IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7490-2016(O&M)
Date of decision:-9.4.2019

Laxman Singh

...Appellant

Versus

Bhupender Kumar and others

...Respondents

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

Present: Ms.Jaspreet Kaur, Advocate for
Mr.Ashish Yadav, Advocate
for the appellant.

Mr.Sanjeev K. Arora, Advocate
for respondent No.3.

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H.S. MADAAN, J.

Petitioner/claimant Sh.Laxman Singh son of Mahesh Kumar, aged about 17 years, resident of village Narainpur, Post Office Saharanwas, Tehsil and District Rewari, minor through his father Sh.Mahesh Kumar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Bhupender Kumar – driver, Lakhiram – owner and Chola Mandalam MS General Insurance Company Ltd. - insurer of tractor bearing No.HR-35H-1295 (hereinafter referred to as the offending tractor), claiming compensation to the tune of Rs.20 lacs.

As per the case of the claimant, on 10.6.2014 at about 3:00 p.m., he along with his uncle was returning from Rewari on motorcycle bearing registration No.HR-36U-2312, in the meanwhile the offending tractor being driven by respondent No.1 – Bhupender Kumar in a rash and negligent manner, while going on the wrong side hit the motorcycle due to which, both the riders fell down; that the claimant suffered grievous injuries on his person; that after the accident, respondent No.1, the tractor driver ran away leaving the tractor behind; that the claimant injured was taken to Government Hospital, Rewari, where he was admitted and medically treated, thereafter the claimant remained admitted in several hospitals for treatment and a sum of Rs.1 lac was spent thereon.

On getting notice of the petition, all the three respondents put in appearance and filed separate written statements contesting the claim petition.

In the written statement submitted on behalf of respondent No.1, he had raised legal objections challenging the maintainability of the claim petition contending that no cause of action arose to the claimant to do so. On merits, a contest was offered.

Written statement filed on behalf of respondent No.2 is almost on the similar lines as that of respondent No.1.

Respondent No.3 – insurance company in the written statement filed by it also raised various legal objections submitting that respondent No.1 was not having a valid and effective driving licence at the time of accident and respondent – insurance company was not informed regarding the accident well in time.

All the three respondents prayed for dismissal of the claim petition.

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

1. Whether Laxman Singh had suffered injuries in a vehicular accident that took place due to rash and negligent driving of the offending vehicle No.HR-35-H-1295 by respondent as alleged in the petition? OPP.
2. If issue No.1 is proved, whether the petitioner is entitled to compensation? If so to what amount? OPP.
3. Whether respondent NO.1 was not holding a valid and effective driving licence on the date of accident? If so its effect? OPR.
4. Relief.

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

In order to prove his case, the petitioner/claimant had examined Sh.Ashok Kumar as PW1, Sh.Subhash Chand as PW2, Sh.Vikash Sharma as PW3, EHC Virender Singh as PW4, Sh.Atma Ram as PW5, Sh.Laxman Singh as PW6 and Sh.Satbir as PW7.

On the other hand, respondents had not examined any witness.

After hearing arguments, the Tribunal while partly allowing the petition vide award dated 15.2.2016, awarded compensation of Rs.37,750/- along with interest @ 7% per annum from the date of filing of the petition till the date of realization holding respondents No.1 and 2 liable to pay the amount of compensation jointly and severally. However, respondent No.3 was absolved of liability to pay compensation.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to the respondents.

Respondents No.1 and 2 did not appear despite service. Whereas respondent No.3 – insurance company appeared through counsel.

I have heard learned counsel for the appellant and learned counsel for respondent No.3 – insurance company besides going through the record.

The Tribunal on appreciation of the evidence adduced before it has returned the finding with regard to issue No.1 to the effect that Laxman Singh had suffered injuries in a vehicular accident that took place due to rash and negligent driving of offending tractor by respondent No.1 as alleged in the petition. While deciding issue No.3 "*Whether respondent NO.1 was not holding a valid and effective driving licence on the date of accident? If so its effect? OPR.,* the Tribunal has come to the conclusion that the tractor was being used for commercial purpose and it was goods carrier plied on road, thus insurance company was absolved of its liability to pay compensation and only respondents No.1 and 2 were held liable to pay the compensation amount. For better understanding of such conclusion arrived at by the Tribunal, the relevant paras are being reproduced as under:

> *17. It is argued by Sh. Sehdev Arya, learned counsel for respondents no.1 and 2 that as the tractor was insured with respondent no.3, hence insurance company be held liable to pay the compensation amount if petitioners found entitled for*

compensation. He has argued that at the time of accident driver was holding a valid and effective driving licence Ex.R2.

