

FAO-1679-2014 (O&M) AND
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: March 20, 2023
FAO-1679-2014 (O&M)

1.

Vikram Batra

....Appellant

versus

Amrik Singh and others

....Respondents

2.

FAO-1407-2014 (O&M)

Raju @ Vijay

....Appellant

versus

Amrik Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ankush Rampal, Advocate for
Mr. Rahul Rampal, Advocate for appellant(s).

Mr. Ram Avtar, Advocate
for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two appeals are being disposed of since facts are analogues and issues raised therein are common. For brevity, recitals are taken from FAO-1679-2014.

2. Appellant before this Court is injured/claimant challenging impugned Award dated 26.10.2023 rendered by learned Motor Accidents Claims Tribunal, Ludhiana (for brevity, Tribunal), whereby the claim petition was dismissed.

3. Succinct facts, in FAO-1679-2014, as noted by learned Tribunal, are as below:

“.....on 29.11.2010, the claimant and one Raju were traveling in their WagonR car bearing registration no.PB10BN-6180. When they reached near Mayur Dhaba situated at GT Road, Karnal, the respondent no.1 came driving the truck bearing registration no.HP-21A-7051. He was driving the said truck rashly and negligently. Without giving any indication, the respondent no.1 turned the truck towards village Indri and struck his truck in the right side of the car of the claimant. The accident had occurred on account of rash and negligent driving of the

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offending vehicle by the respondent no.1. In the accident, the claimant and his co-passenger Raju received injuries. Hence, a criminal case under Sections 279, 337 etc. IPC was registered against the respondent no.1. The claimant was hospitalized and he remained hospitalized from 29.11.2010 till the end of December, 2010. On account of the injuries, the claimant's hearing capability was affected adversely. His eye sight was also affected adversely. There was a fracture of right "Maxillary sinus with haemousinus, fracture of floor of right orbit and fracture right lamina papyrae, extra duralhaematoma along with right temporal convexity". On account of the injuries, the claimant has been disabled. He has suffered mental pain and agony. He has to employ a person for looking after him. His business has also suffered. He cannot see and hear properly. Thus, he has suffered a loss of Rs.10 lacs. He is, therefore, entitled to recover the same from the respondents along with interest @ 24% per annum."

3.1 Likewise, brief facts, in FAO-1407-2014, as noted by learned Tribunal, are as below:

".....on 29.11.2010, the claimant and one Vikram Batra were traveling in their WagonR car bearing registration no.PB-10BN-6180. When they reached near Mayur Dhaba situated at GT Road, Karnal, the respondent no.1 came driving the truck bearing registration no.HP-21A-7051. He was driving the said truck rashly and negligently. Without giving any indication, the respondent no.1 turned the truck towards village Indri and struck his truck in the right side of the car of the claimant. The accident had occurred on account of rash and negligent driving of the offending vehicle by the respondent no.1. In the accident, the claimant and his co-passenger Vikram Batra received injuries. Hence, a criminal case under Sections 279, 337 etc. IPC was registered against the respondent no.1. The claimant was hospitalized and he remained hospitalized from 29.11.2010 till the end of December, 2010. On account of the injuries, the claimant's right eye and left thigh were affected adversely. On account of the injuries, the claimant has been disabled. He has suffered mental pain and agony. He has to employ a person for looking after him. His business has also suffered. He cannot see properly. Thus, he has suffered a loss of R.10 lacs. He is, therefore, entitled to recover the same from the respondents along with interest @ 24% per annum."

4. In both the claim petitions, upon notice, respondents No.1 & 2 contested claims by filing joint written statement raising preliminary objections regarding the frame, falsehood of petition and concealment of material facts. It was denied that offending vehicle was involved in accident in question. Other pleas of claimant were refuted. It was also denied that claimant Vikram Batra was earning Rs.20,000/- per month and claimant Raju alias Vijay was earning Rs.15,000/- per month, as alleged. It

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was denied that claimants received any injury or they remained hospitalized or that they became disabled. Prayer for dismissal of claim petitions was made.

4.1. Respondent No.3-Insurance Company filed its written statement in both the claim petitions taking preliminary objections regarding maintainability of petition, non-joinder/ mis-joinder of parties, validity of driving license of respondent No.1. Occurrence of accident in question was disputed. All other pleas of claimants were disputed. Prayer for dismissal of claim petitions was made.

