

FAO-3659-2018 (O&M) with
FAO-4076-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:- 20.11.2023

Pronounced on:- 13.12.2023

(1) FAO-3659-2018 (O&M)

National Insurance Co. Ltd.

...Appellant

Versus

Bajinder Singh and others

...Respondents

(2) FAO-4076-2019 (O&M)

Bajinder Singh

... Appellant

Versus

Manjit Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amit Jaiswal, Advocate
for the appellant in FAO-3659-2018
and for respondent No. 3 in FAO-4076-2019.

Mr. Amandeep Singh Saini, Advocate
for respondent No. 1 in FAO-3659-2018
and for the appellant in FAO-4076-2019.

Mr. Rahul Garg, Advocate
for respondents No. 2 and 3 in FAO-3659-2018.

AMARJOT BHATTI, J.

1. The appellant – National Insurance Company Limited has filed appeal bearing FAO No. 3659 of 2018 for setting aside the impugned Award dated 23.02.2018 passed by learned Motor Accident Claims Tribunal, Rupnagar, whereas, the appellant/claimant – Bajinder Singh has

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filed the appeal bearing FAO No. 4076 of 2019 for modification and enhancement of compensation awarded by the Tribunal, as referred above. Both these appeals have arisen out of the same Award dated 23.02.2018, therefore, the appeals are taken up together for disposal.

2. The facts of the case are that Bajinder Singh had filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs. 50,00,000/- alongwith interest @18% per annum on account of injuries suffered by him in a motor vehicular accident. It was submitted by the injured/claimant that at the time of accident, he was 30 years old and was serving in Indian Army. He was drawing monthly income of Rs. 35,000/- per month. On 30.11.2010, the injured/claimant along with one Prabhjot Singh and Jaswinder Singh were going to Village Brahmpur from their village on motorcycle bearing Registration No. HP-12-C-7905, which was being driven by the injured/claimant with proper care and caution. When they reached in the area of Village Ajouli, then at about 12:30 pm, a car bearing Registration No. HP-24-A-7578 came from behind at a high speed, without blowing horn and hit the motorcycle due to which the injured along with said persons fell down on the road and received multiple grievous injuries. The said car was being driven in a rash and negligent manner by its driver i.e. respondent No. 1. The injured was firstly taken to BBMB Nangal from where the doctor referred him to Command Hospital, Panchkula. Regarding this accident, FIR No. 143 dated 03.12.2010 under Section 279, 337, 338, 427 of I.P.C. was registered at Police Station Nangal, against respondent No. 1. Hence, the claim petition.

3. The claim petition was contested by all the respondents. In the

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separate written statements filed by respondents No. 1 and 2, preliminary objection regarding maintainability was taken. Both the answering respondents have denied the accident as well as the involvement of vehicle in question. It was further submitted that the name of the owner of vehicle in question was Daryhodhan Singh s/o Sh. Krishan Singh. The insurer of the vehicle in question was National Insurance Company Limited, Branch Office Hamirpur, District Hamirpur (HP). It was further alleged that the story put forth by the claimant was false, fabricated, concocted and self-contradictory. Hence, it was prayed that the claim petition may be dismissed with costs.

4. The Insurance Company – respondent No. 3 also filed separate written statement taking the stand that claim petition was not maintainable in the present form. It was alleged that claimant has filed the claim petition in connivance with respondents No. 1 and 2 in order to get illegal compensation from the answering respondent. The driver of the offending car was not holding a valid and effective driving license at the time of alleged accident. He was not having the Registration Certificate, Fitness Certificate and Insurance at the time of alleged accident. Therefore, the answering respondent was not liable to pay compensation. While denying remaining averments, it was prayed that the claim petition filed by the injured/claimant may be dismissed qua the answering respondent – Insurance Company.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 08.02.2017 :-

(1) Whether Bajinder Singh received injuries in motor vehicular accident which took place on 30.11.2010 at about 12:30 pm in the area of village Ajouli, due to rash and negligent driving of vehicle

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No. HP-24-A-7578 being driven by respondent No. 1? OPP

(2) Whether the claimant is entitled for compensation as prayed for? OPP

(3) Whether the respondents were not having valid documents i.e. driving license, RC, route permit, fitness certificate at the time of accident? OPR

(4) Whether the present claim petition is not maintainable? OPR

(5) Relief.

