

FAO-932-2017(O&M) &
FAO-2188-2017(O&M)

-1-

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

(1) FAO-932-2017(O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Bhanga Singh and others

...Respondents

(2) FAO-2188-2017(O&M)

Bhanga Singh

...Appellant

Versus

Vikas Sharma and others

...Respondents

Date of Decision:-20.2.2023

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

Present: Mr.Sanjeev Kodan, Advocate
for the appellant in FAO-932-2017 and
for respondent No. 3 in FAO-2188-2017.

Mr.V .S. Cooner, Advocate for
Mr.J.S. Cooner, Advocate
for the appellant in FAO-2188-2017 and
for respondent No.1 in FAO-932-2017.

Mr.V.K. Gupta, Advocate
for respondent No.1 in FAO-2188-2017 and
for respondent No.2 in FAO-932-2017.

H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. FAO-932-2017 filed on behalf of appellant – Reliance General Insurance Company Ltd. and FAO-2188-2017 filed on behalf of appellant Bhanga Singh, which have arisen out of the same award.

2. Briefly stated, the facts of the case are that petitioner/claimant Bhanga Singh, aged about 55 years son of Gainda Singh through his wife and next friend Smt.Gurmail Kaur, resident of village Kiratpur, Tehsil Kalka, District Panchkula had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as the Tribunal) against respondents i.e. Vikas Sharma – driver, Ravinder Singh – owner and Reliance Motor Insurance Company Ltd. - insurer of truck bearing registration No.HP-12-A-9247 (hereinafter referred to as the offending truck) on account of injuries suffered by him in a motor vehicular accident.

2. As per version of the claimants, on 23.6.2011 the petitioner/claimant started his journey from his shop of vegetables situated at bus stand of village Charnia for going home; he was going on foot; when he reached at a distance of about 25-30 steps from his shop towards Nalagarh, he was hit by the offending truck which was being driven in a rash and negligent manner and at a high speed by respondent No.1 Vikas Sharma, in the process the petitioner-claimant suffered multiple injuries; the injured was taken to hospital, where he was medically treated and medico legally examined. FIR No.110 dated 24.06.2011 under sections

279, 337 of IPC was registered at police station Pinjore.

3. According to the claimant, he used to earn Rs.7,000/- per month by working as a labourer and on account of injuries suffered by him in the accident, he has become disabled.

4. On being given notice of the claim petition, respondents No.1 and 2 had earlier put in appearance before the Tribunal but subsequently, they absented and as such were proceeded against ex-parte.

5. Respondent No.3 insurance company had appeared and filed a written statement contesting the petition raising various legal objections, to wit that respondent No.1 was not holding a valid and effective driving licence at the time of accident; the claim petition had been filed by the claimant in collusion with respondents No.1 and 2. On merits, such respondent denied any such accident having taken place or petitioner/claimant suffering injuries therein. Refuting the remaining assertions, such respondent prayed for dismissal of the claim petition.

6. On the pleadings of the parties, following issues were framed:

1. Whether on 23.06.2011, claimant-injured sustained injuries in the accident in question which took place due to rash and negligent driving of offending truck bearing registration No.HP12-A-9247, by respondent no.1?OPP.
2. If issue no.1 is proved, whether the claimant is entitled to any compensation, if so to what amount and from whom?OPP.
3. Whether respondent no.1 was not holding a valid and effective driving licence at the time of accident in question, if so to what

effect?OPR.

4. Relief.

7. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

8. In order to prove his case, the claimant had examined his wife Gurmail Kaur as PW1, Mahender Singh as PW2 and Dr.Rajesh Chhabra as PW3 and also placed on record documents Ex.P1 to Ex.P62 and Ex.PW3/A.

9. In rebuttal, the respondent no.3 in its evidence examined Mohit Sharma, Clerk from Judicial Record Room, Panchkula as RW1 and tendered the documents Ex.R1 to Ex.R5.

10. After hearing arguments, the claim petition was accepted by Tribunal vide award dated 7.11.2016 and compensation of Rs.7,52,750/- along with interest @ 7% per annum was awarded to the claimant from the date of filing of the claim petition till its actual realization. The respondents No.1 and 2 were held liable to pay the compensation jointly and severally. However, it was observed that the insurance company would firstly make payment of compensation amount to the claimant and thereafter recover the same from respondents No.1 and 2 in appropriate proceedings.

