IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-9996-2014 (O&M)
Date of decision: 18.12.2019

United India Insurance Company Ltd.

...Appellant

Versus

Hari Singh and others

...Respondents

(2) FAO-10262-2014 (O&M)

Hari Singh

...Appellant

Versus

Shyam Lal and others

...Respondents

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

Present: Mr. Sanjiv Pabbi, Advocate for the appellant in FAO-9996-2014 and for respondent No.3 in FAO-10262-2014.

Mr. Nitin Mittal, Advocate for the appellant in FAO-10262-2014 and for respondent No.1 in FAO-9996-2014.

Ms. Rajni, Advocate for Mr. Surjit Kumar, Advocate for respondents No.2 & 3 in FAO-9996-2014 and for respondents No.1 & 2 in FAO-10262-2014.

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H.S. MADAAN, J.

Briefly stated facts of the case are that petitioner/claimant Hari Singh had brought a claim petition under Section 166 of the

Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Shyam Lal-driver, Asha Rani-owner and United India Insurance Company Ltd., Mohali-insurer of Maruti Car No.HR-70-0171 (for brevity 'the offending car'), claiming compensation to the tune of Rs.15 lacs on account of injuries suffered by him in the motor vehicular accident, which took place on 15.02.2008.

As per version of the claimant on 15.02.2008, claimant Hari Singh was going from Shahzadpur to Village Kurali, Tehsil Naraingarh, District Ambala, pillion rider along with Baljeet Singh, another pillion rider on a new Splendor motorcycle without number which was being driven by Naresh Kumar on correct left hand side of the road at a moderate speed. At about 8.30/9.00 PM, when they reached at Bibipur T-point on Shahzadpur to Ambli Road, in the meanwhile, the offending car being driven by respondent No.1 in a very rash and negligent manner came from the opposite side. On seeing such type of driving of the car, Naresh Kumar took the motorcycle on extreme left hand side of the road on kacha berm, but the offending car hit against the motorcycle by going on wrong side of the road. Resultantly, the three riders on the motorcycle fell down along with the motorcycle and suffered multiple injuries. Sham Lal driver of the car stopped it but on seeing condition of the injured persons, he sped away the car. All the three injured were taken to Civil Hospital Naraingarh, however, on the way, Baljeet Singh succumbed to the injuries suffered by him in the accident. Claimant Hari Singh had suffered fracture of both bones of right arm below elbow, fracture of both bones right leg below knee in addition to other injuries. He remained admitted in PGI from 15.02.2008 to 15.03.2008. An operation for inserting nails and screws in right leg and knee joint was conducted in PGI, Chandigarh on 17.02.2008. Another operation for inserting plates in right arm was conducted on 22.02.2008. An amount of Rs.75,000/- was spent on treatment, medicines, tests, transportation etc. in the hospital. He was still undergoing treatment at the time of filing of claim petition. According to him, he has become permanently disabled; that he was aged about 40 years at the time of accident and was working as an electrician. He used to earn Rs.8000/- per month. As a result of suffering injuries in the mishap, he is unable to do his routine work and earn anything. He prayed that compensation of Rs.15 lacs be granted to him with interest and costs.

On getting notice, all the three respondents put in appearance.

Respondents No.1 & 2 filed a joint written statement, raised preliminary objections that no accident had taken place with the offending car; respondent No.1 was having a valid driving licence. The car was insured with respondent No.3 at the relevant time. According to them, the car has been falsely involved in the accident. On merits, material assertions in the claim petition were denied, whereas, pleas taken in the preliminary objections were reiterated, while praying for dismissal of the claim petition.

In the written reply filed by respondent No.3-insurance company, it had taken various legal objections and statutory defences, contending that the driver of the car was not holding a valid and effective driving licence at the time of accident and no accident had taken place with the vehicle in question. Such respondent denied any liability to pay compensation to the claimant. In the end, such respondent prayed for dismissal of the claim petition.

