

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

FAO-7730-2014(O&M)

Date of decision:-27.5.2019

Jaswinder

...Appellant

Versus

Sanjay Kumar and others

...Respondents

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

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

Mr.Amandeep Saini, Advocate for
Mr.Sanjay Verma, Advocate
for respondents No.1 and 2.

Ms.Geeta Chaudhari, Advocate for
Mr.Vinod Chaudhari, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that
petitioner/claimant – Jaswinder son of Sh.Fakiriya, aged about 37 years,
resident of Shanti Nagar, Police Station Jhansa, District Kurukshetra had
brought a claim petition under Section 166, 140, 141 of the Motor

Vehicles Act, 1988 against respondents i.e. Sanjay Kumar – driver, Ashu Kumar – owner and United India Insurance Company Limited – insurer of motorcycle bearing registration No.HR-07R-3579 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.5 lacs.

As per the version of the petitioner/claimant on 17.12.2011 he was returning from village Tangore to his house at Shanti Nagar, Police Station Jhansa, District Kurukhsetra after selling vegetables on his rickshaw/cart; that at about 6:15 p.m. when he had just crossed Sugarcane Weigh Bridge and was going on his left side of the road, then all of a sudden respondent No.1 Sanjay Kumar driving his motorcycle at a very high speed and in a rash and negligent manner going on the wrong side of the road hit the rickshaw/cart of the petitioner/claimant, as a result the petitioner/claimant received serious injuries on his leg and his right leg was fractured; that Jagwinder Singh, a brother of the petitioner/claimant had arrived at the spot and noted down the number of the offending vehicle; that after the accident Sanjay Kumar - driver along with his motorcycle had left the spot; that the petitioner was taken to CHC Shahabad from where he was referred to LNJP Hospital, Kurukshetra; that formal FIR with regard to the accident in question was lodged.

According to the claimant, he had spent Rs.80,000/- on his treatment, medicines, transportation, special diet etc.

On being put to notice of the claim petition, all the three respondents appeared and filed written statements. A joint written statement had been filed by respondents No.1 and 2, whereas respondent No.3 – insurance company had filed a separate written statement.

In the joint written statement filed by respondents No.1 and 2, they took up various preliminary objections contending that the claimant had no locus standi to file the claim petition; that the claim petition was bad for misjoinder and non-joinder of necessary parties etc. On merits, such respondents denied that any accident had been caused by respondent No.1 while driving it in a rash and negligent manner, rather the very involvement of the motorcycle in question in the accident was denied. Refuting the remaining allegations in the claim petition, such respondents prayed for dismissal of the claim petition.

Respondent No.3 – insurance company in its written statement had also raised various legal objections on merits denying the accident in question submitting that a false version had been put up in order to fleece money from the answering respondent. According to such respondent, the motorcycle in question was being plied without any valid and effective driving licence. In the end, such respondent also prayed for dismissal of the claim petition.

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

1. Whether the motor vehicle accident dated 17.12.2011 is an outcome of rash and negligent driving of motorcycle bearing registration No.HR-07R-3579 driven by Sanjay Kumar respondent No.1? OPP.
2. Whether the respondent-driver of aforesaid vehicle was not having valid driving licence at the time of alleged accident? OPR.
3. Whether the petitioner is entitled to compensation on account of injuries sustained by him in the aforesaid accident? If so, to what

amount and from whom? OPP.

4. Relief.

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

In order to prove his case, the petitioner/claimant got his statement recorded as PW1 besides examining Dr.J.P. Bharal as PW2 and Dr.R.L. Arya as PW3.

On the other hand, respondents No.1 and 2 tendered in evidence copy of driving licence Mark-A, copy of registration certificate Mark-B and copy of insurance policy Mark-C, whereas respondent No.3 tendered in evidence challan chit Ex.R1 and copy of insurance policy Ex.R2.

After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 11.3.2014, which left the claimant aggrieved and he has filed an appeal before this Court, notice of which was issued to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the award in question is not sustainable and is liable to be set aside.

