

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

Date of Reserve: 10/12.05.2023

Date of pronouncement: 24.05.2023.

1. FAO-4283-2017

Karamjit Singh

....Appellant.

VERSUS

Amandeep Singh and another

....Respondents.

2. FAO-6229-2017

Amandeep Singh

....Appellant.

VERSUS

Karamjit Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Mr. Dushant Jog, Advocate for
Mr. T.V.S. Lehal, Advocate
for the appellant (in FAO-4283-2017)
for respondent No.1 (in FAO-6229-2017).

Mr. Mohit Giri, Advocate for
Mr. Ashok Giri, Advocate
for the appellant (in FAO-6229-2017)
for respondent No.1 (in FAO-4283-2017).

Mr. Sachin Ohri, Advocate for
respondent No.2-Insurance Company.

Sukhvinder Kaur, J.

This order shall dispose of **FAO-4283-2017 (Karamjit Singh
Vs. Amandeep Singh and another)** and **FAO-6229-2017 (Amandeep
Singh Vs. Karamjit Singh and another)** as both the appeals have arisen
from a common award dated 11.01.2017.

2. This appeal (FAO-4283-2017) has been filed by the appellant-claimant for modification of award dated 11.01.2017 passed by the Motor Accident Claims Tribunal, Rupnagar, whereby the claim petition filed by the appellant-claimant invoking the provisions of Section 166/140 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was partly allowed and he was awarded a compensation of Rs.6,84,582/- and exonerating respondent No.2-Insurance Company to pay the compensation amount, respondent No.1 (driver-owner) of offending vehicle was directed to pay the amount of compensation positively within two months from the date of passing the award, failing which the appellant was held to be entitled to get the interest @ 6 % per annum from the date of filing of the claim petition till the date of realization, on account of injuries sustained by the claimant in a motor vehicular accident that took place on 27.09.2014.

3. This appeal (FAO-6229-2017) has been filed by the appellant (driver-owner) of offending vehicle seeking to absolve his liability by setting aside the award qua him.

4. The relevant facts are that on 27.09.2014, appellant/claimant-Karamjit Singh along with his father-Dilpreet Singh was going from village Malan Jhalian towards village Bama Khulian on a motorcycle which was being driven by him, whereas his father was pillion rider. At about 9.00 P.M., when they reached near village Chaunta Bhani on Ropar-Bela road, a Honda Twister Motorcycle bearing registration No.PB-12R(T)-7535, being driven by its driver-cum-owner Amandeep Singh (appellant in FAO-6229-2017), in a rash and negligent manner, came from wrong side and hit the

motorcycle appellant-claimant. Due to the said collision, the appellant-claimant and his father fell down on the road along with the motorcycle and appellant-claimant sustained multiple grievous injuries on his right leg, right arm and others parts of body. He was taken to Civil Hospital, Ropar, from where he was referred to PGI, Chandigarh and he remained admitted there from 28.09.2014 to 03.10.2014. During treatment he was operated upon and thereafter also he was regularly going to PGI, Chandigarh for follow up treatment. He also got treatment from Sangha Hospital, Ropar, where he remained admitted from 15.10.2014 to 28.10.2014 and was again operated upon. Finally, his right arm was amputated on 21.10.2014 and he is still under treatment. Though on 28.09.2014 police officials visited him at PGI, Chandigarh and obtained his signatures on blank papers, but later on he came to know that no FIR had been registered by the police. Thereafter, he lodged complaint and thereafter FIR No.178, dated 04.11.2014, under Sections 279, 337, 338 and 427 IPC was registered at Police Station, Chamkaur Sahib, against Amandeep Singh driver of the offending vehicle.

5. It has been averred by appellant-claimant in his claim petition that he has become permanently disabled and is confined to bed and has become unemployed. He had spent Rs.2,00,000/- on his medical treatment excluding the attendant charges. Prior to the accident, he was hale and hearty and was the sole bread earner of his family. He was working as a carpenter and was earning Rs.25,000/- P.M. Due to the accident in question, he has become disabled physically and has also suffered great financial loss.