18. Respondent counsel has placed on record registration certificate Ex.R3 of the tractor but learned counsel for the insurance company disputed its liability on the ground that it came in the pleadings as well as evidence of the petitioner that tractor to which trolley was attached loaded with cement thus the tractor become a goods vehicle so it become a transport vehicle which is supposed to be used for transporting goods from one place to another. He has also argued that such type of vehicle can be plied under valid route permit but neither respondents no.1 and 2 has led any evidence to rebut that the tractor-trolley was not being used for commercial purpose but for agriculture purpose nor placed on record any route permit and prayed that respondents no.1 and 2 be held jointly and severally liable to pay the compensation if award is passed in favour of petitioner and referred ***Natwar Parikh & Co. Ltd. vs. State of Karnataka 2006 ACJ 06 (SC) and Mam Chand vs. Sunita Devi 2013 ACJ 1332 (P&H)****.*

19. I have gone through the pleadings of the parties. It is clear that in para no.3 of the written statement it has categorically mentioned by the insurance company that the insured violated the terms and condition of the policy as he *had plied the tractor attached with trolley on hire for commercial use without permit and fitness certificate hence insurance company is not liable to indemnify the insurer. Respondent has also filed an application under section 170 of the Motor Vehicle Act to contest the petition by taking the defence available under the Act which was allowed but to rebut the aforesaid plea of the insurance company respondents no.1 and 2 who were owner and driver of the offending tractor failed to appear into the witness box nor they have examined any other witness to show that the cement was being carried in a tractor-trolley for their own purpose and not for commercial purpose. It is not in dispute that at the time of accident tractor attached with trolley was loaded cement bag and was being used on road but neither respondents no.1 and 2 produced the permit nor driver was holding a licence to drive the commercial vehicle and thus the ratio of Natwar Parikh's case (supra) is fully applicable on the facts of the present case.*

20. In this ruling it was categorically held that it was not the duty of the insurance company to prove that the vehicle was being used for commercial purpose, rather it was the duty of the owner and the driver to prove that the vehicle was used for agricultural purpose for which it was insured. Though it was contended by learned counsel for respondents no.1 and 2 that only 15-20 cements bags were loaded in the

> *trolley for personal use as a construction of petitioner's house was going on but to this effect respondents no.1&2 has not led any evidence. Neither owner nor driver prefer to appear before Tribunal to make a statement to that effect and in absence of such an iota of evidence, there is nothing on file to held that the tractor trolley was being used for agriculture purpose. It is clear that tractor was being used for commercial purpose and it was goods carries to be plied on road thus insurance company is exonerated from its liability and respondents no.1 and 2 are held jointly and severally liable to indemnify the awarded amount if any.*

However, the whole approach of the Tribunal has been erroneous and misconceived. In ***Fahim Ahmad and others Vs. United India Insurance Co. Ltd. and others, 2014(2) RCR(Civil) 470***, a three Judges Bench of Hon'ble Supreme Court dealing with a case for grant of compensation under Section 166 of the Motor Vehicles Act when a tractor carrying sand in the trolley met with an accident and sand was for the purpose of construction of tank, it was observed that merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and there was no breach of terms of insurance policy, therefore, liability could not be fastened on the owner of tractor and insurance company was liable to pay the compensation.

The facts of the case in hand are somewhat similar to the facts of the authority. The observations of the Tribunal that with attachment of the trolley with the tractor and when same was loaded with cement, it is to be taken as a transport vehicle, which could not be plied without permit and fitness certificate, so insurance company was not liable on account of violations of terms and conditions of the insurance policy are totally wrong. The insurance company is not at all absolved of its liability. Thus the finding on issue No.3 is modified and all the respondents are held liable to pay compensation.