The Tribunal has non-suited the claimant mainly for the reason that the matter was reported to the police after a period of six days and as revealed from the report under Section 173 Cr.P.C., a ruqa was sent to the police station regarding admission of injured in LNJP Hospital, Kurukshetra and there was no explanation as to why the police did not

record statement of the claimant/injured on the same day i.e.18.12.2011 when the ruqa was received in the police station; that from the perusal of statement of petitioner Jaswinder recorded in a criminal case, it comes out that registration number of the motorcycle was added later on after recording of statement; that Jaswinder during his cross-examination has stated that no MLR was prepared in CHC Shahbad, whereas his testimony is falsified from the document i.e. copy of MLR Ex.P6 placed on record by petitioner/claimant himself showing that he was first medico legally examined in CHC Shahbad on 18.12.2011 from where he was referred to LNJP Hospital, Kurukshetra, though it was mentioned in the MLR that petitioner received injuries in a road side accident with a motorcycle but in this case involvement of motorcycle was not established by the petitioner by leading cogent and convincing evidence. One more factor which weighed on the mind of the Tribunal was that although as per case of the claimant registration number of the motorcycle was noted down by Jagwinder but said Jagwinder was not examined as a witness by the claimant.

Learned counsel for the respondent No.3 – insurance company has referred to authority **M/s Graphisads Private Limited Versus Akhtar and another, 2018(2) Law Herald 1510** wherein it was observed that the onus to prove involvement and rash and negligent driving of the offending vehicle is on the claimants.

There cannot be any dispute with such proposition of law. However in the instant case, the claimant had successfully discharged the onus of proof placed upon him. Statement on oath of claimant Jaswinder

is there to provide ocular version of the accident in consonance with the stand taken by him the claim petition. Furthermore, the FIR with regard to the accident was also registered and as observed by the Tribunal itself, it is mentioned in the MLR that petitioner had received injuries in a road side accident with the motorcycle. Therefore, this judgment does not come to help the respondent in any manner.

However, I find that the Tribunal unnecessarily tried to find fault with the evidence adduced by the claimant and testimony of the claimant was discarded without any justifiable reason. Jaswinder having received injuries in the accident was a stamped witness and his presence at the spot could not be doubted. There was no reason for him to involve a vehicle in this case wrongly. In his statement, he had repeated on oath his version given in the claim petition standing his cross-examination well. Respondent No.1 – Sanjay Kumar had not appeared in the witness-box to rebut the evidence adduced by the claimant. Therefore, the evidence brought on file by the claimant had gone rebutted and should have been believed rather than rejecting it since no cogent or convincing reason was there to do so. As such the finding of the Tribunal on issue No.1 is reversed and that issue is decided in favour of the petitioner/claimant and against the respondent holding that motor vehicle accident dated 17.12.2011 was an outcome of rash and negligent driving of the offending vehicle driven by Sanjay Kumar – respondent No.1.

Now coming to issue No.2. The onus of proving this issue was upon respondent No.3 – insurance company but it has failed to bring any evidence on record to prove the issue. A photocopy of driving licence

was placed on record as Mark A. No attempt was made to summon the concerned official from the office, which purportedly issued the licence to show that the licence in question had not been issued to respondent No.1 by the said office or that the same is a forged and fabricated document. Thus the insurance company had failed to discharge the onus of proof placed upon it. The Tribunal has wrongly given finding on this issue just by saying that the same has become redundant, whereas it was not so. Similarly with regard to issue No.3, the Tribunal refrained from giving any finding and stated that the issue had also become redundant.

Now in view of the finding given on issue No.1, it is proved that the respondent No.1 was author of the accident by driving the offending vehicle in which the claimant had suffered injuries. All the three respondents i.e. driver, owner and insurance company are liable to pay compensation to the petitioner/claimant. Now the question is that of quantum.