6. In order to prove the claim petition, the petitioner Bajinder Singh himself stepped into the witness box as PW5 and tendered his affidavit Ex.PW5/A into evidence. He further examined Mohinder Singh Saini as PW1, Jaswinder Singh as PW2, HC Sukhdev Singh as PW3, HAV Dilip Sarkar Command Hospital (WC) as PW4, HC Jogga Singh as PW6 and Sardara Singh (Retd. ASI) as PW7. Thereafter, learned counsel for the claimant closed the evidence.

7. In order to rebut the case of the claimant, respondent No. 1 himself stepped into the witness box as RW1 and tendered his affidavit Ex.RW1/A into evidence. In documentary evidence, learned counsel for respondents No.1 and 2 tendered certified copy of RC of vehicle No. HP-24-A-7578 as Ex.R-1, copy of driving license of Manjit Singh as Ex.R-2, copy of Insurance Policy as Ex.R-3 and copy of Judgment dated 17.09.2016 in case titled "State vs. Manjit Singh" as Ex.R-4. Thereafter, closed his evidence.

8. The learned counsel for respondent No. 3 tendered certified copy of judgment dated 17.09.2016 as Ex.R-5, certified copy of statement of Sh. Bajinder Singh as Ex.R-6 and certified copy of statement of Sh. Jaswinder Singh as Ex.R-7 and thereafter, the evidence of respondent No.3 was closed by order on 08.02.2018.

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9. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the petitioner/claimant was allowed by passing impugned Award dated 23.02.2018 vide which he was awarded compensation to the tune of Rs. 7,95,000/- with interest at the rate of 9% per annum from the date of filing of petition till its actual realization as detailed therein.

10. Feeling aggrieved of this Award, the appeal bearing FAO No.3659 of 2018 has been preferred by appellant – Insurance Company, whereas, the appeal bearing FAO No. 4076 of 2019 has been preferred by the appellant/claimant Bajinder Singh.

I have heard the arguments of learned counsels representing the parties in both the appeals. The learned counsel for the appellant - insurance company in FAO-3659-2018 argued that Award dated 23.02.2018 passed by learned Motor Accident Claims Tribunal, Rupnagar is against the facts and the evidence on record. The learned Tribunal has totally ignored the evidence and the documents duly proved on record. The learned counsel representing the insurance company has mainly argued the present appeal regarding the findings given on issue No. 1 where it was wrongly held that from the evidence it was established that the accident had occurred due to rash and negligent driving of respondent No. 1. It is pointed out that the present claim petition was filed before the Tribunal after a gap of more than four and a half years from the date of accident. The learned counsel for the insurance company has proved on record the copy of judgment in a criminal case registered against Manjit Singh in the FIR No. 143 dated 03.12.2010 under Section 279, 337, 338, 427 of I.P.C, Police Station Nangal, in which the present claimant had received injuries.

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The copy of judgment in criminal case bearing Police Challan RT No. 513 of 28.02.2011, decided on 17.09.2016 titled “State versus Manjit Singh” is Ex.R5, according to which Manjit Singh was acquitted of the charge framed against him by giving him the benefit of doubt. He has further placed on record the copy of statement of Bajinder Singh recorded before the learned Magistrate dated 28.10.2013 Ex.R6 and statement of Jaswinder Singh dated 06.01.2015 is Ex.R7, where both the witnesses did not support the prosecution case. They had failed to identify the driver involved in the said accident and further claimed that they had not given any statement to the police regarding the involvement of accused in the said accident. The learned Motor Accident Claims Tribunal, Rupnagar has wrongly ignored the aforesaid evidence and wrongly concluded that it was proved on record that the accident was caused due to rash and negligent driving of respondent No. 2 Manjit Singh (respondent No. 1 in claim petition). The learned counsel for the insurance company has relied upon the authority cited in **2010(4) PLR 235, Punjab and Haryana High Court**, given by the Coordinate Bench in case titled “**United India Insurance Company Limited versus Kamla Devi and others**”, where in para No. 5 of the judgment in a similar case it was observed as follows :-

“5. ... It must be remembered a statement in criminal court case by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence. If it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice.”

