

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

FAO-2858-2015(O&M)

Reserved on:-3.5.2023

Date of Pronouncement:-10.5.2023

Sunil Kumar

...Appellant

Versus

Rinku and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Sachin Gupta Ladwa, Advocate,
for the appellant.

Mr.Gurmail Singh Duhan, Advocate
for respondents No.1 and 2.

Ms.Swantantar Kapoor, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. Briefly stated, facts of the case as per the version of the petitioner/claimant are that on 15.1.2013, he along with one Pola was going to Kaithal Deha Basti from Yamunanagar on motorcycle bearing registration No.HR-08-1845; the motorcycle was being driven by Sunil Kumar on which Pola was pillion riding; at about 10:00 p.m., when they had reached Karnal Road near Lal Kothi within the jurisdiction of Police Station Civil Line, Kaithal, then an ambulance bearing No.HR-64-4130 (hereinafter referred to as the offending vehicle) came from the side of Lal Kothi being driven by respondent No.1 Rinku in a rash and negligent

manner without blowing any horn and it struck against the motorcycle from the opposite side; resultantly both the riders of the motorcycle fell down on the road; Sunil Kumar suffered multiple serious and grievous injuries on his person; he was shifted to General Hospital, Kaithal where he remained admitted w.e.f. 15.1.2013 to 30.1.2013.

An FIR No.41 dated 15.3.2013 for the offences under Sections 279, 336, 337 IPC was registered with Police Station Civil Line, Kaithal against respondent No.1 Rinku – ambulance driver.

2. The petitioner/claimant Sunil Kumar had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against Rinku – driver, Arjun Singh – owner and National Insurance Company Ltd., Kaithal – insurer of the offending vehicle, claim compensation.

3. According to the claimant, he was aged about 16 years and a student doing labour work with his father before the accident; after suffering injuries in the form of fracture of right leg, he remained admitted in General Hospital, Kaithal from 15.1.2013 to 30.1.2013 and spent Rs.1 lakh on his treatment; he is still undergoing treatment and is unable to perform his daily routine.

4. On being put to notice, all the three respondents had appeared and filed written statements contesting the claim petition.

In the joint written statement submitted on behalf of respondents No.1 and 2, they had raised several legal objections contending that no accident had taken place involving the offending vehicle on account of alleged rash and negligent driving by respondent

No.1, which is clear from the statement of claimant given to the police under Section 161 Cr.P.C.; the version given in the DDR and in the statement to the police is quite different from version set up by the claimant in the present writ petition; there is delay of two months in registration of criminal case against respondent No.1 for which no explanation is coming forth; as a matter of fact, the claimant had received injuries when his motorcycle had hit an animal on the road as mentioned by the claimant/injured in his statement under Section 161 before the police; respondent No.1 Rinku, who was coming behind driving his ambulance had helped the claimant but claimant rather involved him in a false case. On merits, such respondents controverted the allegations contending that police has registered a false FIR in collusion with the claimant and complainant against respondent No.1. The respondents however admitted that respondent No.2 is registered owner of the vehicle in question, which was insured with respondent No.3 insurance company for a period commencing from 21.1.2013 to 20.1.2014.

In the written statement filed by respondent No.3 – insurance company, it has also raked up various legal objections contending that respondent No.1 was not holding a valid and effective driving licence at the time of accident and vehicle in question was being driven in violation of the rules of the Act and terms and conditions of the insurance policy; the petition has been filed in collusion with respondent No.1 with some ulterior motive. On merits, the answering respondent controverted the allegations in the claim petition denying that any such accident had taken place as alleged in the claim petition. Some additional pleas were raised.

All the three respondents prayed for dismissal of the claim petition.

5. Issues on merits were framed. Both the parties were afforded adequate opportunities to lead evidence.

6. After hearing learned counsel for the parties, the claim petition was dismissed by the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as the Tribunal) vide Award dated 25.11.2014, which left the claimant aggrieved and he has filed an appeal before this Court, notice of which was issued to the respondents, who put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that the impugned award is not legally sustainable and is bound to be set aside.

8. The Tribunal has dismissed the claim petition with the observations that the claimant has failed to bring any cogent and reliable evidence to establish that he suffered injuries in the accident having been caused by respondent No.1 by driving the offending vehicle and further the claimant was a minor when the accident was taken place and as per his own version he was driving motorcycle since he had not tendered any driving licence, that goes to show that he was not authorized to drive vehicle and he was at fault in causing the accident. If for a second, it is taken that the accident in question had taken place involving the vehicle in question, the whole approach of the Tribunal in dealing with the matter was wrong and erroneous.

9. Learned Tribunal proceeded to decide the issue as if it was

dealing with a criminal case and not a petition for compensation under Section 166 of the Motor Vehicles Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

10. Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Strict rules of evidence and procedure are not applicable there. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice.