As regards issue No.2, again observations by the trial Court show a very casual approach and non-application of judicious mind. The petitioner/claimant while getting his own statement recorded had stated that due to the injury he had suffered a lot of pain and sufferings, mental agony, loss of study which cast dark shadow on his future; that he has become permanent disabled and developed an ugly facial appearance; that he had spent a sum of Rs.70,000/- on his treatment. As per the x-ray report, the claimant had suffered fracture in right arm, nasal bone and upper thoracic rib. The claimant had examined Sh.Ashok Kumar, Clerk of Muskan Dental and Orthodentic Clinic Garhi Bolni Chowk, Rewari, who had identified the signature of Dr.DS Yadav on bill Ex.PW1/B with respect to root canal treatment given to the injured/claimant. The bill is for Rs.18,000/-. The Tribunal has unnecessarily tried to find faults with the bills citing unconvincing reasons when an official from the clinic of doctor had identified the signatures on the bill that should have been accepted as such, instead of requiring the doctor himself to come and prove the bills. The observation of the Tribunal that injured has no nexus with the dental treatment is also not plausible and worthy of acceptance.

The claimant deserves to be awarded a sum of Rs.18,000/- for dental treatment. The Tribunal has allowed a sum of Rs.29,742/- to the claimant on the basis of bills proved by PW2 Subhash Chand, Record Keeper, Amandeep Hospital and Trauma Centre, Rewari and PW3 Vikash Sharma, Recordkeeper, Ganpati Medical Store, Rewari. The Tribunal has lost sight of the fact that many a times people omit to retain the bills, receipts etc. for purchase of medicines etc. and the Tribunal should be alive to that situation. Thus the medical expenses allowed by the Tribunal are enhanced to Rs.47, 742/-(29742 + 18000).

On account of loss of income, no amount has been awarded to the claimant. Keeping in view the nature of injuries and their magnitude and period of hospitalization of the claimant/injured, he ought to be compensated for being unable to perform natural chores on account of receiving injuries in the motor vehicular accident. A sum of Rs.20,000/- is awarded tot he claimant in that regard.

Again the Tribunal has not awarded any amount under the head of transportation charges. A person suffering injuries, getting admitted in the hospital and going to the doctor for follow up treatment do have to spent considerable amount towards transportation. A sum of Rs.15,000/- is awarded to the claimant under that head.

Again under the head of attendant charges, no amount has been awarded. Considering the facts and circumstances of the case, an amount of Rs.15,000/- is awarded to the claimant under that head.

The amount awarded under the head special diet to the extent of Rs.3,000/- is too meagre. Taking realistic view of the things including the requirement of an injured person to take special diet for early joining of the fractures and prompt recovery and type and magnitude of injuries suffered by the injured/claimant, a sum of Rs.10,000/- is awarded to the claimant.

The Tribunal has not awarded any amount towards future medical expenses. An amount of Rs.20,000/- is awarded under that head.

Towards pain and suffering, an amount of Rs.5,000/- was awarded by the Tribunal, which seems to be on lower side. Only a person suffering injuries can feel the anguish and misery undergone by him. It is very difficult to quantify such term undergone by an injured. A sum of Rs.25,000/- is awarded under that head.

For the reason that on account of suffering injuries, the marital prospects of the claimant have been effect, a sum of Rs.25,000/- is awarded to him.

For the reason that the claimant shall not be able to walk, run and work as could do earlier prior to suffering of injuries, a sum of Rs.25,000/- is awarded towards loss of amenities.

The total compensation comes out to Rs.2,02,742/-.

The Tribunal has awarded a total sum of Rs.37,750/- as compensation along with interest @ 7% per annum from the date of filing of the claim petition till the date of realization.

In that way, the enhanced amount comes to Rs.1,64,992/- (2,02,742 - 37,750). The appellant/claimant shall be entitled to recover the enhanced amount with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment. With regard to the total compensation awarded all the three respondents shall be jointly and severally liable. The other terms and conditions shall remain the same as given in the original award.

With such modification, the appeal is allowed partly.

9.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No