

243

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

CM-14748-CII-2019

CM-14750 and 14751-CII-2019 in/and

FAO-4472-2019

Date of decision: 28.03.2023

L AND T GENERAL INSURANCE COMPANY NOW HDFC
GENERAL INSURANCE CO. LTD ...Appellants

VS

NIREN ROY AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Varun Sharma, Advocate for
Mr. Ashwani Talwar, Advocate,
For the appellants.

None for the respondents.

ARUN MONGA, J. (ORAL)

CM-14748-CII-2019

For the reasons stated in application, same is allowed. Delay of
28 days in filing appeal is condoned.

CM No. 14748-CII-2019 and Main Case:

CM first. Applicant-appellant seeks leave to produce additional evidence by summoning the concerned official of the PGIMS, Rohtak with relevant record. Learned counsel argues that as per case set up by the claimant, the accident took place on 06.04.2017 and the injured-claimant Niren Roy was taken to PGIMS, Rohtak from where he was shifted to Sunflag Hospital, Rohtak but there is no evidence on record with regard to his admission in PGIMS, Rohtak. To have a correct picture, it is, therefore, necessary that the applicant be allowed to summon the concerned official of the PGIMS, Rohtak with relevant record.

Pertinently, similar application filed before the learned
Tribunal was dismissed vide its order dated 06.12.2018 (Annexure A-2). Its

perusal shows that the investigation form Ex. P-29 issued by the PGIMS, Rohtak of the petitioner-claimant bears the CR/OPD No. 549039, meaning that he was treated there in the Out-patient department(OPD). The claimant's case also is that he was taken to PGIMS, Rohtak from where he was shifted to Sunflag Hospital, Rohtak. Thus, a complete and consistent picture is already available on the record. There is no explanation forthcoming as to why the evidence now sought to be produced, was not tendered when the applicant availed the opportunity to adduce its evidence before the learned Tribunal. In any case, for the reasons stated in the order passed in the main appeal, production of the additional evidence in question, at this stage, does not seem necessary for just and proper decision of the case. Outcome of the FAO/Appeal herein would remain same, regardless.

Application is, therefore, dismissed.

FAO- Main case

Aggrieved by the award dated 09.01.2019 rendered by Motor Accidents Claims Tribunal, Rohtak (for brevity, Tribunal), Insurance Company has preferred the instant appeal.

2. Succinct facts, as noted by learned Tribunal, are as below:

“The facts giving rise to the above-said claim petition are that on 06.04.2017, at about 9.00 p.m., claimant-Niren Roy along with Parveen, was standing at Bus Stand Baland Road, Village Karontha, in the meanwhile, a car bearing registration No.HR-12X-9346 (hereinafter referred to as the offending vehicle) being driven by its driver i.e. respondent no.1 in a rash and negligent manner and at high speed came from the side of Rohtak and struck the same against the claimant while coming on wrong side and has caused the accident. As a result thereof, the claimant has sustained various serious injuries on his body including fracture in ribs. The registration number of the offending vehicle was noted as HR-12X-9346 and its driver has disclosed his name as Hari Kishan

son of Shri Umed Singh, resident of village Karontha. Thereafter, many people have gathered at the spot and while taking its advantage, the driver of the offending vehicle fled away from the spot along with his vehicle. The claimant was brought to PGIMS, Rohtak and thereafter he was brought to Sun Flag Hospital, Rohtak for further treatment. Thus, the present accident took place due to rash and negligent driving of the driver of the offending vehicle. The respondent No.1, being driver, respondent No.2 being owner and respondent No.3 being insurer, of the offending vehicle, are jointly and severally liable to pay the compensation to the claimant.”

3. Upon notice, respondent No.1 and 2-driver and owner of offending vehicle filed their joint written statement and denied the averments made in the claim petition. It was stated therein that respondent No.1 was having valid and effective driving licence and vehicle in question was insured with respondent No.3 at the relevant time. Accident in question had taken place due to the sole negligence of the claimant. False case was got registered against respondent No.1 in collusion with the police.

3.1 Respondent No.3 being insurer of the offending vehicle also contested the claim petition and raised preliminary objections regarding maintainability, claim petition suffered from non-joinder and mis-joinder of necessary parties; cause of action etc. It was denied that the accident took place due to rash and negligent driving of the offending vehicle. All the averments of the claim petition to that effect were also denied.

