

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-1510-1995

Reserved on:- 07.08.2023

Pronounced on:- 20.09.2023

RAM RIKH

...Appellant

Versus

RAMESH AND ANR.

....Respondents.

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Deep Inder Singh Walia, Advocate for the appellant.
Mr. Gaurav Tyagi, Advocate for the respondents.

AMARJOT BHATTI, J.

1. The appellant/claimant – Ram Rikh has filed present appeal against impugned Award dated 08.03.1995 passed by learned Motor Accident Claims Tribunal, Karnal vide which the claim petition filed by the appellant/claimant has been rejected with costs.

2. The facts of the case are that claimant Ram Rikh filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs.15 lakh on account of injuries suffered by him in a motor vehicle accident. He alleged that he was 35 years old and was working as Fitter, M.E. Section, NDRI, Karnal and was earning Rs.2,355/- per month. On the fateful day of 29.05.1991, at about 8.30/9.00 pm, he was going from his place of posting i.e. NDRI to village Beejna on Vicky Moped HNL-4090. The light of his vehicle was on. Jugar Diesel Engine fitted with Rehra Boggie driven by respondent No.1 came from village Beejna side on link road towards bifurcation of Karnal-Munak Road to

village Beejna. He had hardly covered about 4 furlongs. There was no light fitted on the Fitter Engine Rehra. He blew the horn. The vehicle in question was being driven by respondent No.1 at a high speed, in a rash and negligent manner and struck against the Moped as a result of which the claimant suffered serious injuries. He became unconscious and was taken to the Hospital of Dr. G.D. Sharma at Karnal and later on referred to PGI Chandigarh where he remained admitted from 30.05.1991 to 28.06.1991. He was operated upon and his right leg was amputated. He suffered disability to the tune of 80%. The respondent No.1 had admitted his guilt before Hans Pal, Sarpanch and other persons, who were present in the Panchayat. The accident took place due to the rash and negligent driving of respondent No.1. Because of this accident his professional and personal life has been adversely affected. Hence the present claim application.

3. The claim petition was contested by both the respondents. In the written statement filed by respondent No. 1 & 2, they had taken preliminary objections qua locus standi, claim barred by limitation, bad for mis-joinder and non-joinder of necessary parties. The respondent No.2 was not the owner of the aforesaid vehicle. The respondent No.1 has denied that he was driving the vehicle on the date of accident. He alleged that as per the case of the claimant the occurrence took place on 29.05.1991 and the FIR was lodged on 01.06.1991. The accident was caused on account of claimant's own negligence with some unknown person. Later on they are falsely involved in this case due to friction in the village. It was prayed that the claim petition may be dismissed with costs.

framed by the Tribunal on 14.10.1992:-

1. Whether the claimant had suffered damage as a result of injuries sustained in a roadside accident having taken place on 29.05.1991 near village Bijna falling within the jurisdiction of Police Station Sadar, Karnal owing to rash or negligent driving of Jugar (diesel-engine) fitted with cart, owned by respondent No.2 on the part of its driver respondent No.1, as alleged? OPP.
 2. Whether the petitioner is barred by time? OPR
 3. Whether the petition is bad for mis-joinder or non-joinder of necessary parties? OPR 1 and 2.
 4. In the light of decision on the foregoing issues whether the claimant is entitled to award of compensation? If so, how much and against whom? OPP
 5. Relief.
5. In order to prove the claim petition, the counsel for claimant had examined Satish Bhatia PW1, claimant Ram Rikh PW2, HC Balwan Singh PW3 and tendered documents Ex.P7 to Ex.P16 and closed the evidence.
6. In order to rebut the case of the appellant/claimant, respondent No. 1 himself stepped into the witness box as RW-1 and closed the evidence on 01.03.1995.
7. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the appellant/claimant was rejected by passing impugned Award dated 08.03.1995 as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellant/claimant.
8. I have heard the arguments of learned counsel for the appellant/claimant as well as learned counsel representing the respondents.