6. Respondent No.1-Amandeep Singh (driver-owner) as well as

IFFICO TOKIO General Insurance Co. Ltd. were impleaded as respondents in the claim petition. Respondent No.1 contested the petition by raising preliminary objections regarding its maintainability and locus standi. On merits it was pleaded that claim petition has been filed just to harass him. The factum of driving the offending vehicle by respondent No.1 and the accident in question was denied and it was pleaded that no such accident had taken place with his motorcycle, whereas a false FIR had been registered against him.

7. Respondent No.2-Insurance Company also raised preliminary objections and filed its separate written statement taking preliminary objection including maintainability of the petition and that there was a delay of more than one month in registration of FIR. It was pleaded that this was a hit and run case and no accident had taken place with the offending vehicle and no such information was provided by owner of the offending vehicle. Respondent No.1 was not having a valid and effective driving licence at the time of the alleged accident, which is clear cut violation of terms and conditions of insurance policy. On merits, factum of accident was denied and it was also denied that claimant had sustained any injuries.

8. 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.

9. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the claim petition and awarded a sum of Rs.6,84,582/- as compensation to

the appellant-claimant and exonerated respondent No.2-Insurance Company to pay the compensation amount and respondent No.1 (driver-owner) of offending vehicle was directed to pay the amount of compensation positively within two months from the date of passing the award, failing which the appellant was held to be entitled to get the interest @ 6 % per annum from the date of filing of the claim petition till the date of realization.

10. Feeling dissatisfied with the award dated 11.01.2017, the appellant-claimant has preferred the appeal (FAO-4283-2017) and respondent No.1 (driver-owner) has filed appeal (FAO-6229-2017).

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

12. Learned counsel for the appellant-claimant (in FAO-4283-2017) has contended that the accident in question had taken place due to the rash and negligent driving of respondent No.1, driver and owner of offending Honda Twister Motorcycle bearing registration No.PB-12R(T)-7535. The appellant-claimant had sustained multiple grievous injuries on his right leg, right arm and other parts of body. He has contended that the appellant was 42 years of age at the time of accident and was earning Rs.25,000/- P.M. by doing the work of carpenter. These injuries have resulted into 74% disability and the injured/claimant has become handicapped and is unable to do the job of carpenter. It has been submitted that the Tribunal has not appreciated certain vital aspects of the matter and has inadequately assessed the compensation which is liable to be enhanced.

He has argued that the appellant-claimant remained admitted at PGI Chandigarh from 28.09.2014 upto 03.10.2014 and was operated upon and even thereafter, had been regularly going to PGI, Chandigarh for the follow-up treatment. Thereafter, he had also taken treatment from Sangha Hospital, Ropar and remained admitted there from 15.10.2014 to 28.10.2014 where he was again operated upon and finally his right arm was amputated on 21.10.2014 and he is still under treatment. He has contended that appellant has spent more than Rs.4,00,000/- for his treatment, but he could not prove all the medical bills on record, as he never intended to keep the same for claiming compensation later on. The sum of Rs.52,982/- that has been granted by the Tribunal for the medical treatment is on very lower side. It has also been argued that the Tribunal has erroneously taken the income of injured as Rs.5,000/- P.M., whereas it has been proved on record that he was earning Rs.25,000/- P.M. After suffering the permanent disability, the injured has become idle and is unable to do any work. So he is entitled to receive compensation for the future loss of income. The Tribunal has erred in not adding 50% of the notional increase in the income and the amount of compensation is highly inadequate. He has also contended that the Tribunal has granted the interest @ 6% P.A. which is also on the lower side and it is liable to be enhanced @ 12% P.A. and has prayed that present appeal may be accepted and the award passed by the Tribunal may be modified accordingly.

