

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 1621/2022

Date of decision:16/03/2023

Vikas Sharma

.....Appellant

Vs.

Avatar Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Gautam Kaile, Advocate for the appellant.

Nidhi Gupta, J.

This appeal has been filed by the injured-claimant against the dismissal of his claim petition by the Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as 'the Tribunal') vide Award dated 6.10.2021 passed in MACT File NO.86/9.7.2018 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts of the case are that the ld. Tribunal on the basis of pleadings and evidence before it concluded that Avtar Singh, respondent no.1 was driving Truck bearing registration No.HP-39-4167 in a rash and negligent manner and had hence, caused the accident in question.

It is submitted by the ld. Counsel for the appellant that though the Tribunal has duly concluded that the accident in question was caused due to rash and negligent driving of respondent no.1, however, ld. Tribunal dismissed the claim petition of the appellant despite the fact that appellant had suffered permanent disability of 20%, and also received

multiple grievous injuries. It is submitted that the appellant had placed on record voluminous evidence in the form of:-

“The appellant himself stepped into witness box as CW-1 and tendered into evidence his duly sworn affidavit Ex.CW1/A and proved documents i.e. FIR Ex.C-1, discharge slip Ex.c-2, Discharge slip issued by Randhawa Hospital and Trauma center Mark A-1, invoice bill summary Mark A-2 issued by Sehgal Auto Store Jalandhar Mark A-3, Bills issued by SRK Tour and Tarvels Mark A-4 to Mark A-7, Sale bill issued by SRK Hospital and Trauma Center Mark A-8 to Mark A-13, Mark-A13/A, Op slip issued by SRK hospital MarkA-14 and Mark A-14/A, bills issued by BEE ESS Medicose Hoshiarpur Mark A-15 to Mark A-17, receipts issued by SRK hospital MarkA-18 to Mark A-23 and also examined CW-2 bittu who tendered his duly sworn affidavit Ex.CW-2/A. Due to this accident the appellant is unable to walk properly and has sustained permanent disability of 20% and there is chance of knee replacement also”.

It is submitted that the aforesaid evidence led by the appellant was not considered by the Id. Tribunal while passing the impugned Award. It is next submitted that appellant remained hospitalized from 13.10.2016 till 21.10.2016 and thereafter again from 7.6.2017 to 9.6.2017 and had therefore, spent huge amount on his treatment and stay in the hospitals. However, none of these facts have been considered by the Id. Tribunal.

No other argument has been raised on behalf of the appellant.

Heard ld. Counsel.

Perusal of the impugned Award shows that ld. Tribunal has returned the following findings:-

“20.The claimant also proved on record discharge Slip Ex.C-2, discharge slip issued by Randhawa Hospital and Trauma Center Mark A-1, invoice Bill summary Mark A-2, bill issued by Sehgal Auto Store Jalandhar Mark A-3, bills issued by SK Tour and Travels Mark A-4 to Mark A-7, sale Bill issued by SKR Hospital and Trauma Center Mark A-8 to Mark A-13, Mark A-13/A, OP Slip issued by SKR Hospital Mark A-14 and Mark A-14/A, Bills issued by BEE ESS Medicos Hoshiarpur Mark A-15 to Mark A-17, receipts issued by SKR Hospital Mark A-18 to Mark A-23 but all these documents have not been proved on record as per law and as such cannot be taken into consideration.

21. As per the pleadings and affidavit of the claimant, he sustained injuries on his person but the claimant has not produced the medico legal report regarding the injuries suffered by him. Even he has not examined any doctor of any hospital to prove that he was admitted in his hospital with injuries on his body who was treated by the doctor. As such in the absence of MLR and statements of the doctors, it cannot be presumed that the claimant suffered any injury on his person in the accident.

22. Although claimant has produced on record discharge slip Ex.C-2, medical bills Mark-1 to Mark-23, Mark 13/A, 14/A regarding his treatment and expenditure but Bill Mark-A3 dated 23.01.2017 issued by Sehgal Auto Store, Jalandhar is relating to purchase of spare parts/ tyre etc., of the vehicle and is also in the name of Parminder Singh. Further Bills Mark A-4 to Mark A-6 are relating to transportation of the vehicles from Pathankot to Hoshiarpur but there is no pleadings of the claimant that he ever visited Hoshiarpur in connection with his treatment. Moreover the said bills are for the months of September and October 2017 whereas the accident in question took place on 13.10.2016. Similarly bill Mark-A7 dated 13.10.2016 is also relating to transportation of the vehicle from Pathankot to Mandi and back. However it is the case of the claimant himself that firstly he was admitted to Civil Hospital Mandi on 13.10.2016 and thereafter he got operated at Randhawa Hospital Pathankot on 15.10.2016 and again operated at SKR Hospital on 06.06.2017 and he remained admitted in Civil Hospital Mandi only for one day i.e. 13.10.2016. So there is no occasion for the claimant to visit Mandi from Pathankot as he was initially admitted in Civil Hospital Mandi on 13.10.2016 only for a period of one day. The bills Mark-A, Mark-A2, Mark A8 to Mark A23 regarding treatment and purchase of medicines produced by the claimant, are relating to some private hospital and have not been proved by examining its author or summoning the original record. Moreover, the same has not been exhibited during the course of proceedings. So, these bills

cannot be considered and claimant is not entitled for the amount of bills claimed by him. Although the claimant has placed on record the disability certificate but the same has not been proved by examining the concerned doctor nor the same has been tendered into evidence by the claimant. As per the petition and affidavit Ex.CWI/A of the claimant, he has already spent an amount of Rs.15,00,000/- approximately on his treatment, but no documentary evidence has been produced or proved on record in this regard. The claimant has to adduce positive and cogent evidence on the file regarding the expenses borne by him on the treatment. Moreover, during his cross-examination, the claimant admitted that he was dealing in sale and purchase of vehicles and he is still doing the same business. As such there is no loss of income to the claimant. So this Tribunal cannot grant any compensation in the absence of cogent and legal evidence on the file. Consequently, this issue is decided against the claimant”. (Emphasis supplied)

Ld. Counsel for the appellant has not been able to controvert the above said findings of the Id. Tribunal, or give any explanation therefor.

Accordingly, I find no error in the impugned Award passed by the Id. Tribunal.

Dismissed.

16/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No