Learned counsel for the appellant/claimant argued that in the

motor accident claim case filed by the present appellant/claimant no compensation was awarded by the Motor Accident Claim Tribunal and his case was dismissed by passing the impugned award dated 08.03.1995. The findings given by the Motor Accident Claim Tribunal are erroneous. The Motor Accident Claim Tribunal came to the conclusion that the accident or rash and negligent driving on the part of the respondent No.1 was not proved on record. The factum of accident is duly proved on record by the claimant Ram Rikh as PW2. On the fateful day of 29.05.1991 at about 8.30 Ram Rikh was returning home on Vicky Moped bearing registration No.HNL-4090. At about 8.30 PM he was going towards village Beejna when offending Fitter Engine Rehra came from village Beejna side towards the link road with bifurcation from Karnal to Munak road. The said offending vehicle came without light and hit his Vicky Moped by coming at a high speed in a rash and negligent manner as a result of this accident he suffered injuries. He had become unconscious and was taken to the Hospital of Dr. G.D. Sharma and he was further referred to PGI Chandigarh where he remained admitted from 30.05.1991 to 28.06.1991. In this accident his right lower leg was amputated and he suffered permanent disability.

The accident was further proved on record by examining HC Balwan Singh (PW3) who further confirmed that on 01.06.1991 he had gone to PGI Chandigarh where he recorded the statement of Subhash son of Ram Rikh on the basis of which FIR No.211 dated 01.06.1991, Ex.P1, was recorded by Inspector Malhar Singh at Police Station Sadar, Karnal. He had recorded the statement of witness namely Jai Kumar and Anand

which are Ex.P4 and Ex.P5. During the course of investigation it was found that driver of said Fitter Engine Rehra was responsible for causing the accident. Apart from this, the petitioner had also examined PW1 - Satish Bhatia who had proved on record the FIR No.211 dated 01.06.1991 under Sections 279 & 337 IPC, P.S. Sadar, Karnal, Ex.P1 and the site plan of the place of accident is proved on record as Ex.P2. The counsel for the claimant had also tendered into evidence the copy of challan report, Ex.P3, Mechanical Test Report of Vicky Moped Ex.P13, Mechanical Test Report of Fitter Engine Rehra Ex.P14.

It is pointed out that despite leading sufficient evidence on record, the learned Motor Accident Claim Tribunal, on hyper technical grounds, came to the conclusion that the accident as well as involvement of Fitter Engine Rehra is not proved on record. There is statement of Ramesh, Driver – RW1 who during his cross-examination stated that he did not file any application to the police regarding registration of false FIR against him. It is argued that the aforesaid evidence has been wrongly ignored by the Motor Accident Claim Tribunal. The findings given by the Tribunal regarding issue No.1 may kindly be reversed as the accident as well as rash and negligent driving on the part of Ramesh respondent No.1 while driving Fitter Engine Rehra owned by respondent No.2 is duly proved on record.

9. Secondly, the learned counsel for the appellant/claimant argued that Ram Rikh, the appellant suffered serious injuries in the accident. He suffered injuries on his right leg as a result of which it was amputated and he suffered 80% permanent disability. He also suffered

compound fracture of right wrist. He remained in PGI Chandigarh from 30.05.1991 to 28.06.1991. Even thereafter he was going to PGI Chandigarh for his regular medical check up. He suffered huge medical expenditure including pain and suffering. At the time of accident, he was working as Fitter with ME Section, NDRI Karnal and was getting salary of Rs.2,355/- per month. After the aforesaid accident and permanent disability suffered by him, he will not be able to carry his job as he was doing earlier. He could not be promoted to Foreman and thereafter In-charge of the Section. His professional life has been adversely affected. Because of this accident he was unable to join back his service. He suffered huge expenditure on travelling and special diet. He further required compensation for future medical expenditure. Now he is dependent on others. Despite all this, no compensation has been awarded by the Motor Accident Claim Tribunal, Karnal. The counsel for the appellant/claimant prayed that he may be awarded compensation of Rs.15,00,000/- as detailed in the claim petition along with interest.

10. On the other hand, learned counsel for the respondents pointed out that the appellant/claimant himself failed to prove the accident or rash and negligent driving on the part of the respondent No.1. There is a serious discrepancy regarding the time when the alleged accident took place. As per the version of Ram Rikh the accident took place at 8.30 pm whereas it has come in the statement recorded by the police that the accident had taken place at about 10 pm. The counsel for the respondents also referred to the cross-examination of Ram Rikh PW2 where he stated that there was no arrangement of light. He further claimed that he had

become unconscious. Therefore, there was no possibility that he saw the alleged offending Fitter Engine Rehra or the person who was driving the same. The onus was on the appellant/claimant to prove his own version which he had failed. The facts of the case and the facts regarding accident were rightly considered by the Motor Accident Claim Tribunal and rightly concluded that there was no sufficient evidence on the file to prove that the accident was caused by respondent No.1 due to his rash and negligent driving. The statement of Ramesh the respondent No.1 as RW1 cannot be ignored. Therefore, the findings given on issue No.1 did not require any interference.

