

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2546 of 2015 (O&M)

Date of decision : 16.12.2019

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Randhir

.....Appellant

vs.

Bhag Singh and others

.....Respondents

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

Present: Mr. Rajesh Lamba, Advocate for the appellant.

Mr. Anubhav Bansal, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate for respondent No.3.

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H. S. Madaan, J.

Briefly stated, facts of the case are that on account of suffering injuries in a motor vehicular accident, petitioner -claimant Randhir, aged 38 years s/o Rattan Singh resident of village Dakora, P.S. Hodal, District Palwal (Haryana), had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Bhag Singh – driver, Jaiveer Singh Tomar -owner and M/s ICICI Lombard General Insurance Company Limited,

Mumbai – insurer of car No. DL-12 CS 0400 (hereinafter to be referred as 'the offending car'), claiming compensation of Rs.20 lacs alongwith interest and costs.

As per version of the claimant, on 12.12.2012 at about 7.15 p.m., he was returning to his village Dakora from village Sonali via National Highway No.2 on his motorcycle bearing registration No. HR 50B-4559. When he reached at Mundkati Chowk, National Highway No.2, in the meanwhile a Hyundai Vema car, bearing registration No. DL-12 CS 0400, being driven by respondent No.1 Bhag Singh in a very rash and negligent manner without blowing the horn, came from behind and hit the motorcycle of the claimant. Resultantly, the claimant alongwith his motorcycle fell down on the road. The claimant suffered simple and grievous injuries on his person. His brother was standing nearby waiting for him. The injured was taken to Sukhdev Raj Soin Hospital, Banchari, by his brother. However, keeping in view his serious condition, he was referred to QRG Central Hospital and Research Centre, Faridabad for treatment. He was accordingly taken there, where he was medico legally examined. The matter was reported to police and FIR No. 442 dated 14.12.2012 for offences under Sections 279, 337 and 338 IPC was registered against respondent No.1 at Police Station Hodal.

According to the claimant, he was aged about 38 years at the time of accident and was serving in M/s NKV Farm House and Developers Pvt. Ltd., Faridabad, getting a salary of Rs.15,000/- per month. He had suffered a fracture on his left leg, besides injures on

cheek, forehead, nose, eye and other parts of the body and resultantly, he has become permanently disabled. He had spent Rs. 3 lacs on his medical treatment.

On being given notice, respondents No. 1 and 2 did not appear despite service, as such they were proceeded against ex parte. Whereas respondent No.3 Insurance company appeared and filed written statement, contesting the claim petition, contending that no such accident as alleged in the claim petition had taken place. As a matter of fact the claimant injured himself had caused the accident, since he was driving the motorcycle under the influence of alcohol. The petitioner claimant had wrongly got FIR registered against respondent No.1 in connivance with respondent No.1, insured and police authorities, so as to extract compensation from the answering respondent. According to such respondent, respondent no.1 was not having a valid and effective driving licence to drive the car in question at the time of the accident and the car was being driven against the terms and conditions of the insurance policy. Refuting the remaining assertions, such respondent – Insurance company prayed for dismissal of the claim petition.

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

1. Whether the accident in question took place due to the rash and negligent driving of car No. DL 12CS 0400 by the respondent No.1 causing injuries to the claimant? OPP
2. Whether the claimant is entitled to compensation, if so,

how much and from whom? OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence to drive the vehicle in question on the date of accident? OPR3
4. Whether the respondent No.2 was possessing a valid and effective route permit to ply the vehicle in question? OPR3
5. Relief.

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

In order to prove his case, claimant -Randhir Singh himself stepped into the witness box as PW-2 and further examined Indu Kumar Thakur, Criminal Ahlmad in the Court of Sh. Vikas Gupta, SDJM, Hodal, as PW-1, Bhagat Singh – eye witness as PW-3, S.S. Malik, Medical Record Keeper, QRG Central Hospital and Research Centre, Faridabad as PW-4, Dr. T.C. Bundela, Deputy Civil Surgeon, Palwal as PW-5 and Ravi Setia, Record Keeper of Mangal Deep Health Aid c/o QRG Central Hospital and Research Centre, Faridabad, as PW-6.

The parties tendered certain documents in support of their respective evidence and closed the same.

After hearing the arguments, learned Motor Accidents Claims Tribunal, Palwal, vide award dated 24.12.2014, dismissed the claim petition, which left him aggrieved and he has filed the present appeal, notice of which was given to the respondents and respondents No. 1 and 3 have put in appearance through counsel.