Furthermore, in para No. 6 of the aforesaid judgment, it was observed that *the decision rendered by the Tribunal, under such circumstance, relying on an untrustworthy witness cannot stand judicial scrutiny before this Court.* As a result, the appeal preferred by the insurance company was accepted and the Award passed by the Tribunal was set aside.

By relying upon the aforesaid authority, the learned counsel for insurance company pointed out that even in the case in hand, the testimony of Bajinder Singh before the Court of Judicial Magistrate and his version before the learned Motor Accident Claims Tribunal, Rupnagar is self contradictory. Therefore, his statement cannot be relied upon. Thus the claimant himself failed to establish that the accident had taken place due to rash and negligent driving of Manjit Singh driver, respondent No. 2 (respondent No. 1 in claim petition). Once it is established that the accident or rash and negligent driving on the part of said Manjit Singh is not proved on record, under these circumstances no liability can be fastened on the insurance company to pay compensation to the claimant for the alleged accident. Therefore, the Award passed by the learned Motor Accident Claims Tribunal, Rupnagar may kindly be set aside by accepting the present appeal. The learned counsel for insurance company regarding the appeal preferred by the claimants seeking enhancement of compensation pointed out that Bajinder Singh did not incur any medical expenditure on his treatment as he received treatment from Command Hospital, Panchkula. He is still in service. He has not placed on record any Disability Certificate to establish the kind of disability suffered by him.

Even if he is retired from Army on account of his medical condition, he

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will receive his pension. Therefore, he has not suffered any monetary loss and the appeal preferred by him seeking enhancement of compensation is without merits.

11. On the other hand in FAO-4076-2019, appellant/claimant Bajinder Singh has filed appeal for enhancement of compensation along with application for condonation of delay of 280 days in filing the present appeal and condonation of delay of 39 days in re-filing the present appeal. In the application for condonation of delay of 280 days in filing the present appeal, it was alleged that he did not receive any message from the clerk of his counsel at lower Court, as a result, he could not file appeal on time and regarding delay in re-filing the present appeal it was alleged that since he was serving in Indian Army, he could not clear the objections.

I have considered the stand taken by appellant/claimant Bajinder Singh in FAO-4076-2019. In this case, the insurance company has also filed appeal against the impugned Award dated 23.02.2018 with the prayer to set aside the Award passed by the learned Motor Accident Claims Tribunal, Rupnagar granting compensation in favour of Bajinder Singh, the present appellant. In the said appeal, notice is served upon the claimant. It is always in the interest of justice that the matter is decided on merits. Once the appeal is filed by the insurance company, the Award passed by the learned Motor Accident Claims Tribunal, Rupnagar is subject to scrutiny. Therefore, taking a lenient view, the delay of 280 days in filing the present appeal and delay of 39 days in re-filing the present appeal stands condoned. Accordingly, CMs No. 13438-CII and 13439-CII of 2019 are allowed.