5. Learned Tribunal framed the following issues:

- “1. *Whether the accident, that took place on at 9.15 p.m. on 29.11.2010 near Mayur Dhaba, Karnal, occurred due to rash and negligent driving of the truck bearing registration no.HP-21A-7051 being driven by respondent no.1? OPP*
2. *Whether the claimant received injuries in the said accident? OPP*
3. *Whether the claimant is entitled to recover Rs.10 lacs from the respondents as compensation for the said injuries along with interest @ 24% per annum? OPP*
4. *Whether the petition is not maintainable on account of the preliminary objections raised in the written statement? OPR*
5. *Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1 & 3 against claimant(s). While deciding issue No.2, learned Tribunal held that on account of accident in question, claimant Vikram Batra suffered loss of a sum of Rs.1,51,389 + Rs.3,000 = Rs.1,54,389/- (in FAO-1679-2014). A sum of Rs.27,545 + 3000 = Rs.30,545/- was assessed as loss on account of injuries suffered by claimant Raju alias Vijay (in FAO-1407-2014) but it was held that since it was not proved on record that accident had occurred on account of rash and negligent driving of offending vehicle, therefore, claimants could not have asked the respondents to compensate them for loss in question. Thus, issue No.2 was decided against claimant(s). Issue No.4 was decided against respondents. Consequently, claim petitions were dismissed.

7. I have heard learned counsel for parties and perused the record.

8. In FAO-1407-2014, notice of motion was issued on 17.11.2014 whereas notice of motion was issued on 16.09.2014 in FAO-1679-2014. During pendency of

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appeals, it transpired that arising out of same accident, another claimant, who was also a co-passenger in the Car in question, which got hit by the offending vehicle (truck), had sought compensation *qua* injuries suffered by him and the same was amicably paid off in course of settlement carried out before Lok Adalat to the tune of Rs.1,35,000/- without contesting the claim. In the aforesaid background, my learned Sister Lisa Gill, J. (as she was seized of the matter then) passed following order on 09.10.2018:

“Learned counsel for the appellant submits that out of the three persons who were injured in the motor vehicle accident which took place on 29.11.2010, one namely Kanwar Pal son of Sh. Dalip Singh filed a petition under Section 166 of Motor Vehicles Act before the learned Motor Accident Claims Tribunal, Karnal. The matter was settled before the Lok Adalat by the Insurance Company. A sum of Rs.1,35,000/- was paid to Kanwar Pal as settlement of all his claims. Certified copy of the award dated 22.12.2012 has been furnished in Court today. Photocopy of the same is taken on record subject to just exceptions.

Learned counsel for the Insurance Company prays for some time to verify the same and seek instructions.

On request, adjourned to 01.03.2019.

A copy of this order be placed on the files of other connected cases.”

8.1 *Apropos*, learned counsel for respondent No.3-Insurance Company does not dispute that indeed the claim of one of the victims of same accident was settled in Lok Adalat. In view thereof, I am of the opinion that it is inconsequential whether learned Tribunal returned a finding *qua* driver of offending vehicle not being rash or negligent and causing the accident. That apart, it appears that learned Tribunal got over-swayed by holding that there was no negligence on the part of offending vehicle and in process, dismissed the claim petitions in entirety without considering the ample evidence otherwise *qua* medical expenses borne out by claimant(s), who had also suffered injuries as was the case of co-victim. Insurance Company cannot be permitted to approbate and reprobate in the same breath as in one case, it settled the matter by paying the compensation amount for injuries suffered by co-victim while in the present case, it is taking refuge under the finding that driver of the offending vehicle was not negligent and, therefore, it is absolved of the liability.

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8.2 I am of the opinion, that in the premise, both the claim petitions ought to have been treated by Insurance Company on parity with other co-victim of the accident. This having not been done, the appeals deserve to be allowed. Accordingly, the impugned awards are modified to the extent that appellants are held entitled for the compensation, as per the amount of respective loss assessed by learned Tribunal *qua* injuries suffered by the claimants i.e.Rs.1,54,389/- to claimant Vikram Batra and Rs.30,545/- to claimant Raju alias Vijay.

9. As an upshot of above discussion, both the appeals are disposed of and impugned Awards are modified as above. Respondent No.3-Insurance Company is directed to pay the said amount of compensation to appellant/claimants. Compensation in each claim petition be paid within a period of 30 days from today with interest @ 7.5 % per annum from the date of filing of claim petition till actual date of payment. In case, compensation is not paid within 30 days, same shall carry additional penal interest of 3% per annum w.e.f. the date of filing of claim.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No