

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1122 of 2019 (O&M)

Date of Decision: 26.07.2019

Gurbaksh Singh

.....Appellant

Vs.

Mahesh

.....Respondent

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Nitin Thatai, Advocate, for the appellant.

DR. RAVI RANJAN, J. (Oral Judgment)

Heard learned counsel for the appellant.

This appeal has been preferred by the driver-cum-owner of the offending vehicle impleaded as respondent No.1 in the claim-application, against the Judgment and Award dated 13.09.2018 passed by the Motor Accident Claims Tribunal, Ambala, in Claim Petition No.77 of 2016 by which the claim-applicant has been awarded a sum of Rs.7,82,000/- as compensation amount along with interest @ 7.5% per annum to be calculated from the date of filing of the claim application till the realization of the said amount.

Briefly stating, case of the claimant is that on 13.11.2015, while returning from Renukaji to his village Kakkar Majra on a motorcycle driven by his neighbour Bittu on left hand side of the road at a normal speed, at about 6 P.M., when they reached near Shahpur on Shahzadpur-Naraingarh road, a Verna car bearing registration No.HR-40E-0130 came from the opposite side at high speed on the extreme wrong side of the road and hit the

motorcycle. Under the heavy impact of the accident both the occupants fell down and suffered multiple grievous injuries. Claimant suffered multiple fracture on his right femur and other injuries. Both the injured were shifted in the hospital at G.H.Naraingarh from where due to critical condition of the claimant, he was referred to GMCH, Sector 32, Chandigarh, where he remained admitted from 14.11.2015 to 11.12.2015. Thereafter, he remained under treatment of Vardhman Trauma and Laparoscopy Centre, Muzaffar Nagar, where four operations were conducted. It is claimed that he was still under treatment as OPD patient and had spent Rs.12 Lacs on his treatment i.e., transportation and special diet etc. At the time of accident, he was running the business of utensils and was earning handsome income but after the accident he is not in a position to even stand with the help of stick on his own and pick up weight from his right arm. It is further averred that the accident has ruined his business and suffered huge financial loss. FIR was also registered under Section 279, 337 of IPC at the Police Station, Naraingarh.. Eventually, the respondent-claimant sought compensation of Rs.30 Lacs for the accident which was caused due to sole negligence of the respondent-appellant.

The respondent No.1-appellant appeared and filed his written statement raising preliminary objections and also on merit denying the accident stating that his vehicle has been falsely been involved in the case for the purpose of extracting compensation from the claimant. The averments regarding age, income, expenses incurred on his treatment etc. were denied. However, he admitted that the offending vehicle was not insured at the time of accident.

Upon consideration of the rival pleadings, the Tribunal framed

following issues:-

1. Whether accident in question took place due to rash and negligence driving of Verna car bearing No.HR-40E/0130 being driven by respondent No.1 Gurbaksh Singh resulting into injuries and disability suffered by claimant, as alleged? OPP.
2. If issue No.1 is proved, whether the claimant is entitled for compensation, if so, how much and from whom?OPP.
3. Relief.

The claimant-respondent, in order to prove his case, examined ASI Joginder Singh as PW1, Criminal Ahlmad v.i.z., Deepak as PW-2, Dr.Vikas Paul as PW3 and himself as PW-4 and also placed and proved on record certain documents.

The respondent No.1 examined himself as DW-1 and thereafter closed his evidence.

The Tribunal has held that it is writ large from the materials available on record and evidence led by the parties that the accident was result of the rash and negligent driving by the respondent No.1-appellant.

Having held so, it has further been held that the claimant would be entitled for Rs.6,22,000/- for the expenditure incurred on his treatment. That apart, his income having been assessed as Rs.9000/- per month in view of the nature of business carried out by him, the claimant has further been awarded Rs.45,000/- as loss of income for five months during he remained hospitalized and since he has suffered 30% disability of right lower femur and pelvis with stiffness, he has been awarded Rs.60,000/- for pain and suffering and for loss of enjoyment of life Rs.20,000/-, for transportation, special diet and attendant, Rs.10,000/- and accordingly, sum total of

Rs.7,82,000/- has been awarded as compensation along with interest @7.5% per annum.

Learned counsel for the appellant has vehemently argued that the accident, at best, would have been held to be a result of contributory negligence inasmuch as the injured himself, while being cross-examined as PW-4 (CW-1), has accepted that the offending vehicle was coming on the left hand side of the road and driving correctly and then it collided with the motorcycle on which the injured was travelling as pillion rider. He also stated that there was no divider on the road. However, this limb of argument would not be tenable in view of the fact that it is apparent from the cross-examination of the injured Mahesh, a copy of which has been appended as Annexure A-2 to the memorandum of appeal, that of course he has stated that there was no divider on the road and the offending vehicle was coming on the correct left side of the road but, at the same time, it is also stated that suddenly the offending vehicle came on the wrong side and struck with his motorcycle. It is further fact that the FIR was lodged by the police which, after investigation has already been submitted a report under Section 173 Cr.P.C. indicting the respondent No.1-appellant for rash and negligent driving.

The second issue which has been raised by the appellant is that in the cross-examination, the injured-claimant himself has accepted that he was operated at GMCH, Chandigarh, whereas, he has also given bill of Vardhman Trauma and Laparoscopy Centre, Muzaffar Nagar. Further, almost all the bills are of Rs.1,20,000/- which may not be possible. It is further urged that he was undergoing treatment at Chandigarh and though

Muzaffar Nagar for his treatment. On the basis of his aforesaid submissions, learned counsel has made an endeavour to impress upon this Court that bills were fake and thus, he cannot be saddled with liability to pay any compensation amount.

From the perusal of the records produced at the time of hearing by the learned counsel for the appellant, it appears that Ex.C-7 is the medico legal case summary of the claimant issued by GMCH, Sector-32, Chandigarh from which it appears that the claimant was kept under observation for fracture for distal femur (right) open grade III-A, fracture of Patella (right) and was admitted on 14.11.2015. Ex.C6 is discharge and follow up card issued by GMCH, Sector-32, Chandigarh, revealing that the claimant remained admitted w.e.f. 14.11.2015 to 12.12.2015 whereas Ex.C-8A is the discharge and follow up card issued by Vardhman Trauma and Laparoscopy Centre, Muzaffar Nagar which shows that the injured was operated there and bone grafting of femur was done. It also reveals that claimant remained admitted w.e.f. 15.05.2016 to 19.05.2016. Ex.C-9 to Ex.C129 are bills of medicines and hospitalization of claimant. PW-3 Dr.Vikas Paul has proved the disability certificate (Ex.P2) of the claimant. Ex.C-8 is prescription of Vardhman Trauma and Laparoscopy Centre, Muzaffar Nagar. The medical bills reveal that Rs.6,22,000/- was incurred upon his treatment and, thus, in such a situation, Rs.6,22,000/- was given by the Tribunal as compensation amount for medical treatment. Of course, during cross-examination, claimant has stated that he was operated at Chandigarh but there are clinching documentary evidences to show that operations were conducted at Vardhman Trauma and Laparoscopy Centre,

presence of documentary evidence, the one sentence which has been taken in the cross-examination would be of no value for the reason that there is no evidence led by other party rebutting the claim. Merely questioning the bills by saying that why all the bills are of equal amount would not be sufficient for dislodging the claimant.

In the result, since no other ground has been raised by the learned counsel for the appellant save and except those which have been discussed above, this Court does not find any reason warranting interference in the Judgment and Award pronounced by the Tribunal. In the result, this appeal, being devoid of any merit, is dismissed.

(DR. RAVI RANJAN)
JUDGE

26.07.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No