11. Feeling aggrieved by such award, respondent No.3 insurance company has preferred FAO-932-2017, whereas claimant has also filed a separate FAO-2188-2017 seeking enhancement of compensation awarded to him by the Tribunal.

12. I have heard learned counsel for the parties besides going

through the record.

13. Firstly coming to FAO-932-2017 filed on behalf of the insurance company.

14. Learned counsel for the appellant insurance company has contended that the petitioner/claimant had preferred a claim petition earlier, which was dismissed as withdrawn on 5.9.2014 and thereafter a filed fresh claim petition on 3.1.2015, which was not maintainable being hit by principle of *res judicata*. He has contended that the Tribunal has failed to consider the fact that the injured had filed a claim petition earlier in the year 2012 wherein there is no mention of any head injury or any adverse affect about mental status of the petitioner/claimant except some fracture of ribs and that claim petition was dismissed as withdrawn on 22.8.2013, however, subsequently it was restored and ultimately withdrawn by the petitioner/claimant on 5.9.2014, later on coming with a fresh claim petition with new allegations that the claimant/injured has become mentally disturbed.

15. However, learned counsel for the respondent/claimant has vehemently contested this contention contending that second claim petition was maintainable.

16. After hearing the rival contentions, I find that Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. The hyper technical

approach in adjudicating a claim petition under the Act is not called for.

17. The petitioner/claimant by producing enough evidence including medical documents has been successful in establishing his case that the injuries were suffered by him in the accident, which had taken place on account of the offending truck being driven by respondent No.1 on 23.6.2011 in a rash and negligent manner. All the injuries claimed by the petitioner are duly proved on record and the plea put forward by learned counsel for the insurance company that head injury was not mentioned in the first petition and it was introduced later on, is something which is not supported by any cogent or convincing evidence. Therefore, the second claim petition filed after withdrawal of the earlier one cannot be held to be barred under law. This submission made by learned counsel for the insurance company is hereby rejected.

18. The other argument put forward by learned counsel for the insurance company was that the petitioner/claimant had planted the truck in question in this case just to get compensation when his initial version was that the accident had been caused by a car; the FIR was got registered against driver of the truck on the next day of the accident; the collusion between the petitioner/claimant and respondents No.1 and 2 is clear from the fact that on getting notice from the Tribunal though they had put in appearance in the Court initially but subsequently absented.

19. After considering the rival contentions, I find that such objection now raised by the insurance company does not carry any weight. The Tribunal has dealt with all such pleas and rightly rejected the same. The Tribunal by proper appraisal of evidence and correct

interpretation of law, had rightly drawn a conclusion that the accident, which had taken place on 23.6.2011 in which petitioner/claimant had suffered injuries, had been caused by respondent No.1 Vikas Sharma by his rash and negligent driving of the offending truck. While drawing such inference, the Tribunal has relied upon eye witness account of the accident provided by PW2 Mahender Singh, who had deposed in consonance with the case of the claimant that respondent No.1 Vikas Sharma was author of the accident in which the petitioner/claimant had suffered injuries due to rash and negligent driving of the offending truck. The presence at the spot of this witness comes out to be natural and probable. He is not shown to have any motive to come forward to appear as a false witness for the claimant and against the respondent. It was he who had set the criminal machinery in motion by reporting the matter with regard to the accident to the police lodging FIR, copy Ex.58. From the documents placed on record by the claimant i.e. copy of report under Section 173 Cr.P.C., Ex.P59, copy of charge-sheet served upon the respondent No.1 for offences under Sections 279, 337, 338 IPC copy Ex.P60, the involvement of the truck in question and respondent No.1 being its driver at the relevant time stand proved. Such evidence oral as well as documentary produced by the petitioner/claimant has gone un rebutted. Respondent No.1 had not got his statement recorded to say that he had not caused the accident by his rash and negligent driving of the truck. Similarly respondent No.2 did not step into the witness box to state that the truck belonging to him had not caused the mishap. Although respondent No.3 insurance company had denied the involvement of truck in question in the accident but then it did

not make any effort to summon the driver and owner of the truck so as to get their statements recorded before the Tribunal in support of such assertions.

20. With regard to the plea by learned counsel for the insurance company that the claim petition has been filed by petitioner/claimant in collusion with respondents No.1 and 2, that does not appear to be convincing. After the FIR was lodged, the matter was investigated by the police, during the course of which it was found that it was the truck in question being driven by respondent No.1, which had hit the petitioner/claimant causing him injuries. Thereafter, he was sent up to face trial and formal charge against him has been framed by the Court. The respondent No.1 would not have risked his neck with imminent chances of conviction and sentence in the criminal case just to help the petitioner/claimant in getting compensation. Similarly respondent No.2 would not have invited problems for himself by getting his truck seized by the police getting it released on superdari then producing it in the Court on each and every date of hearing just for the purpose of enabling the petitioner/claimant to get compensation.