4. No replication was filed. Learned Tribunal framed the following issues:

“1. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. car bearing registration No. HR-12X-9346? OPP

2. If issue No.1 is proved, whether Niren Roy son of Gajen Roy sustained injuries in the above said accident, if so to what amount of compensation and from whom the petitioner is entitled to? OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident and

respondents No.1 and 2 have violated the terms and conditions of the insurance policy, as alleged? OPR-3
4. Relief.”

5. On appraisal of evidence, the learned Tribunal decided issues No. 1 and 2 in favour of the claimant and issue No.3 was decided against respondent No.3.

6. The Insurance Company, who was respondent No. 3 before the Tribunal, has come up in appeal.

7. I have heard the learned counsel for the appellant and with his able assistance gone through the record.

8. Shorn of details, the contentions herein are that there was delay of 5 days in lodging of FIR; the injured claimant and the eye-witnesses of the occurrence are from the same village; there is no documentary evidence on record to connect the claimant with the alleged accident and there are contradictions in the statements of the two eye-witnesses as PW-3 Parveen deposed that he had shifted the injured to PGIMS, the latter remained there for 4-5 days after which he was shifted to Sunflag Hospital and remained there for 7-8 days whereas PW Niren Roy deposed that the injured claimant had come back home from the hospital after 1-2 month; that in the written intimation Ex R-4 given by the hospital to the police and case summary Ex R-5 issued by Sunflag Hospital, it was mentioned that the patient was on a bike and was hit by car, whereas the eye-witnesses have stated that the injured was on foot and that as per mechanical test report, no damage had been caused to the offending vehicle. On these contentions it was argued that the story about the accident set by the claimant was unacceptable and that the interest @ 7.5% per annum awarded by the learned Tribunal is excessive and liable to reduced.

9. I am of the opinion that there is no merit in the appeal.

10. The learned Tribunal observed and, rightly so, that the conduct of PW3 Parveen was quite natural regarding delay in the registration of the FIR as he remained busy in taking care of Niren Roy during his treatment at PGIMS, Rohtak. Merely because the injured claimant and the eye-witnesses are from the same village is no ground to disbelieve them all. The aforesaid discrepancies pointed out by the learned counsel for the appellant are only on minute details, which are natural with fading of memory by lapse of time and do not warrant the rejection of the claimant's story. It is not shown at whose instance it was mentioned in the written intimation Ex R-4 given by the hospital to the police and case summary Ex R-5 issued by Sunflag Hospital that the patient was on a bike and was hit by car. On their basis, therefore, it cannot be said that they falsify the version of the eye-witnesses to the effect that the injured was on foot. Absence of any damage noticed in the mechanical test report of the offending vehicle is also insignificant. Applying the standard of proof by preponderance of probabilities in civil matters, to my mind, the learned Tribunal held it correctly that the accident in question occurred due to rash and negligent driving of car No. HR-12X-9346 by its driver Hari Kishan, resulting in injuries to the claimant. No fault can, therefore, be found with the finding on issues No. 1 and 2 recorded by the learned Tribunal in favour of the claimant. The same are affirmed.

11. I also find no merit in the contention of the learned counsel for the appellant that the interest @ 7.5% per annum awarded on the compensation amount by the learned Tribunal is excessive and liable to be reduced. To my

mind, the rate of interest awarded by the learned Tribunal is fair and reasonable .

12. I thus find no grounds to interfere in the aforesaid cogent findings rendered by learned Tribunal. That apart taking an overall view of the matter, given that amount awarded is merely Rs.1,61,500/-, had there been a counter appeal perhaps there was a chance of same being enhanced, given the nature of injuries suffered by claimant. Taking a lenient view, this Court is not treading on the same since the injured has chosen to give it a quietus after entire compensation has already been disbursed to him as there was no stay granted during pendency of the appeal.

13. Be that as it may, appeal is dismissed.

14. Pending application, if any, including application seeking production of additional evidence, shall also stand disposed of.

(ARUN MONGA)
JUDGE

28.03.2023
vandana

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