13. On the other hand, learned counsel for appellant/driver-cum-owner (in FAO-6229-2017) has contended that he has been falsely

implicated in the criminal case as FIR was lodged after delay of more than one month. No positive evidence was led by the injured/claimant except his self serving statement to prove involvement of the appellant/driver-cum-owner in the alleged accident. No eyewitness to the alleged accident has been examined. Injured/claimant while appearing as PW1 has admitted in his cross-examination that he did not know the appellant/driver-cum-owner prior to the accident and as such identity of the appellant/driver-cum-owner was not established. He had also urged that claimant got discharged from the hospital against the medical advise and the medical negligence was also the reason for amputation of right arm of the injured/claimant. Besides that, it has also been argued that the respondent/insurance company could not prove that the driving licence of the appellant was fake. The Tribunal relied upon the verification report Ex.P2 which was sought by the insurance company and was just placed on record, though the same was not properly proved as per law. No official from the concerned D.T.O. Office was called to prove that the Driving License of the appellant was not issued by them. So the insurance company cannot evade its liability, for no fault on the part of the appellant. He has contended that amount awarded is also on the higher side and income of the claimant was taken as Rs.5,000/-P.M. which was not proved on record. He has prayed that the instant appeal be allowed and appellant be absolved of the liability by setting aside the award qua him.

14. To prove the factum of the accident, due to negligence of respondent No.1, the claimant Karamjit Singh himself stepped into the

witness box as PW1. In his affidavit Ex.PW1/A, tendered in his examination in chief, he has deposed in detail all the averments made in the claim petition.

15. To rebut the same, respondent No.1 has also appeared as his own witness as RW1 and in his affidavit, he has deposed that a false FIR was registered against him. The accident allegedly took place on 27.09.2014 whereas the FIR was registered on 04.11.2014 after a considerable delay. But in his cross-examination he has admitted it to be correct that he was arrested for causing the accident dated 27.09.2014 and was released on bail later on. He has further categorically admitted that he did not approach the SSP, Ropar or any other higher police official regarding his false implication in FIR No.178, dated 04.11.2014, under Sections 279, 337, 338 and 427 IPC Police Station, Chamkaur Sahib and he has further admitted that he was facing trial before the Court of Judicial Magistrate Ist Class, Ropar.

16. So, only because of delay in the registration of FIR, it cannot be presumed that respondent No.1 has been falsely implicated, when it has been specifically admitted by respondent No.1 while appearing as RW1 that he had not filed any complaint before the higher police authorities regarding his false implication. Moreover, it is also to be taken note of, that admittedly report under Section 173 Cr.P.C. was presented in the Court against respondent No.1 and he was facing trial in the Court. The proceedings before the Tribunal are of summary nature and strict proof regarding happening of the accident beyond the reasonable doubt is not

required as required in the criminal proceedings.

17. The Tribunal has rightly observed that the delay might have been caused as injured was getting medical treatment and was admitted at PGI, Chandigarh and thereafter remained admitted in a private hospital and twice he had to undergo the surgery. Furthermore, it has been mentioned in the FIR itself which has been produced on record as Ex.P1, that earlier the talk for compromise was going on, but the same could not materialise. So that also might be the reason for the delay in the registration of FIR. PW4 Dr. J.P.S. Sangha has deposed that claimant Karamjit Singh son of Banarasi Das was admitted in his hospital on 13.10.2014 and it was a case of roadside accident. Then in his cross-examination he has specifically stated that earlier patient was taken to PGI, Chandigarh for treatment. So from these facts, it stands established that claimant had sustained injuries on his right arm as a result of accident in question which had taken place due to rash and negligent driving of the offending motorcycle by respondent No.1.

18. I also do not feel inclined to accept this contention of learned counsel for appellant/driver-cum-owner that the right arm of the claimant was amputated as due to the negligence on the part of the claimant himself, the infection developed in his right arm. It has been contended by learned counsel for the appellant/driver-cum-owner that the claimant got himself admitted in a private hospital by leaving PGI, Chandigarh due to which he had suffered amputation. It has been rightly observed by the Tribunal the claimant was advised to get his right arm amputated on account of severe

infection and if he had preferred a private hospital for the said operation, then it does not mean that he was negligent in getting the medical treatment.

FAO-4283-2017

19. It has been alleged by the claimant/appellant that income of the claimant that has been taken as Rs.5,000/-P.M. is on the lower side, whereas it has been argued by the counsel for the appellant/driver-cum-owner that it is on the higher side.

20. The perusal of the evidence on record reveals that no specific evidence has been produced by the claimant regarding his occupation and income. So in the absence of any evidence regarding the occupation and income of the injured, he has been rightly considered as a daily wager by the Tribunal and his notional income has been rightly taken as Rs.5,000/- P.M.

