IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 2043 of 2018 (O&M)
Date of decision : 24.7.2019

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Bajaj Allianz General Insurance Company Limited,
Chandigarh

................Appellant

vs.

Harbans Singh and others

.................Respondents

2) FAO No. 5179 of 2018 (O&M)

...

Buta Singh and others

................Appellants

vs.

Aman Singh and others

.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. J.S. Chatrath, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant in FAO 2043-2018 and
for respondent No. 2 in FAO 5179-2018.

Mr. T.P. Singh, Advocate for the appellants
in FAO 5179-2018.

Mr. A.K. Walia, Advocate for respondents No. 2 and 3
in FAO 2043-2018 and
for respondents No. 1 and 3 in FAO 5179-2018.

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H. S. Madaan, J.

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO-2043-2018 titled as 'Bajaj Allianz General Insurance Company Limited vs. Harbans Singh and others' and FAO-5179-2018 titled as ' Buta Singh and others vs. Aman Singh and others', as both these appeals have arisen out of the same accident.

Briefly stated, facts of the case are that claimant Harbans Singh son of Jagmail Singh, resident of Jagatpura Basti, Sunam, District Sangrur, filed a claim petition under Section 166 of the Motor Vehicle Act, 1988, against respondents i.e. Aman Singh, driver, Bajaj Allianze General Insurance Company, Patiala – insurer and Joginder Singh – owner of car bearing registration No. PB-13-AH-4301 (hereinafter to be referred as 'the offending car'), claiming compensation to the tune of Rs.25,00,000/-, on account of suffering serious injuries, including permanent disability in right eye, in a motor vehicular accident which took place on 23.9.2015, on account of rash and negligent driving of car bearing registration No. PB-13-AH-4301 being driven by Aman Singh – respondent No.1. Claimant - Harbans Singh alongwith his friend Pritpal Singh son of Buta Singh, resident of Chhajali, were going to Sunam on their HF Deluxe motorcycle. Buta Singh was also following them on a separate motorcycle. At about 6.30 P.M. when they had reached about 2 kms ahead of village Chhajali, then the offending car was seen coming, being driven by respondent No.1 Aman Singh, at a very high speed, in a rash and negligent manner and had struck against motorcycle of Pritpal Singh, on which Harbans Singh was pillion rider. Resultantly, both the riders fell down on the road and suffered multiple injuries.

The car was stopped a little distance ahead by its driver Aman Singh – respondent No.1. Observing that claimant and Pritpal Singh had suffered injuries, he ran away from the spot, leaving his car behind. Pritpal Singh succumbed to the injuries suffered by him at the spot itself, whereas claimant was also grievously and seriously injured and the motorcycle was damaged.

Harbans Singh had filed a claim petition whereas legal representatives of deceased Pritpal Singh, namely, his father Buta aged 45 years, grandfather Kehar Singh and grandmother Dayalo, had filed a separate claim petition against those very respondents.

As far as claim petition of claimant – Harbans Singh is concerned, on getting notice, all the three respondents had appeared and filed separate written statements, contesting the claim petition.

In the written statement filed by respondent No.1, he had taken up various legal objections, challenging maintainability of the claim petition in the present form, on merits submitting that no such accident had taken place as alleged, involving car No. PB-13-AH-4301 and answering respondent has no liability to pay any compensation to the claimants. However, it was contended that car was insured at the relevant time. Refuting the material assertions, this respondent, prayed for dismissal of the claim petition.

In the written statement filed on behalf of Insurance company, it also took up various legal objections with regard to maintainability of the claim petition and respondent – Aman Singh not possessing valid and effective driving license at the time of accident; that the claim petition being bad for mis-joinder and non-joinder of necessary parties. According to this respondent, as per OD form of insured, motorcycle first hit with a bus and then came in front of car, as such the accident took place due to negligence of driver of motorcycle, as such the answering respondent was not liable to pay compensation to the claimant; that a false criminal case was got registered against respondent No.1, just to get compensation and there was possibility of false FIR being got registered by the claimant in connivance with the owner and driver of the car in question, since the claimant and owner of the car belong to the same village. In the end this respondent also craved for dismissal of the petition in question.

Written statement filed by respondent No.3 is almost on the same lines as that of respondent No.1. This respondent also prayed for dismissal of the claim petition.

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

1. Whether Harbans Singh claimant received injury and permanent disability of right eye due to Motor Vehicle Accident dated 23.9.2015 caused by respondent No.1 by driving his car No. PB-13AH-4301 rashly and negligently? OPP
2. If so, whether the claimant is entitled for compensation, if so, to what extent and from whom? OPP
3. Whether the respondent No.1 was not holding valid and effective driving license at the time of accident? OPR

4. Relief.

Parties were afforded adequate opportunity to lead their respective evidence.