12. The learned counsel for appellant/claimant Bajinder Singh has

taken the stand that the compensation awarded by the learned Motor Accident Claims Tribunal, Rupnagar is meager and without any justification. In-fact, he is entitled to enhanced amount of compensation. The learned counsel for appellant/claimant Bajinder Singh referred to his statement PW5 who has proved the facts regarding the manner of accident as well as the injuries suffered by him in the accident. Mohinder Singh Saini, his Power of Attorney has also stepped into the witness box as PW1 to prove his version. Jaswinder Singh the pillion rider has also stepped into the witness box as PW2 to confirm the accident as well as the manner in which it took place. The claimant had also examined HC Jogga Singh PW6 to prove the registration of FIR No. 143 dated 03.12.2010 under Section 279, 337, 338, 427 of I.P.C. registered at Police Station Nangal, which is Ex.PW6/A. Sardara Singh (Retd. ASI), the Investigating Officer also stepped into the witness box as PW7 to prove the accident as well as the investigation which was carried out by him. Therefore, from the evidence led before learned Motor Accident Claims Tribunal, Rupnagar, the accident caused by rash and negligent driving of Manjit Singh while driving car bearing Registration No. HP-24-A-7578 was duly proved on record. The vehicle was insured with National Insurance Company Limited. The copy of insurance policy is Ex.R3. Therefore, the insurance company cannot escape its liability.

13. It is pointed out that the learned Motor Accident Claims Tribunal, Rupnagar has merely granted compensation of Rs. 7,95,000/- along with interest as detailed in the Award dated 23.02.2018. The claimant had examined HC Sukhdev Singh from 21 Sikh Regiment as PW3 who has proved on record the service certificate of Bajinder Singh

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Ex.P1, brief case medical history of the claimant Ex.P2 and his pay slip Ex.P3. The salary certificate Ex.P3 shows that his gross salary was Rs.48,487/- per month. The medical record of Bajinder Singh is Ex.P6. It is pointed out that as per the record proved on file, the service career of Bajinder Singh has been adversely affected due to permanent low medical categorization. He has suffered loss of service on account of his low medical category. The learned Motor Accident Claims Tribunal, Rupnagar while passing the impugned Award wrongly came to the conclusion that he has suffered loss of income to the extent of Rs. 5,000/- per month, annual income Rs. 60,000/- and income for 13 years is wrongly calculated as Rs. 7,80,000/-. He is granted meager amount of Rs. 15,000/- under the head of pain and suffering, thus, the learned Motor Accident Claims Tribunal, Rupnagar has awarded meager compensation of Rs. 7,95,000/- along with interest as mentioned therein. He has suffered great loss on account of his future prospects in the Army by way of promotion as well as corresponding salary. Therefore, considering his salary and loss of service, he is entitled to enhanced amount of compensation. He has further claimed more compensation under the conventional heads. Therefore, the Award dated 23.02.2018 passed by the learned Motor Accident Claims Tribunal, Rupnagar may kindly be modified by granting enhanced amount of compensation.

14. I have considered the arguments advanced before me. I have also gone through the trial Court record carefully. Firstly I will deal with the findings on issue No. 1. Bajinder Singh filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of injuries suffered by him. It is the case of the claimant that on

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30.11.2010, he was going on his motorcycle bearing Registration No. HP-12-C-7905 to village Brahmpur and when he reached near village Ajouli at about 10:30 pm, the offending car bearing Registration No. HP-24-A-7578 came from behind without blowing horn in a rash and negligent manner and hit his motorcycle from behind. The said car was driven rashly and negligently by Manjit Singh driver. The accident took place on 30.11.2010 and FIR No. 143 dated 03.12.2010 under Section 279, 337, 338, 427 of I.P.C. was registered at Police Station Nangal. It is matter of record that in order to prove this accident, Bajinder Singh the claimant stepped into the witness box as PW5 and his version is also supported by Jaswinder Singh pillion rider as PW2. The copy of FIR proved on file by HC Jogga Singh PW6 is Ex.PW6/A. Apart from this, the Investigating Officer Retired ASI Sardara Singh stepped into the witness box as PW7 and confirmed that he had recorded the FIR as per the statement of complainant Bajinder Singh. He further confirmed that Bajinder Singh had received injury along with two other persons namely Prabhjot and Jaswinder Singh. So far as the aforesaid statements of the witnesses are concerned, those are there to confirm the facts as mentioned in the claim petition. The learned counsel for insurance company has proved on record the copy of judgment in Police Challan RT No. 513 of 28.02.2011, decided on 17.09.2016 titled "State versus Manjit Singh", vide which Manjit Singh was acquitted of the charge framed against him, giving him the benefit of doubt vide judgment of acquittal dated 17.09.2016, which is Ex.R5. The perusal of this judgment indicates that Manjit Singh was acquitted on account of the statement of Bajinder Singh PW1 and Jaswinder Singh PW2, who did not support the prosecution case nor they identified the accused Manjit Singh