21. In case titled as **Sri Anthony @ Anthony Swamy Vs. The Managing Director, K.S.R.T.C.,** Civil Appeal No.2551 of 2020 (arising out of SLP (Civil) No.1738 of 2018,) decided on 10.06.2020, the right arm of the appellant had to be amputated and the physical disability suffered by the appellant of the left lower limb was assessed as 74%, which was about 37.5% of the whole body. It was held by the Hon'ble Apex Court in case **Sri Anthony @ Anthony Swamy** (supra) that “the earning capacity of the appellant as on the date of the accident stands completely negated and not reduced. He has been rendered permanently incapable of working as a painter or do any manual work. Compensation for loss of future earning therefore has to be proper and just to enable him to live a life of dignity and

not compensation which is elusive. If the 75% physical disability has rendered the appellant permanently disabled from pursuing his normal vocation or any similar work, it is difficult to comprehend the grant of compensation to him in ratio to the disability to the whole body. The appellant is therefore held entitled to compensation for loss of future earning based on his 75% permanent physical functional disability recalculated with the salary of Rs.5,500/- with multiplier of '14' at Rs.6,93,000/-".

22. In the instant case also even if the appellant is taken to be daily wager, the fact that his right arm has been amputated, will severely affect his ability to perform any manual work. It is to be taken note of that the appellant is to do manual work for the rest of his life, without use of his right arm and this is bound to affect the quality of his work and also his ability to find work considering his disability. So the Tribunal has rightly taken the functional disability as 74%. Thus the annual loss of income comes to Rs.44,400/- (Rs.3700 x 12).

23. This fact is not disputed that the appellant was aged about 42 years at the time of sustaining the injuries in accident in question. Keeping in view that the age of the claimant was 42 years, multiplier of '14' has been rightly applied by the Tribunal. So, by applying multiplier of '14', such compensation is assessed as Rs.6,21,600/- (Rs.44,400 x 14).

24. Besides that, Tribunal has held that claimant is also entitled for medical expenses of Rs.52,982/-. But this fact has not been considered by the Tribunal that it is not possible to keep all the bills and than produce the

same on record to claim the medical expenses. So, keeping it in view, cost of medicines and treatment is enhanced to Rs.60,000/-

The perusal of the award further reveals that the compensation under the non-pecuniary heads had not been adequately granted. On account of pain and suffering only Rs.10,000/- have been granted which is not adequate. The claimant remained admitted at PGI, Chandigarh from 28.09.2017 to 03.10.2014 and thereafter, he also remained admitted at Sangha Hospital, Ropar from 15.10.2014 to 28.10.2014 and was operated upon twice and ultimately his right arm was amputated, so he must have undergone immense pain and suffering. As such, the compensation for pain and suffering is enhanced to Rs.60,000/-.

As the claimant remained admitted at various hospitals and finally his right arm was amputated, so obviously he must have remained out of work for at least three months. Therefore, loss of income for three months is assessed as Rs.15,000/-.

The fact being that the claimant remained admitted at various hospital and his right arm was amputated, so he must be in need of attendant at that time and afterwards. So Rs.15,000/- are granted on account of attendant charges.

The claimant must have been advised by the doctors to take special diet for his proper recovery, so Rs.10,000/- are granted for special diet and nursing.

As the claimant remained admitted at various hospitals and thereafter also keep on visiting the hospital, for follow-up treatment, so

being in such a condition, it would not have been possible for the claimant to travel in the public transport, so Rs.15,000/- are granted on account of the transport charges.

25. The claimant lost his right arm and it had to be amputated to save his life, so Rs.30,000/- are granted to him for loss of amenities. Thus compensation that is to be granted to the claimant is re-worked as under:

1.	Loss of future earnings	Rs.6,21,600/-
2.	Loss of amenities	Rs.30,000/-
3.	Treatment and medicines charges	Rs.60,000/-
4.	Transportation charges	Rs.15,000/-
5.	Pain and suffering	Rs.60,000/-
6.	Special diet and nursing charges	Rs.10,000/-
7.	Attendant charges	Rs.15,000/-
8.	Loss of income during treatment	Rs.15,000/-
	Total	Rs.8,26,600/-

26. However, the rate of interest that has been granted by the Tribunal is just and does not call for any interference. Thus, the appellant/claimant in this appeal is held entitled to the compensation of Rs.8,26,600/- along with interest @ 6% per annum from the date of filing of the claim petition till the realization. Accordingly the appeal i.e. FAO-4283-2017 is partly allowed.

