

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

FAO-7884-2014(O&M)

Date of decision:-8.4.2019

HDFC ERGO General Insurance Company Ltd.

...Appellant

Versus

Parneet Goyal and others

...Respondents

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

Present: Ms.Vandana Malhotra, Advocate
for the appellant.

Respondents ex parte.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 6.2.2010, Gurdeep Singh along with Manga Ram were travelling in a Maruti Zen car bearing registration No.PB-10AC-6645 returning to Nabha after attending a marriage function at Panipat; that the car was being driven by Gurdeep Singh on left hand side of the road observing all traffic rules; that at about 5:00 p.m., when the car reached near village Titram in front of Kuber Rice Mill, then a TATA Sumo vehicle of white colour having registration No.HR-06K-5321 (hereinafter referred to as the offending vehicle) driven by respondent No.1 – Surender Singh at a very fast speed in a rash and negligent manner came from the opposite side and by going on wrong side of the road struck against the Zen car in question, as a result, both the occupants of the car received injuries; that they were taken to General Hospital, Kaithal, where Manga Ram succumbed to the injuries received by him in the accident; that FIR No.28 dated 6.2.2010 for the offences

under Sections 279/304-A IPC was lodged at Police Station Sadar, Kaithal against respondent No.1 – Surender Singh; that Gurdeep Singh Badesha – injured was shifted from General Hospital, Kaithal to Rajindera Hospital, Patiala, where he remained admitted from 6.2.2010 to 20.2.2010; that he was operated upon; that as per his version, he is still undergoing treatment and has spent Rs.2,50,000/- on his treatment, special diet and transportation etc. and more amount is likely to be incurred for further treatment since the doctors had advised him further operations; that at the time of accident, he was aged about 52 years; that prior to the accident, he was employed in SGPC, posted at Nabha, getting salary to the tune of Rs.40,265/- per month, however, as a result of suffering injuries, he has become permanently disabled and dependent upon others; that the Zen car in question belonged to Sh.Parneet Goyal and it was got completely damaged in the accident.

Sh.Gurdeep Singh Badesha injured had filed a claim petition under Section 166 of the Motor Vehicles Act impleading Surender Singh – driver, Gurvinder Singh - owner and HDFC EEGO General Insurance Company Ltd. insurer of offending vehicle. Sh.Parneet Goyal owner of the ill-fated Zen car, which had suffered damage in the accident had also brought a separate claim petition against the abovesaid respondents.

Both the petitions were tried together.

All the three respondents had appeared and contested the claim petitions.

The Tribunal vide award dated 21.3.2014 had awarded compensation in both the cases. With regard to the claim petition filed by

Sh.Parneet Goyal, a sum of Rs.1,50,000/- was awarded to him as compensation on account of damage caused to his car.

Respondent No.3 – insurance company felt aggrieved by the said award regarding awarding a sum of Rs.1,50,000/- to Sh.Parneet Goyal as compensation on account of damage caused to his car and has approached this Court by way of filing an appeal, notice of which was given to respondents. Since nobody appeared on behalf of the respondents despite service, they were proceeded against ex parte.

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

The first and foremost arguments put forward by learned counsel for the appellant is that though the loss assessed to the car by the Surveyor was Rs.1,15,000/- only even then the Tribunal awarded compensation of Rs.1,50,000/- ignoring the fact that the car in question was of 1998 model having lost substantial value after expiry of 12 years in 2010.

A perusal of the award in question is very relevant. In para No.40 of award, it is mentioned that Parneet Goyal in his affidavit Ex.P17 stated that he is registered owner of the Maruti Zen car in question, which was completely damaged in the accident and is not in repairable condition as per Surveyor's report Ex.P11 and photographs Mark-2 to 10. He had tendered copy of registration certificate showing him as owner as Ex.P18. He had further examined Sh.Virender Krishan Caplash, Surveyor as PW2, who had stated that on 3.9.2010 at the instance of complainant Sh.Parneet Goyal, he had gone to village Rohti Basta Singh near Nabha, where

Maruti Zen car was lying in a damaged condition and it was beyond repair. He proved photographs of the damaged car Ex.P2 to Ex.P10 and he further stated that vide his report Ex.P11, he had assessed the loss to the tune of Rs.1,15,000/-. A perusal of the report prepared by PW2 Sh.Virender Krishan Caplash goes to show that he had determined the net loss of the car as Rs.1,35,000/- and deducting value of the salvage to the tune of Rs.20,000/- calculated the net loss suffered by owner of the car to be Rs.1,15,000/-. The report was submitted by PW2 Sh.Virender Krishan Caplash, Surveyor/Loss Assessor engaged by the claimant himself and he has appeared as a witness for the claimant. Therefore, the claimant can certainly not wriggle out of his report. The Tribunal had wrongly observed that the Surveyor had assessed the loss to the tune of Rs.1,50,000/- and taking it to be so had allowed compensation of Rs.1,50,000/-. Though the insurance company has not led any evidence in rebuttal but then the claimant cannot ask for more amount than assessed by Surveyor/Loss Assessor engaged by him and on whose testimony he relied upon. The Tribunal has not given any plausible or convincing reason to award a sum of Rs.1,50,000/- to the claimant as compensation. Therefore, the grant of compensation of Rs.1,50,000/- to the claimant by the Tribunal was not justified.

Accordingly, the Award is modified by acceptance of the appeal in part and compensation of Rs.1,50,000/- granted to claimant Parneet Goyal on account of damage caused to his car bearing registration No.PB-10AC-6645 is reduced to Rs.1,15,000/-. The other terms and conditions with regard to payment of interest and cost shall be same as

directed in the original award.

8.4.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No