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

1. Whether the claimant-injured Hari Singh received injuries in a road side accident caused due to rash and negligent driving by respondent No.1 while driving Car bearing No.HR-70-0171? OPP.
2. Whether the driver of the offending vehicle was not holding any valid and effective driving licence at the time of accident, if so, its effect? OPR-3
3. Whether the respondent No.2(owner) of the car has violated the terms and conditions of the insurance policy, as alleged in the written statement? OPR3.
4. Whether the injured/claimant is entitled to receive compensation, if so, to what extent and from whom? OPR.
5. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, SAS Nagar, Mohali (for short 'the Tribunal') decided issue No.1 in favour of the claimant, holding that the claimant Hari Singh had received injuries in a road side accident on 15.02.2008, which was caused because of rash and negligent driving of Shyam Lal while driving the offending car, issue No.2 was decided against respondent No.3, holding that it had not brought on record any evidence to show that driving licence of Shyam Lal was invalid or ineffective in any manner on the day of accident, issue No.3 was decided against respondent No.3, holding that it had failed to establish that respondent No.2 owner of the car had violated terms and conditions of the insurance policy, issue No.4 was decided in favour of the claimant against respondents and vide award dated 09.07.2014, the claim petition was accepted and compensation of Rs.2,70,000/- with interest @ 6% was awarded to the petitioner/claimant, payable by all the three respondents jointly and severally.

However, respondent No.3-insurance company felt aggrieved by the said award and has approached this Court, by way of filing the present appeal, notice of which was given to the respondents, who have put in appearance through counsel to offer a contest.

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

The first and foremost argument advanced by learned counsel for the appellant-insurance company was that registration number of the vehicle and name of the driver are not mentioned in the FIR and the FIR was recorded on the basis of statement of PW3 Baldev Singh made to the police on 17.03.2008 i.e. after one month of the accident. As a matter of fact, Baldev Singh was not present at the spot because if he had been there, he would have taken the injured to the hospital and would have reported the matter to the police either on the same day or on the next day. There appears to be collusion between the parties and the insured vehicle has been involved in this case to claim compensation from the insurance company. Even the driver has been acquitted by the criminal Court on the ground that his identity was not established.

Whereas, learned counsel for the claimant has vehemently contested such contentions, stating that the delay in reporting the matter does not have much bearing on this case and the claimant has successfully established his case that the accident in which he had suffered injuries had taken place on account of rash and negligent driving of the offending car by respondent No.1 Shyam Lal.

After hearing the rival contentions and going through the record, I find that the arguments advanced by learned counsel for the appellant are without any merit. Section 166 of the 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. This is unlike a criminal case where guilt of the accused to the hilt is required to be established by the prosecution. It is for the reason that life and liberty of a person is involved, therefore, very strict proof is expected in a criminal case. Delay in lodging the FIR may be a relevant factor in a criminal case but it is not so while adjudicating a claim petition under Section 166 of the Act. The Tribunal on proper analysis of the evidence and correct interpretation of law has rightly come to the conclusion that respondent No.1 Shyam Lal was author of the accident by his rash and negligent driving of the offending car, in which Hari Singh petitioner/claimant had suffered injuries.

Petitioner/claimant Hari Singh getting his statement recorded as PW1 repeated on oath his case as given in the claim petition. PW3 Baldev Singh had also deposed in consonance with the case of the claimant. In rebuttal, respondent No.1 did not step into the witness box to state on oath that he had not caused the accident by his rash and negligent driving of the offending car. Similarly, Asha Rani owner of the offending car did not get her statement recorded to show that the car belonging to her was not involved in the accident. Counsel for respondent No.3 had tendered in evidence copy of judgment dated 04.09.2012, vide which Shyam Lal had been acquitted by the criminal Court. But that judgment does not help the respondents much. The fact remains that Shyam Lal was booked for causing the accident. On completion of investigation, he was challaned and sent up to face trial and on conclusion of the trial, though, he was acquitted but the reason for the same that the witnesses had not identified the accused. Judgment of a criminal Court is not binding upon the Tribunal, though, it may have some relevance in the matter. The Tribunal is to reach its own conclusion on the basis of evidence adduced before it. Though, according to the insurance company, there has been collusion between the claimant and respondents No.1 & 2, but that does not come out to be there. It is very difficult to believe that respondent Shyam Lal would have offered himself to be arrested, then getting himself bailed out and facing trial in the Court attending numerous dates of hearing there, with a possibility of being sent behind the bars without any rhyme or reason. Similarly, respondent No.2 Asha Rani would not have invited the hassles of getting her car taken into possession by the police, getting it released on superdari, producing it in the Court on each and every date of hearing, just for the sake of helping the petitioner/claimant. Therefore, the allegations of collusion between the parties do not make any sense.

As regards non mentioning of name of the driver and registration number of the car in the FIR, FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR regarding the commissions of a cognizable offence can be lodged by a person who might or might not had seen the accident/incident himself. It is only during the investigation of the case that the complete story gets unfolded regarding the manner of the commission of the offence, persons involved therein. Therefore, no fault can be found with the verdict recorded by the Tribunal that rash and negligent driving of the offending car by respondent No.1 Shyam Lal had caused the accident, in which Hari Singh had suffered injuries.