In order to prove his case, claimant himself stepped into witness box as CW-1, besides examining Subash Kumar as PW-2, Sandeep Kumar, Clerk, Office of Civil Surgeon, Sangrur as PW-3, and tendered the following documents:-

1. Certified copy of FIR	Exhibit C-1
2. Certified copy of MLR	Exhibit C-2
3. Certified copy of judgment dated 29.3.2017	Exhibit C-3
4. Certified copy of statement of Boota Singh	Exhibit C-4
5. Certified copy of Sapurdarinama	Exhibit C-5
6. Photocopy of disability certificate	Exhibit C-6
7. Medical record of claimant	Exhibits C-7 to C-11
8. Medical bills	Exhibits C-12 to C-17
9. Photocopy of OPD slip	Mark A
10.Salary certificate	Mark B

In rebuttal, respondents No. 1 and 3 tendered into evidence following documents:-

1. Copy of insurance policy	Exhibit R-1
2. Copy of driving license	Exhibit R-2
3. Copy of registration certificate of vehicle No. PB-13AH-4301	Exhibit R-3

Thereafter such respondents closed their evidence.

Respondent No.2 tendered into evidence following documents;-

1. Copy of judgment dated 9.3.2017 Exhibit R-4
2. Insurance policy Exhibit R-5

Thereafter respondent no.2 closed his evidence.

After hearing the arguments, learned Motor Accident Claims Tribunal, Sangrur, vide award dated 21.12.2017 awarded compensation of Rs. 2,34,700/- to the claimants, payable by respondents No. 1 to 3, jointly and severally alongwith interest @ 9% per annum from the date of filing of the claim petition till actual realization.

However, the Insurance company was dissatisfied with the award and has challenged it by way of filing FAO-2043-2018, notice of which was given to the respondents, who have put in appearance.

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 was that in the claim petition filed by Buta Singh etc. - legal representatives of Pritpal Singh, decided by Motor Accident Claims Tribunal, Sangrur, on 21.12.2017, it was held by the Tribunal that the accident had taken place on account of contributory negligence of both the drivers and contributory negligence of Pritpal Singh deceased in that case, who was driving the motorcycle was assessed as 30% and that of Aman Singh driver of the car as 70%.

However, in the present case, the Tribunal found that it was a case of rashness and negligence by the car driver and fastened the entire liability to pay the compensation on the vehicle being driven by Aman Singh, which has been wrongly done.

However, learned counsel for the respondents has contended that there is no merit in such contentions raised by the Insurance company. The Tribunal has dealt with these contentions in detail and rejected the same.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal has dealt with this aspect in detail in para No. 25 of the award, observing that Harbans Singh claimant was pillion rider on the motorcycle and as such was not at fault in the accident. Therefore, no deduction could be made from the compensation assessed in favour of claimant on account of contributory negligence allegedly on part of Pritpal Singh, who was driving the motorcycle. I find myself in agreement with the Tribunal on that point.

Coming to the next argument advanced on behalf of learned counsel for the appellant – Insurance company, that a fraud has been committed by claimant in connivance with owner of the car in question to get the compensation amount from the Insurance Company and it was a hit and run case, which has been converted into the present case. The owner and driver belong to the same village and during the trial against driver Aman Singh, in the Court of JMIC, Sangrur, Buta Singh had appeared as PW-2 and had not supported the prosecution story. Similarly PW-4 Harbans Singh has also stated that he did not know the driver present in the Court and had seen him in the Court for the first time. He has also not identified the accused present in the Court.

However, learned counsel for the respondents has vehemently contested these assertions.

I, on my part, feel that in absence of any cogent or convincing reason transpiring from the record, it cannot be said that claimant had connived with respondents No. 1 and 2 just to extract compensation amount from the Insurance company, as it comes out that an FIR regarding the accident was lodged, accused Aman Singh, was arrested in that case. He was sent up to face trial. Normally, no person could have volunteered to get himself arrested, then face hassles of a lengthy criminal trial in the Court of law, putting in appearance there repeatedly and frequently, merely because of the reason that the owner and the driver of the car belong to the same village, where the claimant comes from, has no reason to reach to a conclusion that they are colluding with each other or are out to defraud the Insurance Company. After registration of the FIR the matter is investigated by the police. If involvement of the car in question and respondent No.1 Aman Singh, being its driver at the relevant time was not found out during the investigation or if it had transpired that the rash and negligent driving of the offending car by respondent No.1 Aman Singh, was not responsible for the accident in which claimant Harbans Singh had suffered injuries, whereas driver of motorcycle Pritpal Singh had also received injuries, to which he succumbed at the spot, the police would definitely have sent him to face trial after filing challan against him in the Court of law. Even if it is taken that Buta Singh and Harbans Singh have not supported the prosecution story in criminal proceedings, that is no reason to discard their testimony recorded in the claim petition. There is nothing to show that they were confronted with their statements recorded during criminal proceedings.

Under the circumstances, this plea raised by the Insurance company does not merit much attention. The Tribunal was justified in deciding issue No.1 in favour of the claimants and against respondent holding that the accident had taken place due to rash and negligent driving of respondent No.1.

The Tribunal had taken note of the fact that the Medical Board after examining Harbans Singh claimant, has assessed his disability as 25% permanent visual impairment, which was not treatable. Dr. Inderjot Kaur, Eye Specialist, while proving disability certificate, Exhibit C-6 stated so. Thus the eye injury which was declared grievous, having 25% impairment permanently, effected his future earning capacity.