The learned counsel for the respondents further pointed out that the appellant/claimant has failed to produce on record any documents to establish the medical expenditure incurred by him. He claimed that he was working as Fitter ME Section, NDRI, Karnal and was drawing salary of Rs.2,355/- per month. In order to prove this fact, no evidence is led by the claimant. In-fact, there is no evidence led by the claimant to establish the medical expenditure or to support the quantum of compensation claimed by him in the claim petition. Once the accident or rash and negligent driving on the part of respondent No.1 was not proved on record there was no point in calculating the quantum of compensation. The claim petition filed by the appellant/claimant was rightly dismissed by the Motor Accident Claim Tribunal, Karnal by passing award dated 08.03.1995. It is prayed that the appeal preferred by the appellant/claimant may kindly be dismissed.

11. I have considered the arguments advanced before me. I have

also gone through the record carefully. In this case, the record of present appeal and trial Court was reconstructed after the burn incident which took place in the year 2011. The perusal of reconstructed file shows that the statement of claimant PW2 recorded in examination-in-chief as well as statement of Satish Bhatia PW1 could not be reconstructed. However, the same is referred in the award dated 08.03.1995 passed by Motor Accident Claim Tribunal which is impugned by filing the present appeal.

12. Regarding accident and rash and negligent driving, issue No.1 was framed. It is the version of Ram Rikh that on the fateful day of 29.05.1991 at about 8.30/9.00 pm he was returning home on his Vicky Moped bearing registration No.HNL-4090, when he was hit by Fitter Engine Rehra coming from the side of Beejna going towards Karnal Munak Road. Regarding this accident FIR No.211 dated 01.06.1991 was registered under Sections 279 and 337 IPC, Police Station Sadar, Karnal which is Ex.P1. Admittedly, the accident took place on 29.05.1991 at night time and thereafter he was taken to the Hospital of Dr. G.D. Sharma and further referred to PGI where he was admitted on 30.05.1991. There is statement of HC Balwan Singh PW3 who confirmed that the FIR was registered on the statement of Subhash Chander son of the claimant who was present in PGI, Chandigarh. In the case in hand, the learned Motor Accident Claim Tribunal has given emphasis on the time when the said accident took place. As per the version of Ram Rikh – the appellant/claimant, the accident had taken place at about 8.30/9.00 PM whereas it has come in statement of Subhash Chander and statement of Jai Kumar, Ex.P4 that accident took place at about 10 PM. Admittedly,

Subhash Chander son of the claimant was not present at the time of accident, therefore, no much emphasis can be given to his statement regarding the specific time when the accident took place. It is the statement of appellant/claimant Ram Rikh which is to be considered regarding the manner and the time when the accident took place. Satish Bhatia - PW1 has also proved the FIR as well as the site plan Ex.P2. The perusal of site plan shows that point- 'A' is the spot where the accident took place, point- 'B' is the spot where the claimant fell down after the accident and point 'C' is the spot from where the eye witness saw the accident. The testimony of HC Balwan Singh, PW3 cannot be ignored who categorically stated that during the course of his investigation the driver of Fitter Engine Rehra was found responsible for causing the accident. The aforesaid site plan Ex.P2 further shows that the accident had taken place towards the left side of the road if we go towards village Beejna. It is the case of the appellant/claimant that the offending Fitter Engine Rehra was coming from the side of village Beejna. The accident took place towards the right side of the road which clearly shows that Ramesh driver of Fitter Engine Rehra went on the wrong side of the road and hit Vicky Moped HNL-4090 driven by the appellant/claimant. During investigation, it was found that the accident was caused by Ramesh respondent No.1 due to his rash and negligent driving and accordingly, the challan was prepared and presented in the Court which is Ex.P3. The mechanical test report of Vicky Moped as well as Fitter Engine Rehra are Ex.P13 and Ex.P14. The learned Motor Accident Claim Tribunal has totally ignored the entire evidence on record and wrongly came to the conclusion that the accident as well as rash and

negligent driving on the part of the respondent No.1 while driving Fitter Engine Rehra owned by respondent No.2 is not proved on record. The case under M.V. Act, 1988 is tried by summary procedure and it is decided by way of preponderance of probability. The appellant/claimant was not required to prove the accident or rash and negligent driving on the part of the respondent No.1 beyond the shadows of reasonable doubt as it is done in the criminal case. There is sufficient evidence on record to prove the accident as well as rash and negligent driving on the part of respondent No.1. Therefore, in my opinion the findings given by the Motor Accident Claim Tribunal while deciding issue No.1 are not sustainable and the same are accordingly set aside and issue No.1 is accordingly decided in favour of the appellant/claimant and against the respondents.