21. Learned counsel for the insurance company has tried to make much of the fact that in the medical record of petitioner it has been mentioned that the claimant had suffered injuries in the road side accident with a car, whereas subsequently it was claimed that the accident had been caused with a truck, therefore claim petition is not based upon correct facts. I am not convinced by such contention. Keeping in view the serious nature of the injuries suffered by the claimant injured it is unlikely that he

would have given details of the accident to the doctor. Many a times such details are provided by the person, who accompanies the injured to the hospital. Such person might or might not have been present at the spot at the relevant time, therefore same mention in a medical document with regard to accident having been caused with a car does not have any adverse affect on the case of the petitioner/claimant, which is otherwise established on the record. With regard to the judgment **Kamla and others Versus Parveen Kumar and others, 2016(1) LAR 635** referred to by learned counsel for the insurance company, the said judgment does not applicable to the present case due to different facts and circumstances and the context in which such observations had been made.

22. Therefore the **FAO-932-2017** filed on behalf of the insurance company is totally devoid of merit and is dismissed accordingly.

23. Now coming to FAO-2188-2017 filed on behalf of the claimant.

24. As per the disability certificate of petitioner/claimant proved in evidence as Ex.PW3/A, the age is mentioned to be 60 years, which was in the year 2016. He is shown to have suffered mental retardation to the extent of 100% which is permanent in nature. The Tribunal was justified in assessing the functional disability of the claimant to be 100% for the purpose of determination of compensation. The Tribunal has taken the monthly income of petitioner/claimant to be Rs.4,000/-, as such annual income worked out to Rs.48,000/-. Applying the multiplier of 9 considering his age, a sum of **Rs.4,32,000/-** was arrived at. No fault can be found with calculation of such amount by the Tribunal.

25. The Tribunal has observed that keeping in view the present mental state of petitioner, he would require constant physiotherapy and support of the attendant at all times . However, a sum of Rs.2,000/- per month has been awarded for 9 years towards attendant charges. I find this amount to be quite low. In this time of high prices when things of even basic needs are very costly, it is very difficult to find attendant for a sum of Rs.2,000/- per month. The amount is enhanced to Rs.4,500/- per month and the total amount of 9 years comes out to **Rs.4,86,000/-**.

26. The Tribunal has awarded a sum of **Rs.1,00,000/-** to the petitioner/claimant on account of mental pain and suffering, which is found to be proper and appropriate.

27. The Tribunal has awarded a meagre amount of Rs.4,750/- towards medical expenses. With the type of injuries suffered by the petitioner/claimant rendering him a total cripple on account of his mental condition, a considerable amount must have been spent on his medical treatment. It is not possible to keep record of each and every penny spent on medical treatment or to get bills/receipts on account of purchase of medicines for comparatively small amount for undergoing tests or for purchasing any medical equipment for the treatment of the injured. At least a sum of Rs.50,000/- deserves to be granted. I award a sum of **Rs.50,000/-** under that head.

28. The Tribunal has not granted any compensation for special diet and travelling expenses. A sum of **Rs.50,000/-** is awarded under the head special diet and to cover the travelling expenses for going to hospital. I award a sum of **Rs.30,000/-** under that head.

29. On account of suffering injuries, the petitioner/claimant shall not be able to live like a normal person. A sum of **Rs.1,00,000/-** is awarded to him under the head loss of amenities.

30. The petitioner/claimant would not be able to walk and work like a normal person and shortening of life on account of suffering injuries. I award a sum of **Rs.50,000/-** to him under the head shortening of life.

31. Thus, the total compensation comes out to Rs.12,98,000/-.

32. The Tribunal has awarded compensation of Rs.7,52,750/-.

33. In this way, the enhanced amount comes out to Rs.5,45,250/- (12,98,000 – 7,52,750). The petitioner/claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

34. With such modification, the FAO-2188-2017 filed by the petitioner/claimant is allowed partly with costs.

35. Since FAO-932-2017 stands dismissed and FAO-2188-2017 is allowed partly with costs, the miscellaneous application(s), if any, stand disposed of accordingly.

20.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No