11. In order to prove that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1 Rinku, the petitioner/claimant had examined PW2 Pola, who had lodged report regarding the accident with the police on the basis of which formal FIR Ex.PA had been recorded. His presence at the spot at the relevant time comes out to be natural and probable. He had provided the ocular version of the incident supporting the case of the claimant on material aspects. He had been cross-examined at length on behalf of the

respondents but he remained unshaken. The claimant had further tendered report under Section 173 Cr.P.C. Ex.PB, copy of charge-sheet Ex.PC, which go to show that after registration of the FIR, the criminal case was investigated and finding sufficient material against respondent No.1, ambulance driver, he was sent up to the Court to face trial and then the Court had framed formal charge against him.

12. The Tribunal had ignored all those facts and gave undue importance to statement under Section 161 Cr.P.C. and DDR recorded on the basis thereof that the accident had in fact taken place and nobody was at fault in happening of the accident because a cow had come on the road and the claimant had lost balance of motorcycle, slipped and further suffered injuries. The statement made by a person in the Court on oath stands on much higher pedestal than the statement made by a person to the police and DDR registered on the basis thereof. Statement made by a person on oath in the Court and after being subjected to cross-examination carries much more evidentiary value.

13. The Tribunal has taken the delay in reporting the matter to the police in a very serious manner. Of course in the case of commission of cognizable offence prompt reporting of the matter to the police is desirable but delay in reporting the matter to the police is not to be treated with suspicion if adequate explanation for the same is coming forth. The explanation being offered in this case is that as talks for compromise between the parties under which the claimant was to be compensated monetarily were going on, therefore delay took place in reporting the matter to the police. Furthermore, delay in reporting the matter to the

police is certainly an important factor while deciding a criminal case but it cannot be given undue importance while deciding a claim petition. Similarly the judgment of a criminal Court is not binding on the Tribunal which has to reach its own conclusion considering the facts and circumstances of the case and evidence brought on record by the parties. Even acquittal of accused driver in a criminal case does not effect the merits of the case in a claim petition.

14. It needs to be mentioned here that the respondent No.1 had got his statement recorded as RW1 submitting his affidavit Ex.RW1/A stating that no accident had taken place due to his rash and negligent driving of the ambulance. The respondents have also tendered in evidence certified copy of DDR Ex.RF.

15. Learned counsel for the insurance company has referred to the judgment **New India Assurance Co. Ltd. Versus Jaysukhlal Maganlal Doshi and others, 2014 ACJ 1075** wherein it was observed that ordinarily averments made in the FIR would not be admissible in evidence per se but if FIR is produced and relied on by the claimants to prove the factum of accident then other averments in the FIR will also be part of the claim application and the Tribunal and appellate Court would be entitled to look into the same.

16. There cannot be any dispute with the proposition of law laid down in this judgment. In this case averments in the FIR are in consonance with the case of the claimant.

17. Learned counsel for the respondent insurance company has cited another judgment i.e. **United India Insurance Co. Ltd. Versus**

Rajender Singh and others etc., 2000(2) RCR(Civil)483 wherein it was observed that no Court or Tribunal can be regarded as powerless to recall its own orders if it is convinced that the order was secured by fraud or misrepresentation.

I wonder how this judgment is helpful to the insurance company since it is certainly not a case where some fraud etc. has taken place.

18. Therefore, keeping in view the statement on oath of PW2 Pola complainant in the criminal case, who had categorically supported the case of claimant coupled with FIR registered regarding the accident Ex.PA and copy of report under Section 173 Cr.P.C. Ex.PB, copy of charge-sheet Ex.PC in absence of any cogent and convincing evidence in rebuttal, verdict with regard to issue No.1 ought to have been given in favour of the petitioner/claimant but the Tribunal fell in error in deciding this issue against the claimant. That wrong is undone and issue No.1 is decided in favour of the petitioner and against the respondents.

19. Now coming to issue No.2. Similarly in view of the detailed discussion above, the claimant is entitled to get compensation for the injuries suffered by him in the accident. As per his version, he had suffered a fracture in his right leg and had to spent Rs.1 lakh on his treatment from General Hospital, Kaithal where he remained admitted from 15.1.2013 to 30.1.2013. Although no documentary evidence in that regard has been produced but copy of bed head ticket Ex.PD, copy of consent form Ex.PE, copy of x-ray report Ex.PF, copy of MLR Mark A lent support to the case of the claimant in that regard. The medical

treatment in these days is become very costly. The price of the medicines is also getting prohibitive. Therefore, keeping in view all facts and circumstances in my considered view, the petitioner/claimant deserves to be granted a sum of **Rs.60,000/-** towards his medical expenses.

20. The petitioner/claimant is also to be compensated under various other heads.

21. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.30,000/-** under that head.

22. As regards special diet, a person suffering injuries does need special diet for early and proper recovery. I award a sum of **Rs.20,000/-** under that head.

23. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.20,000/-** is awarded to him on account of transportation.

24. The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.20,000/-** is accordingly awarded to the appellant/claimant on that score.

25. The total compensation payable is worked out to Rs.1,50,000/-, payable by all the respondents jointly and severally.

26. Thus issue No.2 is decided in favour of the petitioner/claimant and against the respondents.

27. Whereas findings on other issues No.3, 4 and 5 are correct and no interference therewith is called for.

28. Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.1,50,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimant payable by all the respondents jointly and severally.

Since the main appeal is allowed, the miscellaneous application(s), if any stand disposed of accordingly.

10.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No