liability to pay this amount being joint and several of respondents No.3 & 4.

Feeling aggrieved by the amount of compensation awarded to the claimant by the Tribunal, the claimant has approached this Court, by way of filing the present appeal seeking enhancement of

compensation, notice of which was given to the respondents, however, only respondents No.2 & 4 have put in appearance through counsel to offer a contest.

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

Since, it is a petition under Section 163-A of the Act, the main thing to be seen is as to whether the petitioner/claimant had received injuries in an accident arising out of use of a motor vehicle. The answer has to be in positive. As a result of suffering injuries, the petitioner/claimant had suffered 65% permanent disability. As per his version, he was working as a driver, earning Rs.3300/- per month and due to suffering injuries, he has become totally disabled, unable to work as a driver. The monthly income of Rs.3300/- as claimed by the petitioner/claimant cannot be said to be on higher side. 65% of the disability seen in the light of monthly income of the claimant comes out to Rs.2145/-, so, annual disability can be quantified as Rs.25,740/-. The injured has given his age to be 30 years at the time of accident. The average life expectancy in the State of Punjab is more than 60 years. That means, he would have to live with such disability for another 30 years or more. As per the Schedule provided under Section 163-A of the Act, if a person in the age group of 30 to 35 years dies, then, a multiplier of 17 is used. Taking guidance from that formula, the total disability of claimant comes out to Rs.4,37,580/-.

The petitioner/claimant is entitled to get Rs.5000/- for pain and suffering and medical expenses to the tune of Rs.15,000/-. Though,

according to the petitioner/claimant, he has paid a sum of Rs.1,97,825/- as indoor charges but petition under Section 163-A of the Act decided as per structured formula and compensation is to be calculated as per enteries in the Schedule. Therefore, amount of Rs.15,000/- can be granted under this provision. Thus, the total compensation comes out to Rs.4,72,580/-.

The Tribunal fell in error in taking it as a case of contributory negligence, finding the contributory negligence of claimant to the extent of 33%. In petition under Section 163-A of the Act, rashness and negligence is not to be seen, therefore, the contributory negligence is also not to be looked into. The claimant is thus entitled to get Rs.4,72,580/- with interest @ 7.5% p.a., on the additional amount of compensation from the date of filing of appeal till actual realization. The liability to pay this amount being joint and several of respondents No.3 & 4 The directions with regard to mode and manner of payment shall remain the same as given in the impugned award.

The appeal stands partly allowed.

09.12.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No