One more argument advanced by learned counsel for the appellant was that three persons were riding the motorcycle, which is against law and it is for that reason, the accident might have taken place or at least it should be taken as a case of contributory negligence. In support of his contentions, he has referred to a judgment by a Co-ordinate Bench of this Court **Angrejo Devi and others Vs. Jai Parkash and others, (2012-4) PLR 604**, wherein it was observed that motorcycle is designed to ride two persons and if used by more than two persons, then the driver will have to share part of his seat; he will not be able to control the vehicle effectively. Moreover, the weight on account of third passenger will affect its stability. In that case, the deceased was driving the motorcycle in violation of Section 128 of the Act with two passengers on the pillion seat. Therefore, the Tribunal had rightly come to the conclusion that it was a case of contributory negligence of deceased Dharam Singh and respondent No.1 in ratio of 50% each.

However, learned counsel for the claimant has contended that there is nothing on record to show that Naresh Kumar had lost control of the motorcycle or there was any fault in his driving. Therefore, he had not contributed to the accident in any way.

After hearing the rival contentions of learned counsel for the parties, I find that though triple riding of a motorcycle cannot be approved and it is an offence under Section 128 of the Act but then the crucial thing to be seen in this case is as to whether Naresh Kumar was not having full control over his motorcycle or that he was driving it in a wrong manner. There is nothing on record to show that, rather, it is consistent case of the claimant that Naresh Kumar was driving the motorcycle at a moderate speed on correct left hand side of the road and on seeing the offending car coming from opposite side being driven in a rash and negligent manner, he had taken the motorcycle on extreme kacha berm of the road but the car by going on extreme left hand side had hit the motorcycle. There is no statement of respondent No.1 in that regard. Therefore, it cannot be taken to be a case of contributory negligence. The judgment cited by learned counsel for the appellant is not helpful to him due to different facts and circumstances and the context in which such observations had been made.

Learned counsel for the appellant-insurance company has contended that the compensation awarded to the claimant is on the higher side, whereas, I find that it is not so. Rather, the compensation awarded comes out to be on lower side. As per disability certificate Ex.PW4/A, proved in evidence by the claimant by examining PW4 Dr. Vijay Kumar, he had suffered 20% disability on account of stiffness right knee joint and shortening of right lower limb by ½ inch. The functional disability has been assessed to be 3% when converted into monetary terms Rs.1000/- per month. Keeping in view the facts that as per case of claimant, he was doing work of electrician prior to the accident and on account of shortening of right lower limb with stiffness in right knee joint, he may not be able to stand properly, that to for a long duration or climb up the stairs, thereby resulting in reduction of his income. Such loss taken to be Rs.1000/- can certainly be not treated to be on higher side. The annual loss has been worked out to Rs.12,000/-.

Considering the age of the claimant as 40 years, multiplier of 15 has rightly been applied, calculating the compensation payable to Rs.1,80,000/-. That compensation is certainly be not taken to be excessive.

A sum of Rs.32,000/- has been awarded for his inability to do routine work for four months on account of hospitalization and undergoing treatment. This amount is adequate.

The Tribunal has granted Rs.45,971/- towards medical treatment. Many a times chemist do not issued bills/cash memos on account of purchase of medicines and some time, such bills/cash memos get misplaced or lost. No arrangement for future treatment of the claimant had been made. As such, the amount deserves to be enhanced to Rs.75,000/-. A sum of Rs.5000/- has been awarded for special diet, Rs.2000/- transportation charges and Rs.5000/- attendant charges. Such amounts appear to be on lower side and are enhanced to Rs.15,000/-, 10,000/- and 15,000/- respectively.

The claimant has not been awarded any amount on account of loss of amenities and loss of expectation of life. A sum of Rs.10,000/- each is awarded to him under those heads. Thus, the total compensation arrived at Rs.3,47,000/-.

The Tribunal has awarded compensation of Rs.2,70,000/- to the claimant. Thus, an additional compensation payable to the claimant is arrived at Rs.77,000/- (Rs.3,47,000 – 2,70,000/-) along with interest @ 7.5% p.a., from the date of filing of appeal till actual realization. The liability to pay this amount would be joint and several of all the three respondents.

Accordingly, the appeal filed by insurance company i.e. FAO-9996-2014 is dismissed and appeal filed by the claimant Hari Singh i.e. FAO-10262-2014 stands partly allowed.

18.12.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

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