Pending applications, if any, shall also stand disposed of.

FAO-6229-2017

27. The foremost contention of appellant/driver-cum-owner in this appeal is that the insurance company had not able to prove that the driving licence of the appellant was fake. The verification report Ex.R2, on the

basis of which the driving licence has been held to be fake has not been properly proved on record, as per law. No official from the concerned D.T.O. Office has been called to prove that the driving licence of the appellant was not issued by their office, so the insurance company cannot be absolved of its responsibility to indemnify the insured. It has been held by the Tribunal that respondent No.2-Insurance Company had sent the copy of the driving license of respondent No.1 for verification by moving the application under R.T.I. The application has been proved as Ex.R3, postal receipt as Ex.R4 and envelop received from D.T.O. Office, Tunesang Nagaland as Ex.R5. The contention of the insurance company is that respondent No.1 the driver of the offending motorcycle was driving with a fake driving licence, which is in violation of the terms and conditions of the insurance policy, so the insurance company is not responsible to indemnify the insured.

28. The Tribunal has relied upon **Munshi Ram and another Vs. Balkar Singh and others, 2016 (3) Law Herald (P&H) 266** and has observed that as the driving licence has been verified through R.T.I. then it being a public document, it requires no further corroboration and has further held that as respondent No.1 was plying the motorcycle without having any valid and effective driving licence, so respondent No.1 is liable to pay compensation and as respondent No.1 has committed violation of the terms and conditions of the insurance company by driving the offending motorcycle with a fake driving licence and respondent No.2-insurance company cannot be held liable to pay the compensation.

29. But, the counsel for the appellant/driver-cum-owner has placed reliance upon **Reliance General Insurance Company Limited Vs. Vijay and others, 2016(2) PLR 478; New India Assurance Company Limited Vs. Sandeep and others,** FAO-6591 of 2016 (O&M), decided on 19.12.2016 and **Mandeep Vs. New India Assurance Company Limited, 2021 (ACJ) 1158** and has vehemently contended that by just marking a document as an Exhibit does not dispense with requirement of proving the same and as such the verification report Ex.R2 cannot be held to be properly proved in the present case.

30. It has been held in **Reliance General Insurance Company Limited through Manager Vs. Sameem @ Samin Mohd. and another,** FAO-1125 of 2018 decided on 01.03.2018, “The first argument raised by the learned counsel is that the appellant had exhibited RTI proceedings whereby the concerned transport authority had verified that the driving license was fake. As per him the reply received pursuant to an application under the RTI Act would be a certified copy of the public document under Section 76 of the Evidence Act and thus had to be taken that driving license was fake. In this connection, he has relied upon the judgment of this Court passed in the matter of “Munshi Ram and another (supra) where this Court has held that response of RTI application would be covered under Section 77 of the Evidence Act. In my opinion, there is no quarrel with the proposition that a response elicited under the RTI Act could be a certified copy of public document if the document is covered under Section 74 of the Evidence Act. But the issue in the present case is that these documents were

merely placed on record and no oral evidence was led. Had it been a case where an employee of the appellant had appeared to prove the RTI application and the reply, it could have been held that the driving license was fake. But in the absence of any person who appeared to testify to this effect, and was cross-examined, it would not be possible to come to the conclusion that the document placed on record was actually a public document. In the circumstances, the argument that the driving license was proved to be fake has to be rejected.”

31. Now, adverting to the present case, in the instant case also when only the verification report obtained through RTI has been placed on record but no oral evidence has been led to prove the same, so on the basis of the said verification report it cannot be held that the driving license of respondent No.1 has been proved to be fake. Thus, it cannot be said that terms and conditions of the insurance policy were violated by respondent No.1. So the finding of the Tribunal whereby the Insurance Company has been exonerated is set aside and liability of both the respondents to pay the compensation shall be joint and several. Accordingly the appeal i.e. FAO-6229-2017 is partly allowed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

24.05.2023

komal

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