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

To prove that the accident in question had taken place on account of rash and negligent driving of the car in question by respondent No.1, the claimant had got his statement recorded as PW-2 and repeated on oath his case as given in the claim petition. Though he was cross examined at length on behalf of the respondent – Insurance company but he stuck to his guns. In addition to that the claimant had placed on file copy of FIR No. 442 dated 14.12.2012 Exhibit P-3, PW-3 Bhagat Singh eye witness, brother of the petitioner -claimant had also lent support to his version on material aspects. The petitioner claimant had further examined Indu Kumar Thakur, Criminal Ahlmad of the Court of SDJM, Hodal, to show that respondent No.1 is facing trial in the criminal case. Respondent No.1 had not opted to offer a contest. Similarly respondent No.2 had also not turned up. The evidence adduced by the claimant had gone un rebutted.

The Tribunal while examining the matter as to whether the accident in question had taken place due to rash and negligent driving of the offending car by respondent No.1. It treated the matter as it was a criminal case, where onus to prove guilt of the accused to the hilt is stationary of the prosecution and it never shifts. The yardsticks to be used for deciding a criminal case and a claim petition under the Motor Vehicles Act, are entirely different. It is for the reason that in a criminal case life and liberty of a person is involved,

therefore, the Courts insist upon strict proof of the guilt of the accused and it is normally said that hundreds of guilty persons may go scot free, but even one innocent person should not be punished. Whereas for deciding a claim petition under the Motor Vehicles Act, the criteria is altogether different. Strict rules of procedure and evidence are not applicable there and the matter is to be decided by preponderance of probabilities. The Tribunal has given too much importance to delay in lodging of the FIR, in as much as, the accident had taken place on 12.12.2012 at 7.15 P.M. , whereas the FIR was lodged on 14.12.2012 at 10.20 A.M. The delay may be an important factor in deciding a criminal case, but while adjudicating a claim petition, too much importance cannot be given to such delay. Even otherwise, after the accident, the natural instinct of the persons present nearby is to remove the injured to the hospital, so as to get medical aid for him to save his life, rather than leaving the injured unattended and going to the Police Station first, to lodge information regarding the accident.

The injured was taken to the hospital and the Medical Officer concerned had sent information to the police on the day of the accident itself i.e. 12.12.2012 at 10.30 P.M.; statement of the injured was recorded on 13.12.2012; the FIR was recorded on 14.12.2012 at 10.20 A.M. Therefore, too much cannot be looked into the delay in reporting the matter to the police.

Furthermore, in the FIR the registration number of the offending car is clearly mentioned. FIR No. 442 dated 14.12.2012

Exhibit P-3 had been registered against respondent No.1 Bhag Singh for offences under Sections 279 and 337 IPC. After registration of the FIR the matter was investigated. Respondent No.1 was challaned and he faced trial before the criminal court. Furthermore, the Verna car in question had been damaged in the accident and is stated to have been taken into possession by the police on the day of accident itself, thus ruling out the possibility of any false information. If in fact the accident had taken place due to negligence of the injured, having been hit by the bus then nothing prevented the claimant - injured to state so before the police. There was no occasion for him to screen the bus driver and involve the car driver in this case wrongly. The police after investigation had also found that enough material was there against the car driver to challan him for causing the accident by rash and negligent driving of the car. If in fact bus was involved in the accident, then the police would have definitely challaned the bus driver, rather than allegedly falsely implicating the car driver in the case.

Even if it is taken that Bhagat Singh had not seen the accident, then deposition of the claimant Randhir Singh is there to support his case. Randhir Singh having suffered injuries in the accident, his presence at the spot cannot be doubted. The Tribunal has doubted the case of claimant for another reason that from MLR of the injured, Exhibit R-1, it has come out that he was under the influence of liquor at the time of examination and the accident took place with the bus. However, these contentions do not come out to

be convincing. In the MLR Exhibit R-1, it was mentioned that there was smell of alcohol present by mouth. This by itself is not sufficient to conclude that the injured had consumed alcohol and was under its influence since there are certain types of medicines having alcohol as its contents and there is possibility of alcoholic smell being emitted after consuming that medicine/syrup. To confirm that the injured was under the influence of liquor the analysis of his blood sample was required and his breath could also have been analyzed, which was not done in the present case. Therefore, even if it is taken that he had consumed some alcohol, but then it has also to be taken into consideration that whether by reason of that he was unable to driver his motorcycle properly and he himself was responsible for the accident, due to that reason. From perusal of the record, it does not comes out to be there. It is specific case of the claimant that a car and bus were overtaking him and the car had hit his motorcycle resulting in the accident.