The Tribunal had however, found that permanent disability of 25% with regard to left eye has caused the functional disability of claimant to the extent of 10%. Therefore, loss of future earning was assessed as 10%, which is quite reasonable. Thus, taking his current wages to be Rs.7,000/-, loss of future earnings was taken to be 10%

thereof as Rs.700/- and considering age of the claimant to be 20 years at the time of accident, multiplier of 18 was used, granting him compensation to the tune of Rs.1,51,200/-.

Then on the basis of evidence produced by the claimant, the Tribunal has granted him compensation of Rs.4,500/- towards purchase of medicines and test reports. Rs.14,000/- has been granted to him towards loss of wages on account of his inability to pursue his avocation for about two months, as a result of suffering injuries in the accident. Rs.10,000/- were granted as transportation charges and Rs.5,000/- as special diet, whereas Rs.25,000/- were granted under the head of pain and suffering and Rs.25,000/- towards loss of amenities. The said amount is quite reasonable and cannot be stated to be on higher side. The total compensation was found out to Rs.2,34,700/-, which is just and reasonable.

However, the rate of interest granted @ 9% per annum was on the higher side. The same is reduced to 7.5% per annum from the date of filing of claim petition till actual realization.

The amount, if any paid in excess to the claimants, be refunded by them to the appellant at the earliest, otherwise, the appellant would be at liberty to approach the Tribunal to seek recovery of the said amount.

Except for this modification, the impugned award is upheld.

Accordingly, FAO-2043-2018 is allowed partly.

As far as FAO-5179-2018, filed by Buta Singh etc., the Tribunal on analysis of the evidence available before it, had concluded that accident took place due to rash and negligent driving of car PB-13AH-4301 by respondent No.1- Aman Singh.

As regards issue No.2, the Tribunal had not accepted the version of the claimants that deceased was working in Hanuman Roller Flour Mills, Jakhal Road, Sunam, and getting Rs.7,500/- per month as salary, for the reason that claimants had failed to adduce any evidence in that regard. However, considering that even a labourer could earn Rs.6,000/- per month, by doing labour, income of deceased Pritpal Singh was assumed to be Rs.6,000/- per month. Since deceased was a bachelor, 50% of the amount was deducted towards his personal and living expenses. Accordingly, his monthly income was taken to be Rs.3,000/- per month. The Tribunal took his age as 17 years at the time of his death, referring to his post mortem report Exhibit C-2.

The Tribunal has not granted any amount towards future prospects. In view of authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** the Constitutional Bench of the Apex Court has observed that 40% income is to be added towards future prospects. By doing so, monthly income of the deceased comes out to be Rs.6,000 + 2,400 = Rs.8,400/- per month. Since the deceased was a bachelor, 50% of the amount is to be deducted towards his personal expenses and by doing so the monthly dependency of the deceased comes out to Rs.4,200/- per month. Thus the annual dependency comes out to Rs.4,200 x 12 = Rs.50,400/-.

The Tribunal has rightly adopted multiplier of 18, keeping in view the age of the deceased. By applying that multiplier the compensation is worked out to Rs. 50,400 x 18 = Rs. 9,07,200/-.

The Tribunal has awarded a sum of Rs.1,00,000/- on account of love and affection and Rs.25,000/- towards funeral expenses. However, as per authority in ***Pranay Sethi's case (Supra),*** under the conventional Heads, the claimants are entitled to get a sum of Rs.15,000/- under the Head loss of estate and Rs.15,000/- towards funeral expenses, totaling (Rs.15,000 + 15,000) = Rs.30,000/-.

The total compensation amount as such comes out to Rs.9,07,200 + Rs.30,000/- = Rs. 9,37,200/-.

The Tribunal by giving cogent and convincing reasons has found it to be a case of contributory negligence for the reason that as conceded by Buta Singh CW-1, deceased Pritpal Singh was not having any driving license and was rather a minor at the time of his death in the accident and the Tribunal has observed that since deceased Pritpal Singh was minor at the time of his death, no valid driving licence could have been issued in his name and it was incumbent on the claimants not to allow him to drive the motorcycle without having the driving license and as such the irresponsible and negligent attitude of the claimants also contributed to the tragic situation. The Tribunal had found contributory negligence on part of rider and the claimants, assessing it to be 30%, whereas that of respondent No.1 Aman Singh – car driver was found to be 60%. It seems that the Tribunal has mentioned it 60% and it should have been

70%.

In this way, the claimants shall be entitled to get total compensation of Rs. 6,56,040/- (70% of Rs.9,37,200).

The Tribunal has awarded a sum of Rs.5,27,100/- to the claimants.

Resultantly, the FAO No.5179-2018 filed by the claimants is allowed partly and additional compensation of Rs.1,28,940/- (Rs.6,56,040 – 5,27,100) is awarded to the claimants on the same terms and conditions as given in the original award with interest @ 7.5% per annum from the date of filing of appeal, till actual realization. The apportionment and other terms and conditions shall remain the same as in the original award.

The award is modified accordingly.

(H.S. Madaan)
Judge

24.7.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No