The claimant has proved in evidence certificate from J.P. Hospital, Kurukshetra showing that Jaswinder aged 38 years male son of Faqir Chand had suffered injuries on which splints were applied; x-ray examination showed fracture of lateral condyle tibia right leg and fracture of lateral malleolus right leg; there was a fracture in his right leg and he was charged Rs.7,500/-. Bill Ex.P2 is in the form of prescription slip. Ex.P3 is the disability certificate showing disability of injured to be 15%. The claimant/petitioner Jaswinder in his affidavit Ex.PW1/A, which he has placed on file which appearing as PW1 has contended that he had spent more than Rs.80,000/- on his treatment, medicines, hospital and

attendant charges, special diet and transportation etc. and more amount is yet to be spent and that he was working as a vegetable vendor earning Rs.10,000/- per month and because of injuries he has suffered a huge loss of income. PW2 Dr.J.P. Bharal, Orthopaedic Surgeon, J.P. Hospital, Kurukshetra in his examination-in-chief has stated as under:

On 31.12.2011, patient Jaswinder, 38 years male son of Fakir Chand, resident of Kulri, Shanti Nagar, near Jhansa, Kurukshetra came to my hospital as OPD patient with alleged history of road side accident on 16.12.2011. The patient was having fracture of laterla condyle tibia right leg and fracture of lateral malleolus right leg. He was applied plaster of paris cast and went back on the same day. Later, he came for OPD consultation. I charged a sum of Rs.7,500/- for the whole treatment. The treatment record-cum-receipt is Ex.P1. He came for follow up till 16.2.2012. The follow up OPD slip is Ex.P2.

PW3 Dr.R.L. Arya, Senior Medical Officer, CHC Shahabad had stated that on 23.5.2012 he along with Dr.Mukesh Kumar, Medical Superintendent and Dr.Madhu Sharma, Deputy Civil Surgeon Kurukshetra had examined patient Jaswinder son of Fakiria, 37 years male, resident of village Kurdi, District Kurukshetra and his total physical disability was assessed to be 15% attributed to post traumatic restricted movement of right knee joint. He had proved the disability certificate issued by Members of Board including him as Ex.P3.

As stated by PW2 Dr.J.P. Bharal, Orthopaedic Surgeon, J.P.

Hospital, Kurukshetra, a sum of Rs.7,500/- was charged from the injured by their hospital. As a matter of common knowledge that it is very difficult to have all the medical bills, receipts secured at home. Some of the bills/receipts get lost whereas some times the medicines etc. are purchased in hurry without asking for issuance of bill/receipt. Some amount is to be awarded to the claimant towards future medical expenses also. Therefore, I deem it proper and appropriate to award a sum of Rs.15,000/- to the petitioner/claimant towards medical expenses.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. I award a sum of Rs.5,000/- under that head.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of Rs.7,500/- is awarded to him on account of transportation.

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.7,500/- is accordingly awarded to the appellant/claimant on that score.

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.10,000/- under that head.

The petitioner/claimant is a vegetable vendor earning a sum of Rs.10,000/- per month and on account of suffering of injuries, he might not have been worked for considerable time. I award a sum of Rs.10,000/- under the head loss of income.

The claimant on account of injuries suffered by him would not be able to walk, run or sit as he could prior to the accident. A sum of Rs.10,000/- is awarded to him on account of loss of amenities and loss of expectation of life.

Learned counsel for the claimant has referred to authority *Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396* by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

- (i) For permanent disability upto 10% Rs. One Lakh.
- (ii) Disability above 10% and upto 30% Rs. 3 lakhs.
- (iii) Disability upto 60% Rs.4 lakhs.
- (iv) Disability upto 90% Rs.5 lakhs.
- (v) Disability above 90% Rs.6 lakh.

The case of the claimant is covered by second eventuality wherein on account of disability 10% and up to 30%, an amount of Rs.3 lakhs was granted as compensation. Therefore, I award compensation of Rs.3 lakhs under that head.

Thus the total compensation comes out to Rs.3,65,000/-.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.3,65,000/- with interest @ 7.5% p.a.

from the date of filing of claim petition till actual realization besides cost of the petition throughout are awarded to claimant payable by all the three respondents jointly and severally.

27.5.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No