

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

FAO-3151-2016(O&M)

Date of decision:-16.12.2019

Khalid Hussain

...Appellant

Versus

Haseen and others

...Respondents

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

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

Mr.Abhimanyu, Advocate
for respondents No.1 and 2.

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

H.S. MADAAN, J.

Petitioner/claimant Khalid Hussain, aged about 38 years, resident of village Ferozepur Namak, Tehsil Nuh, District Mewat had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Haseen – owner, Jamshed – driver and National Insurance Company Ltd. - insurer of motorcycle Splender No.HR-52A-6966 (hereinafter referred to as the offending vehicle), claiming compensation of Rs.50 lakhs along with interest on account of suffering injuries in a motor vehicular accident, before the Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the Tribunal).

Briefly stated, facts of the case, as per version of the claimant are that on 28.7.2014, he along with his brother Abdulla Khan was standing at bus-stop of village Ferozepur Namak; at about 5:00 p.m. the offending vehicle came from Nuh side being driven in a very rash and negligent manner by respondent No.2 – Jamshed and it struck the petitioner without any indication or blowing horn, after going on kachha portion; resultantly petitioner sustained serious multiple injuries on his person; after the mishap, respondent No.2 sped away the motorcycle; petitioner/injured was taken to SKHM Govt.Medical College and Hospital, Nalhar but keeping in view his serious condition, he was referred to Surya Ortho and Trauma Centre, Faridabad, where he remained admitted from 29.7.2014 to 1.8.2014; thereafter he remained admitted in Alashka the Medi World Hospital, Sohna from 9.9.2014 to 13.9.2014. According to the petitioner/claimant, he has spent an amount of Rs.2.5 lakhs on his treatment; he was working as a JBT Teacher at GPS Palla and earning Rs.35,000/- per month.

On being put to notice, all the three respondents appeared. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed on behalf of respondents No.1 and 2, they had taken up various legal objections with regard to the maintainability of the claim petition, arising of any cause of action to the claimant to bring the petition etc. On merits, such respondents denied the allegations in the claim petition and prayed for dismissal of the claim petition.

In the separate written statement filed by respondent No.3- insurance company, it had taken up various preliminary objections, to wit, that respondent No.1 was not holding a valid and effective driving licence at the time of accident; that the owner of the vehicle was not cooperating with the insurance company and was not contesting the claim petition and he had not given any information; that as per the provisions of Section 170 of the Act, the answering respondent was entitled to contest the petition on merits and to take all the defences and pleas available to the owner of the vehicle; that respondent No.2 had been falsely involved in the FIR No.599 dated 3.9.2014 and accident took place on 28.7.2014 and FIR was registered on 3.9.2014 without rendering any explanation for delay in registration of the FIR. On merits, such respondent controverted the assertions in the claim petition contending that no such accident had been caused by the motorcycle in question. In the end, such respondent also 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 8.1.2016, which left the claimant aggrieved and he has filed an appeal before this Court, notice of which was issued to the respondents, who put in appearance through counsel.

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

While dealing with issue No.1 “*Whether the accident dated*

28.7.2014 took place due to rash and negligent driving of vehicle bearing No.HR-52A-6966 by respondent No.2, resulting into injuries to petitioner?”, the Tribunal has adopted a very wrong and erroneous approach. The petitioner/claimant had led enough oral as well as documentary evidence to discharge onus of proof placed upon him but that was wrongly disbelieved by the Tribunal. Petitioner – Khalid Hussain appearing as PW5 in his affidavit Ex.PW5/A had repeated on oath his case as given in the claim petition. He was cross-examined at length on behalf of the respondents but he stuck to his guns. He having suffered injuries in the accident is a stamped witnesses and his presence at the spot at the relevant time could not be doubted. No previous enmity between the petitioner and respondents No.1 and 2 has been pleaded or proved prompted by which he might have involved the motorcycle of respondent No.1 as owner and respondent No.2 as driver thereof in this case. The Tribunal has made much of the fact that there has been delay in reporting the matter to the police. Of course in case of commission of cognizable offences prompt lodging of report to the police is desirable but that cannot be given undue importance while deciding a claim petition under the Act.

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.

The petitioner/claimant had examined PW1 Sh.Shyam Record-keeper as PW1, Surya Ortho, PW2 Rakesh Kumar, Store-Keeper, SHK GMC, Nalhar, PW3 Sh.Manoj, Accountant, Alashka Hospital, Sohna to prove that he remained admitted in those hospitals after receiving injuries in the road side accident. It may be mentioned here that neither respondent No.1 nor respondent No.2 stepped into the witness-box to get their statements recorded. Therefore, evidence adduced by the claimant has gone un rebutted. The cogent and convincing evidence adduced by the claimant was wrongly rejected by the Tribunal and verdict as regard issue No.1 is clearly wrong. That wrong is undone and this issue is decided in favour of petitioner/claimant and against the respondents holding that the accident in question in which claimant had suffered injuries had taken place on account of rash and negligent driving of the offending vehicle by respondent No.2 – Jamshed.

As regards issue No.3 *“Whether respondent No.2 was not*

having valid and effective driving licence on the date of accident. If so its effect?, the Tribunal has given a finding that respondent No.2 was holding a legal and valid driving licence on the date of accident. That finding is correct and appropriate and does not call for any interference.

With regard to issue No.4, no finding has been recorded by the Tribunal. However, the insurance company could not point out any violation of any term and condition of the insurance policy, which might have absolved it of liability to pay compensation to the claimant. Therefore, issue No.4 is decided against respondent No.3 – insurance company.

Now coming to issue No.2. The Tribunal has observed that at the time of accident, the claimant was drawing salary of Rs.36,394/- per month and he had sustained permanent disability of 25%. The petitioner/claimant stated that he had spent about Rs.3 lakhs on his treatment but the Tribunal has allowed a sum of Rs.1,70,464/- only on the basis of medical bills Ex.P3 and Ex.P8, in the process ignoring other bills Mark 1 to Mark 16 without assigning any justifiable reason. The Tribunal has not taken into view the fact 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 and no amount has been awarded towards future medical expenses. Thus, I award a sum of **Rs.2,50,000/-** under that head.

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.

An amount of Rs.20,000/ assessed on account of pain and suffering is on very low side. 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 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.

The Apex Court in judgment *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396* has provided the yardstick for award of compensation to a child, who suffered permanent disability in a motor vehicular accident providing that for permanent disability above 10% and upto 30%, Rs.3 lakhs is to be awarded besides some more compensation under different heads. However, since in the present case the disability is 25% and not of the entire body, nevertheless I find that compensation of Rs.50,000/- assessed is on the lower side and it needs to be enhanced. Therefore, a compensation of **Rs.1,50,000/-** is awarded on account of permanent disability to the extent of 25%.

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.25,000/- each (total **Rs.50,000/-**).

The total compensation payable is worked out to Rs.5,30,000/-, payable by all the respondents jointly and severally.

Thus finding on issue No.2 is modified accordingly.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.5,30,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimant payable by all the respondents jointly and severally.

16.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No