IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3122-2017 (O&M)
Reserved on:21.04.2023
Date of Pronouncement:26.04.2023

Baldev Raj Sharma ... Appellant

Vs.

Gaurav Bhatia & others ... Respondents

2. FAO-4848-2017 (O&M)

Gaurav Bhatia ... Appellant

Vs.

Baldev Raj Sharma & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. R.C. Gupta, Advocate for the appellant.
(in FAO-3122-2017).

Mr. Neeraj Khanna, Advocate for the appellant.
(in FAO-4848-2017).

None for respondent No.2 in FAO-3122-2017.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.3/Insurance Company.

...

SUKHVINDER KAUR, J.

This order shall dispose of **FAO-3122-2017 (Baldev Raj Sharma Vs. Gaurav Bhatia & others)** and **FAO-4848-2017 (Gaurav Bhatia Vs. Baldev Raj Sharma & others)** as both the appeals have arisen from a common award dated 04.10.2016.

1. The relevant facts are that on 24.06.2014, claimant-Baldev Raj

Sharma was going from his village Padwala to Taraori on his motorcycle bearing No.HR05X-1573. Kusum Lata wife of Roshan Lal met him at about 1:15 P.M. near petrol pump, Railway over bridge and then they proceeded to village Shamgarh from Taraori. He was driving the motorcycle at the normal speed. When they reached near GT road over bridge of Village Shamgarh then one Tata Magic vehicle came and hit their motorcycle from the backside. The driver of the vehicle came to them after stopping his vehicle but then fled away along with his vehicle. He informed the police about the number of the said vehicle as HR45B-3658, but during the investigation it was found by the police that number of the said vehicle was HR45B-3653. He as well as Kusum Lata wife of Roshan Lal suffered injuries in the said accident. Claimant was shifted to Civil Hospital, Karnal, but due to his serious condition, he was shifted to Shree Hari Hospital, Karnal. He remained admitted there from 24.06.2014 to 30.06.2014. He was operated upon by the doctors for the fracture in his right arm and right foot and was also given treatment for the injuries on his head and left eye. The accident had been caused by respondent No.2-Amit driver of the offending vehicle, by driving the same in a rash and negligent manner. In this connection, FIR No.173, dated 25.06.2014, under Sections 279/337/338/420 IPC was registered at Police Station Taraori, District Karnal.

2. It has been averred that the claimant is working as a Priest to perform religious ceremonies and other related activities in the area and was deriving income of Rs.20,000/- per month out of same. The injured was 48 years old at the time of the accident. He was healthy before the accident but after the accident, he has become permanently disabled and is confined to

bed. He is unable to do any work and is suffering from great mental pain and agony. He is unable to do even his daily necessary jobs and he cannot do any work to earn livelihood for his family. He is getting treatment from Shree Hari Hospital, Karnal as an outdoor patient and had spent Rs.80,000/- on his treatment and special diet, physiotherapy and transportation etc. and is still incurring more expenses. It has been prayed that he may be granted compensation of Rs.10 lakhs along with interest @ 18% per annum.

3. After notice, respondent Nos.1 and 2 appeared (owner and driver respectively) and filed joint written statement alleging therein that claim petition is not maintainable. No such accident had ever been caused by respondent No.2 while driving Tata Magic Vehicle No.HR45B-3653 and a false FIR has been got registered in collusion with the police. It has been alleged that the claim petition has been filed in order to grab money in an illegal manner from the respondents. Respondent No.2 driver was having a valid and effective driving license and the offending vehicle was fully insured with the Magma HDI General Insurance Company Limited which was valid from 23.12.2013 to 22.12.2014 and it was for the insurer to indemnify the insured by satisfying the award.

4. A separate written statement was filed by respondent No.3/ insurance company, alleging therein, that the insurer was not liable to pay any compensation as respondent No.2/driver was not having a valid and proper driving license at the time of the accident. So, the owner was liable to pay the compensation. The claim petition was bad for mis-joinder and non-joinder of necessary parties and cause of action and the other pleas taken in the claim petition were also denied.

5. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

6. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal has partly allowed the claim petition MACP Case No.53 of 2014/CIS No.2171 of 2014 and awarded a sum of Rs.1,26,800/- as compensation to the claimant alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the compensation and the recovery rights were given to the Insurance Company, to later on recover the amount deposited from the insured.

7. Feeling dissatisfied with the award dated 04.10.2016, the appellant-claimant has preferred the instant appeal.

8. I have heard learned counsel for the parties and have also perused the relevant record.

9. Learned counsel for the claimant/appellant in FAO-3122-2017 has contended that due to receiving the injuries in the accident in question, the appellant/claimant has become disabled and is unable to perform his duties for earning his livelihood. The appellant who was aged about 48 years at the time of the accident remained hospitalized for many days. But while granting the compensation, the learned Tribunal has not awarded anything on account of loss of amenities of life, loss of happiness and frustration in life. He has further argued that the Tribunal has wrongly taken income of the injured on the lower side consequently awarding the lesser compensation

under the head of loss of income as well as under the other conventional heads. He has contended that the claimant is still getting the follow up treatment. He had spent huge amount on the transportation and for taking special diet. So, amount of Rs.50,000/- may be granted on account of transportation charges and Rs.50,000/- under the head of the special diet. He has contended that the appellant has also not been awarded anything towards the future medical expenses. As the claimant had suffered serious injuries, so some compensation was required to be awarded on this account also to enable him to get the future required treatment. He has prayed that the amount of compensation may be enhanced accordingly and the present appeal may be accepted.

10. On the other hand, learned counsel for the respondents has contended that the compensation awarded by the learned Tribunal is rather on the higher side which does not require any enhancement.

11. In addition to it, counsel for the appellant in FAO-4848-2017 has contended that the offending vehicle was fully insured with respondent No.3/insurance company and the insurance policy Ex.R3 was valid at the time of the accident. There was no violation of any terms and conditions of the insurance policy, so the insurance company was liable to pay the amount of compensation. He has contended that the Tribunal has wrongly granted the recovery rights to the insurance company by holding that it transpired from the criminal proceedings against driver of the offending vehicle that the fake number plate had been affixed on the vehicle and as such the owner and the driver of the offending vehicle had not approached the Tribunal with clean hands. He has argued that the proceedings against the driver under

Section 420 IPC were dropped by the prosecution and no charge was framed under Section 420 IPC. Later on the driver of the vehicle had been acquitted in the criminal case pertaining to the accident in question which was decided on 06.11.2015 and has prayed that his appeal may be accepted and insurance company be made liable to pay the amount of compensation and no recovery rights are required to be given to the insurance company.

There is no dispute with regard to the finding given by the Tribunal on issue No.1 that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver, in which the claimant/appellant Baldev Raj Sharma had sustained the injuries.

12. Claimant-Baldev Raj Sharma has himself stepped into the witness box as PW1 and has deposed on oath before the Tribunal, that as per the averments made in his claim petition, he was 48 years of age at the time of receiving injuries in the accident in question. He suffered fracture in his right arm and right foot and also suffered injuries on his head and left eye and other parts of the body. He remained hospitalized from 24.06.2014 to 30.06.2014. He also underwent surgery of his foot and arm and he had spent Rs.80,000/- on his treatment which is still continuing. He has suffered 27% disability and could not earn his livelihood.

13. After considering that the claimant remained hospitalized in Shree Hari Hospital, Karnal, for 7 days from 24.06.2014 to 30.06.2014 also underwent surgery and then also got treatment as an outdoor patient for sometime and thus suffered a lot of pain due to it. The Tribunal has awarded sum of Rs.25,000/- under the head of pain and sufferings, which appears to

be the reasonable amount.

14. The Tribunal has further rightly granted Rs.5,000/- as transportation charges and Rs.5000/- as cost of special diet. When nothing has been brought on record that the claimant had spent much more than the amount granted under the above said heads, then the compensation granted under these heads also needs no interference.