13. In the case in hand, the Motor Accident Claim Tribunal has not assessed the quantum of compensation. There is specific issue No.4 framed in this regard. It is matter of record that the appellant/claimant has not examined any Doctor to prove the treatment record nor he has proved on file the bills of the Hospital or the Bills regarding purchase of medicines. However, the treatment record of PGI, Chandigarh is on the file according to which Ram Rikh was admitted on 30.05.1991 and was discharged on 28.06.1991. There are certificates given by the Doctor Ex.P7 to Ex.P11 vide which he was recommended leave during the period of treatment and even thereafter. The appellant/claimant has placed on record the disability certificate Ex.P6 according to which his right lower leg was amputated and he suffered 80% permanent disability. In order to assess, the quantum of compensation regarding permanent disability, the

appellant/claimant has not examined any witness to show that he was working as Fitter with ME Section, NDRI Karnal or he was getting salary of Rs.2,355/- per month. In the absence of any evidence on record, the income of appellant/claimant can be taken as that of an unskilled worker. The counsel for the appellant/claimant has also placed on record one chart of minimum wages of unskilled workers in Haryana and as per the entry at Sr. No.8 on 01.01.1991, the monthly wages of unskilled worker is mentioned as Rs.869.70. The perusal of discharge and follow up card of PGI Chandigarh further show that in the column of income it is mentioned that he was getting Rs.800/- per month. In the claim application, it is mentioned that at the time of accident he was 35 years of age, however, there is no documentary proof to establish the same. There is discharge and follow up card of PGI, Chandigarh in which his age is mentioned as 40 years. Therefore, in order to assess the quantum of compensation which he is entitled to on account of permanent disability, his monthly income is taken as Rs.800/-; annual income is taken as Rs.9600/-. The disability on account of amputation of right lower leg is taken as 80% and considering his age as 40 years multiplier of 15 is applied and the quantum of compensation on account of permanent disability suffered by him comes out to Rs.1,15,200/-. No doubt the appellant suffered pain and agony. It was not possible for him to do his job. He must have required some amount for future medical expenditure. He must have spent money on transportation and special diet. There is nothing on record to show that he hired service of any attendant. Therefore, considering the aforesaid facts, the appellant/claimant is granted compensation under the following heads:-

SR. No.	Head	Amount of compensation (Rs.)
1.	Loss of future earnings on account of permanent disability	1,15,200/-
2.	Future Medical expenditure and Misc. Expenses	Rs.10,000/-
3.	Pain and suffering	Rs.50,000/-
4.	Expenditure of Transportation	Rs.5,000/-
5.	Expenditure of Special Diet	Rs.5,000/-
6.	Loss of income for a period of about 6 months.	Rs.5,000/-
	TOTAL	Rs.1,90,200/-

14. The claimant is entitled to the compensation of Rs.1,90,200/- on account of injuries suffered by him in the motor vehicle accident caused by respondent No.1 while driving his Fitter Engine Rehra. The offending vehicle was owned by respondent No.2 as per the case of claimant. The respondent No.2 has not stepped into the witness box to deny this fact. Fitter Engine Rehra is unauthorised vehicle. Therefore, there cannot be any document in the name of respondent No.2. The unrebutted statement of appellant/claimant is sufficient to prove this fact. Therefore, the liability of both the respondents is joint and several. The appellant/claimant is entitled to receive the aforesaid amount with interest @ 9% p.a. from the date of filing of claim application till the date of award dated 08.03.1995 and further future interest @ 6% p.a. from the date of filing of present appeal till realization of the amount. The present appeal remained pending for long duration. Therefore, the claimant is further granted Rs.5,000/- towards the litigation expenses. The appeal preferred by the appellant/claimant is accordingly accepted.

Pending application(s), if any, also stand disposed off.

20.09.2023
snd

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes/No