The Tribunal has been influenced by another factor that a near relative of the claimant, namely, Amar Singh was posted at the Police Post within the jurisdiction of the place where the accident had taken place. May it be so, but that does not mean that the investigation in this case had been carried out in a partial and improper manner. There is nothing on record to show that.

Furthermore, the Tribunal has referred to various admissions said to have been made by the claimant in his statement.

But as it comes out, those are not admissions but improper

recording of suggestions. Statement of a witness is to be seen in entirety and it cannot be dissected into parts, which are then to be interpreted in isolation out of context. Claimant having supported his case in his examination-in-chief itself, it cannot be expected that he starts toeing the line of respondents in his cross examination. Therefore, verdict given by the Tribunal on issue No.1 is obviously wrong. The same is reversed and issue No.1 is decided in favour of the claimant, against the respondents, holding that the accident in question took place due to rash and negligent driving of car bearing registration No. DL 12 CS 0400, by respondent No.1 – Bhag Singh, causing injuries to the claimant – Randhir Singh.

The Tribunal has not recorded any findings on issues No. 3 and 4. The Tribunal fell into error in omitting to do so. It was required to give findings on all the issues and the Tribunal failed in its legal duty to do so. Nevertheless, the onus to prove both these issues was on the Insurance company. However, it did not lead any evidence. It did not bring on record any cogent or convincing evidence to discharge the onus of proving such issues. Therefore, those issues are to be decided against respondent No.3 – Insurance company.

Coming to issue No.2, the Tribunal has found that the claimant was not entitled to get any compensation. This verdict is obviously wrong. In view of detailed discussion above, where I have found that the accident in question had taken place on account of rash and negligent driving of the offending car by respondent No.1 and

that no violation of terms and conditions of insurance policy could be brought on record by respondent No.3-Insurance company, which might have absolved it of its liability to indemnify respondent No.2 – insured, with regard to liability to pay compensation and that there is no dispute that the offending car was insured with respondent No.3 Insurance company at the relevant time. Respondent No.1 being driver, respondent no.2 – owner and respondent No.3 insurer of the offending vehicle, are jointly and severally liable to pay compensation to the claimant.

Under the head medical treatment, the claimant is entitled to be compensated for the expenses incurred by him for his medical treatment on account of injuries suffered by him in the accident. He is stated to have remained admitted in QRG Central Hospital and research Centre, Faridabad from 12.12.2012 to 14.12.2012, having paid a sum of Rs.78,003/- and further undergone operation of ankle, bearing expenses of Rs.9,710/-. Though he is stated to have undergone another operation in Sarvodhya Hospital, Faridabad, but on account of possessing an Army card, he was not required to pay any amount there and he remained admitted in Sarvodhya Hospital, Faridabad from 7.5.2013 to 10.5.2013.

With regard to the oral and documentary evidence adduced by the claimant, a sum of Rs.1,19,386/- is stated to have been spent vide bills of the various dates. Thus total amount is calculated as Rs.2,07,099/-. Since some times chemists do not issue bills for the medicines purchased and many a times such bills/cash

memos/receipts get misplaced or lost. Furthermore, some amount has to be given to the claimant for future medical expenses.

A sum of Rs.2,25,000/- is awarded to the claimant towards expenses for medical treatment and future medical treatment.

As per disability certificate Exhibit P-32, proved in evidence by him, the claimant has suffered permanent disability of 5%. Considering that he had sustained injuries on his left leg, forehead, nose, left cheek and left eye and with such disability would not be able to work like a normal human being, in future, he deserves to be compensated for that reason. A sum of Rs.30,000/- is awarded to him under that head.

Some amount must have been spent upon transportation, while injured was taken to the hospital after the accident, during the period of his hospitalization in various medical institutes, going there for followup treatment etc. A sum of Rs.20,000/- is awarded to him under that head.

On account of loss of income during the period he could not perform his normal work, a sum of Rs.30,000/- is awarded to him and under the head pain and suffering, attendant charges, a sum of Rs.20,000/- each is awarded to him.

For the reason that he would not be able to work, run and lead a normal live as he used to do earlier to suffering injuries in the accident, a sum of Rs.20,000/- is awarded to him on account of loss of amenities.

For the reason of suffering injuries, his life expectancy has

been affects. A sum of Rs.20,000/- is awarded under that head.

Accordingly, the claimant is held entitled to total get compensation of Rs.2,25,000 + 30,000 + 20,000 + 30,000 + 20,000 + 20,000 +20,000 + 20,000 = Rs. 3,85,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The liability of all the three respondents to pay this amount shall be joint and several.

The appeal is allowed with costs.

16.12.2019
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(H.S. Madaan)
Judge

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