15. After considering the medical bills/receipts, Ex.P3 to P18, Tribunal has rightly observed that the claimant had incurred about Rs.67,806/- on his treatment. Tribunal has rightly pointed out that there is no such evidence on record that the claimant requires some future surgery and treatment. As per testimony of PW2-Dr. Tarun Goel also, the claimant was discharged in a stable condition on 30.06.2014. After taking the view that the claimant must had spent this much amount on his treatment and keeping in view the nature of injuries sustained, a sum of Rs.67,800/- has been rightly awarded to the claimant as cost of medicines and treatment expenses incurred by him.

16. As claimed by the claimant, he has suffered 27% disability which is permanent in nature. But no medical evidence in support of this plea has been produced on record. Even the doctor concerned, who issued the disability certificate, has not been examined. In these circumstances, the Tribunal has rightly held that there is no evidence that optimum earning capacity of the claimant had ever been diminished. Furthermore, as per the claimant, he is working as a Priest and thus his work does not require physical and strenuous labour. The Tribunal has thus rightly held that it cannot be taken that the claimant would be unable to carry on his work in

future, due to the injuries suffered by him in the accident in question. But as the claimant remained hospitalized and also keeping in view the nature of the injuries suffered by him in the accident, the claimant must had been unable to work properly for a period of about four months. As no proof regarding actual income of the claimant has been produced on record, so the Tribunal by considering him to be an unskilled labour, with monthly wages of Rs.6000/-, has rightly awarded a sum of Rs.24,000/- towards loss of earnings. The case law cited by the learned counsel for the appellant in **Lallan D. @ Lal & another Vs. The Oriental Insurance Company Limited, Civil Appeal No.2855 of 2020 (arising out of SLP (Civil) No.2131 of 2018, decided on 17.09.2020)** and **Munna Lal Jain & another Vs. Vipin Kumar Sharma & others, 2015 (3) SCC (Civil) 315** is not applicable to the facts of the case in hand, as Lallan D. @ Lal was a case of 100% disability, while Munna Lal was a death case and in that case Rs.12,000/- was taken as income of the deceased who was working as a Priest, only as per facts and circumstances, of that case.

17. As such, the compensation of Rs.1,26,800/- granted by the Tribunal to the claimant/injured appears to be just and no enhancement is required.

Accordingly, the appeal i.e. FAO-3122-2017 is dismissed.

<u>FAO-4848-2017:</u>

Perusal of the evidence on record reveals that the offending vehicle was fully insured with respondent No.3/insurance company at the time of the accident. The insurance policy of the offending vehicle has been produced on record as Ex.R3. The registration certificate of the offending vehicle was also produced as Ex.R2. Perusal of these documents shows that same engine and chassis numbers have been reflected in both these documents. There is no such evidence on record to show that the terms and conditions of the insurance policy have been violated in any manner. But the Tribunal has given recovery rights to the insurance company on the ground that from the criminal proceedings initiated against the driver, it was made out that the driver was charge sheeted under Section 420 IPC also, as there was fake number plate on the vehicle. But counsel for the appellant has placed on record copy of judgment dated 06.11.2015 pertaining to FIR No.173 dated 25.06.2014, under Sections 279/337/338 IPC at Police Station Taraori passed by the Judicial Magistrate 1st Class, Karnal. Perusal of which reveals that the driver of the offending vehicle had been charge sheeted only under Sections 279, 337 and 338 IPC and was not charge sheeted under Section 420 IPC. He has been acquitted even for the offences under Sections 279, 337 and 338 IPC. Even counsel for the respondent/insurance company has conceded regarding the fact that no charge under Section 420 IPC was ever framed against the driver and he had already been acquitted in the criminal case. So there is nothing on record from which it can be presumed that the vehicle was being driven with the fake number plate as alleged. So when the offending vehicle was fully insured with the insurance company and the insurance policy was valid at the time of accident and there was no violation of any terms and conditions of insurance policy, then the insurance company is liable to pay the amount of compensation and no recovery rights are required to be given to the insurance company.

Accordingly, the appeal i.e. FAO-4848-2017 is partly allowed.

(SUKHVINDER KAUR)
JUDGE

26.04.2023
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No