facing trial in that case. The learned counsel for insurance company has also placed on record the copy of statement of Bajinder Singh recorded before the learned Magistrate dated 28.10.2013 Ex.R6 and statement of Jaswinder Singh recorded on 06.01.2015 Ex.R7. Bajinder Singh as a witness claimed that he cannot identify Manjit Singh being driver of the offending vehicle. He denied to have given statement Ex.PA before the police. He further denied his participation in the investigation of the case. Similarly, Jaswinder Singh as PW2 before the learned Magistrate denied to have given any statement to the police and further refused to identify Manjit Singh accused facing trial before the learned Magistrate. These statements ultimately led to the acquittal of Manjit Singh vide judgment dated 17.09.2016 Ex.R5. The accident took place on 30.11.2010 and the present claim petition was filed on 20.05.2015 in which Bajinder Singh gave his statement as PW5 recorded on 15.11.2017, where he changed his version altogether. It is settled principle that judgment in a criminal case is not binding on the Civil Court. The criteria to decide the criminal case is to prove the guilt of accused beyond the shadows of reasonable doubt, whereas, in a civil case, it is decided on the basis of preponderance of probabilities. The proceedings in a claim petition under the provisions of Motor Vehicles Act are summary proceedings. Keeping in mind these principles, in my opinion the appellant/claimant Bajinder Singh cannot be permitted to take contradictory stand before different forums. In order to grant compensation, the testimony of the claimant has to be trustworthy. The claimant Bajinder Singh lost his credibility when he gave different statement before the learned Magistrate, which is Ex.R6 and when he stepped into the witness box before the learned Motor Accident

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Claims Tribunal, Rupnagar as PW5, he gave altogether different version. Similarly, the statement of Jaswinder Singh recorded before the learned Magistrate and thereafter, his statement before the learned Motor Accident Claims Tribunal, Rupnagar is self contradictory. The entire record was presented before the learned Motor Accident Claims Tribunal, Rupnagar and the same has been wrongly ignored. The authority cited in **2010(4) PLR 235 (supra)** is applicable to the facts of the present case. The appellant in FAO-4076-2019/claimant Bajinder Singh cannot be permitted to blow hot and cold in the same breath. Therefore, the findings given by the learned Motor Accident Claims Tribunal, Rupnagar pertaining to issue No. 1, in my opinion are not justified and the same are accordingly, reversed by holding that the testimony of Bajinder Singh, the claimant does not inspire confidence and therefore, he failed to prove that the accident had actually taken place due to rash and negligent driving of Manjit Singh respondent No. 1 in FAO-4076-2019 and respondent No. 2 in FAO-3659-2018 (respondent No. 1 in claim petition) and this issue is accordingly decided against the appellant in FAO-4076-2019/claimant Bajinder Singh.

15. So far as quantum of compensation granted by the learned Motor Accident Claims Tribunal, Rupnagar is concerned, no finding is required on issue No. 2, since the appellant in FAO-4076-2019/claimant has failed to prove issue No. 1 to justify his claim under Section 166 of Motor Vehicles Act, 1988.

With this observation, the appeal preferred by appellant in FAO-3659-2018 – National Insurance Co. Ltd. is accepted and the findings given in the impugned Award dated 23.02.2018 passed by learned

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Motor Accident Claims Tribunal, Rupnagar are set aside and accordingly, the claim petition filed by the claimant Bajinder Singh is dismissed.

In view of above observation, the FAO-4076-2019 preferred by appellant/claimant Bajinder Singh is also dismissed.

Pending application(s), if any, in both the FAOs shall stand(s) disposed off.

The copy of record received from the Tribunal be sent back to the concerned quarter.

Photocopy of this order be placed on the file of another connected case.

13.12.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes