

FAO-6625-2016 (O&M)

Date of decision: 03.09.2021

B.D Garg

.....Appellant

versus

Ajay Rana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Ravinder Arora, Advocate
for the appellant.Mr. Subhash Goyal, Advocate
for the respondents.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case
is being taken up for hearing through video conferencing.

CM-21418-CII-2017

Heard on application for condonation of delay in filing the
appeal.

In view of the contentions made in the application and in
the light of the settled proposition of law that a party should not be
denied access to justice on hyper technical grounds and in the
interest of justice, taking a lenient view, delay of 98 days in filing the
appeal is hereby condoned.

CM stands disposed off.

CM-21419-CII-2017

In view of the averments made in the application and in the interest of justice, the same is allowed. Order dated 18.04.2017 vide which respondent No.1 was proceeded against *ex parte*, passed by the Coordinate Bench of this Court , is hereby set aside.

CM stands disposed off.

FAO-6625-2016

The claimant-B.D. Sharma has come up in this first appeal against order dated 09.09.2015 of the learned Motor Accident Claim Tribunal, Panchkula, whereby, the claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') filed by the present appellant then claimant was disposed off with the following observations:-

“53. In view of the discussion held on the aforesaid issues, claim petition is partly accepted with costs and an award to the tune of Rs.2,64,415/- (Rupees Two Lacs Sixty Four Thousand Four Hundred Fifteen only) is hereby passed in favour of the claimant along with interest @7.5% p.a. from the date of filing of the petition till its realization, on account of injuries suffered by him in the accident in question. Both the respondents have been held jointly and severally liable to pay the compensation amount to the claimant.”

Heard counsel of both the sides and perused the records.

The claim of the claimant/appellant that on 04.04.2015

while he was going on foot in the area of Sector 9, Panchkula, offending car bearing No.HR-03-Q-1631 (in short 'offending car') came in a rash and negligent manner being driven by its owner-cum-driver-respondent No.1-Ajay Rana and hit the claimant resulting in multiple injuries leading to his disablement. Though the respondents have refuted the claim on the grounds of total denial, however, the FIR bearing No.113 dated 05.04.2015 under Sections 279/338 IPC registered with Police Station Sector 5, Panchkula (Ex.P-49) corroborate and establish the fact of this accident having taken place. Furthermore, the medical record (Ex.P-4, P-5, P-8, P-9, P-10, P-13) corroborate the factum that the claimant was admitted for treatment in Raffles Hospital, Sector 14, Panchkula. The MRI/CT Scan report establishes that there is marked compression and collapse with fracture of vertebra D10 and with minor damage to vertebra D8 to D11 which were observed to be post traumatic. The discharge summary (Ex.P4) shows that the claimant was admitted in the hospital on 04.04.2015 and discharged on 07.04.2015 and was operated upon on 05.04.2015 with fracture of left hip bone. All this medical evidence proved on the record have remained totally un rebutted. The counsel for the respondent could not impress upon the Court how the claim of the claimant to this effect is not duly established on the records.

Though the Tribunal had framed the following issues:-

- (1) *Whether on 04.04.2015, claimant-injured sustained injuries in the accident in question which took place due to rash and negligent driving of Ritz Car bearing registration No.HR-03-Q-1631, by respondent No.1?*
- (2) *If issue No.1 is proved, whether the claimant is entitled to any compensation, if so to what amount and from whom?*
- (3) *Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident in question, if so to what effect?*
- (4) *Relief.*

The claimant has testified as PW-3 through his affidavit PW-3/A followed by the testimony of Dr. Pardeep Aggarwal (PW-1). Nothing could be pointed by the counsel for the respondents to displace the case of the claimant/appellant. The premise that has sought to be raised by Mr. Subhash Goyal, Advocate for the contesting respondent that there is delay in the lodging of the FIR does not cuts much ice. Admittedly the accident had taken place on 04.04.2015 and the FIR has been got registered on 05.04.2015, apparently, because the injured, immediately upon accident, had been rushed to the hospital and it cannot be expected that he would be prompt in lodging the FIR keeping in view his traumatic experience emancipating from the accident. The unrebutted evidence of the claimant duly proved and established the fact that the claimant had received injuries resulting out of the accident with the offending vehicle.

The most hotly contested issue is over the quantum of compensation. No doubt, the claimant in his testimony states that he is aged around 80 years running a business of crockery goods and claims to be earning Rs.70,000/- per month. However, his claim as has been pointed out by the counsel for the respondent that he is permanently disabled and incapacitated is not at all duly proved and established on the records by any disability certificate which only illustrates physical slow mobility and which has been rightly held so in the impugned findings. Since, Dr. Pardeep Aggarwal, Orthopaedic Surgeon (PW-1) who has performed the surgery upon the injured has claimed that the surgery was successful is illustrative that all was well with the claimant. Not much weight can be given to the testimony of PW-4-Anil Garg, son of the claimant, who has purely taken the plea that his father was injured in an accident and was given special diet and the amount of money they have spent on his treatment. No doubt PW-5-Anil Verma, so claiming to be the attendant, engaged by the claimant for his look after has proved the receipts P-55 to P-67 regarding his salary at the rate of Rs.15,000/- per month but this Court, keeping in view the then prevalent salaries and cost of living is slow to accept such a claim on the face of it and, therefore, needs to be moderated.

The medical disability certificate P-54 issued by the office of Civil Surgeon, Panchkula, shows that there is simple permanent disability of 70% to the body, which means and can not be construed

to be disability, where the entire body is unable to carry on functions to the extent of 70%. However, keeping in view as has been contended by counsel for the respondent to the submissions of the appellants' counsel, Mr. Arora, that the claimant, admittedly, is aged around 80 years and it cannot be expected that at this age he would be in a perfect state of health and mobility. There is nothing illustrative what sort of disability has come about which may be attributable to his age as well as to the fractures due to the injuries received in the accident.

Thus, the Court needs to be weary of such a claim and has to scrutinize the evidence with more care and caution. The Income Tax returns filed P-51 to P-53 are around the year 2013-2014 and the counsel for the appellant could not convince if the claimant was a prior regular Income Tax assessee and payee as it is a matter of common knowledge that one can file Income Tax return two years prior to a day and, therefore, such returns cannot be attached any authenticity and reliance. Moreover, as has been observed by the Courts below these returns pertain to M/s Garg Kitchen Collection, which is owned by his son, Anil Kumar Garg and the claimant claimed that he sits in that very shop and, therefore, by any means must be only supervising the business to some extent. The Court keeping in view the welfare nature of the Statute had assessed the compensation to which the claimant is entitled in respect of special diet to the tune of Rs.12,000/-, other expenses on ambulance,

transportation, etc. have been reasonably assessed by the Court below and the loss of income too is rightly calculated and even the expenses incurred on the services of attendant cannot be found fault with.

In light of the arguments of the counsel for the claimant/appellant-Mr. Arora, Advocate, that the Court without there being substantial evidence, has outrightly declined the claimant any compensation on account of his permanent disability certainly needs to be taken account of, which is well illustrative in para No.46 of the impugned award where the Court/Tribunal is of the view that the claimant has failed to hold the said injury with the present accident, is certainly highly erroneous and uncalled for. The unrebutted, oral as well as documentary evidence, even that of the experts, bear out that it is as a consequence of accidental injuries the claimant has suffered 70% disability to his body. Though, the claimant has not been proved to be unable to move about but keeping in view that the injuries and its results certainly have incapacitated the claimant to some extent and in light of the fact that claimant is aged 80 years and could not establish any loss of personal income for his contribution towards the business of his son has diminished and keeping in view that the Act is a welfare Statute for the betterment of the claimants, wherein, the Court should not be guided by hypertechnicalities, necessitates that with some amount of guess work and hypothetical calculations, the Court keeping in view the age

of the injured-claimant, his disability, his earnings and contribution towards the family, together with pain and sufferings and disability needs to be awarded Rs.1 lakh over and above the amount of Rs.2,64,415/- so arrived at and awarded by the Tribunal. The claimant shall be entitled to interest at the rate of 9% per annum from the date of filing of the appeal till its realization on this enhanced amount rest of the assessment made by the Tribunal below needs to be upheld.

No arguments have been addressed on issue No.3 which findings are upheld.

In light of the foregoing discussions, the instant appeal is allowed to that extent and the award is modified accordingly.

The present appeal stands partly allowed and disposed off.

03.09.2021
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No