



FAO-1397-2006 (O&M)

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

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FAO-1397-2006 (O&M)

Date of Decision: November 21, 2024

Rajbir

.....Appellant

Vs.

Azad Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Nitin Rathee, Advocate
for the appellant

Mr. Ashwani Verma, Advocate
for respondent No.1.

Mr. D.R. Bansal, Advocate and
Mr. Rahul Bansal, Advocate
for respondent No.3- Insurance Co.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 15.09.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Sonipat (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 20.7.2003, the appellant/claimant was on his way to Nangloi on Government duty on his own scooter No. HR-11-4499. When he reached in the area of Mundka (Delhi State) on Rohtak-Delhi Road, a four wheeler Tata No. HR-10GA-0193 (hereinafter referred to as offending vehicle) being driven by

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respondent No.1 rashly and negligently hit the scooter of claimant with full force at its back. As a result of this, the claimant fell on the road alongwith the scooter. However, he saw the registration number of the vehicle in the light of a truck which was coming behind the four-wheeler. He reported the matter to the police leading to the registration of FIR No.727 dated 8.9.2003 under Sections 279/337/338 IPC at Police Station Nangloi (Delhi).

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the petitioner sustained injuries as a result of rash or negligent driving of the vehicle in question by respondent No. 1 as alleged ? OPP.

2. Whether the petitioner is entitled to the compensation if so to what amount whom? OPP.

3. Whether respondent No. 1 was not duly licenced driver if so to what effect? OPR.

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the claim petition of the appellant was dismissed only on the ground that there was

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a delay in lodging of the FIR. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellant/claimant.

7. *Per contra*, ld. Counsel for the respondents argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal. Therefore, they pray for dismissal of appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

“8. In support of this issue, Rajbir claimant has appeared as PWI and deposed that 20.7.2003 he was going for his official duty on on his scooter No. HR-11/4499 and when he reached near village Mundka, a vehicle TATA-407 bearing registration No.HR-10GA-0193 came from behind and struck its side against his scooter as a result of which he fell on the road with his scooter and the TATA vehicle fled away after causing the accident but he noted the number thereof in the light of a truck which had come from behind at that time. He further deposed that after some time he lost his senses he regained in Sanjay Gandhi Hospital, Mangolpuri, Delhi. which. He further deposed that he remained admitted from 31.7.2003 to 3.9.2003 in PGIMS Rohtak where his statement was recorded by the police on the basis formal FIR was recorded, copy of which is Ex.PI.

9. Azad Singh respondent No.1 appeared as RW1 and deposed that on 12.7.2003 after loading buffaloes in his TATA vehicle No. HR-10GA/0193, he was driving it from Rohtak to Delhi and when his vehicle reached between village Mundka and Ghevra Mor, it was raining and he applied brakes but it had a slip and the side of his vehicle struck against the scooter as a result of which the scooter rider fell down. He further deposed, that he stopped his vehicle,



saw the injured who had already sat after the accident and then went away with his vehicle. He also deposed that he went to the house of the scooter driver and also approached him in PGIMS, Rohtak, for compromise but that could not be effected because he was not in a position to pay a sum of Rs.50,000/60,000/- demanded by the claimant.

10. In rebuttal of the aforesaid evidence, respondent no.3 relied upon the report mark "X". It can be read in evidence when it has been relied upon by respondent no.3 and the correctness thereof has not been denied by PWI Rajbir, who rather admitted that a report was recorded on the date of accident in Police Station Nangloi. As per this report mark 'X', which was recorded in the daily diary in Police Station Nangloi on 21.7.2003 i.e. on the next day the accident, on the statement of the claimant himself, he (claimant) was going on his scooter no. HR-11-4499 from Jakhoda to Sonipat via main Rohtak Road and when he reached near village Mundka, he lost control of his scooter because of the lights of oncoming, vehicles in the night and fell with his scooter on the road and suffered injuries on his left ankle and left shoulder and thereafter he was removed by a PCR to S.G.M. Hospital, the accident took place in the night at about 10/10.30 P.M. on 20.7.2003 (as mentioned in para 8 of the petition). From the place of accident the claimant was removed to Sanjay Gandhi Hospital, Mangolpuri (Delhi), where his statement was recorded on the next day and on the basis of that statement a report no.57 was recorded in daily diary at Police Station Nangloi (Delhi). That is the earliest version of the accident. According to that version claimant was going on scooter and due to mechanical defect in the scooter and the lights the sole of the vehicles the claimant lost control of his scooter and fell on the road alongwith his scooter and suffered injuries. He did not show the involvement of any other vehicle in the accident at the time of lodging that report. He admitted in his cross examination that a report regarding the



accident was recorded in Police Station Nangloi. His explanation that he was unconscious at that time and his thumb impressions were obtained by the police and whatever was written in the report was written at the instance of his family members, does not appeal to reason. The claimant was a Head Constable in the police at the time of accident. His statement was recorded on the next day of the accident in a hospital at Mangolpuri (Delhi). There was no reason as to why the polices officials of P.S. Nangloi would record a wrong version of the accident and that too when the injured is an official of the police himself. The claimant remained admitted in PGIMS, Rohtak, from 21.7.2003 to 3.9.2005. He got registered the FIR only on 8.9.2003, revealed from the copy of FIR: Ex. P1. There is explanation for this delay of more than 1/1-2 as no months in lodging the report with the police. The claimant even tried to conceal the fact that he lodged report of this accident with the police on the very next day of accident. So, any explanation furnished by him for the delay in lodging the FIR is of no consequence. The claimant admitted that he had regained consciousness on the next day of the accident in PGIMS, Rohtak, but he called the police in the hospital on 2.9.2003 when he made his statement to the police. No statement of the claimant recorded by police on 2.9.2003 is available on record. the Even if it is admitted that any such statement was made claimant to the police on 2.9.2003, it was also about 42 days of the accident and there by the After is no explanation as to why the claimant kept mum for such a long time when he was aware of the alleged vehicle involved in the accident.

11. No doubt, Azad Singh respondent No.1 while appearing as RWI admitted the involvement of his TATA vehicle in the accident in question' but there is every reason to believe that he as well as the owner of this vehicle are colluding with the claimant because their vehicle was insured and the date of accident and they could presume that the compensation, if any, will have to be paid by the



insurance company and not by them. According to the version in the FIR, the driver of TATA vehicle had fled away immediately after causing the accident and be believed to approach the claimant and make an officer for compromise. The admission of the involvement of their vehicle in the The the written statement itself by respondents No.1 and 2 and then fully supporting the version of the accident by respondent No.1 while appearing as RW1 clearly indicates that this vehicle no. 193 was lateron introduced by the claimant in collusion with respondents no. 1 & 2. In case Ram Karan and others Vs. Zile Singh 2002 (4) Accident Compensation Judicial Reports 222. the number of four-wheeler not was mentioned in the FIR but was mentioned in the statement before the Tribunal. That was held to be an improvement by the Tribunal and that finding was affirmed by our own Hon'ble High Court. The present case is at a worse footing. The earliest version of the accident was given by the claimant himself on the very next day of the accident in which he did not show the involvement of any other vehicle. According to that version the claimant while travelling on the scooter lost control over his scooter because of lights of the oncoming vehicles in the night and the due to the occurrence of sudden mechanical defect in the scooter. The version given by him in the FIR after more than two months of the accident involving the TATA vehicle in the accident improvement is clearly an improvement.

12. It was argued by the counsel for the claimant that since respondent No.1 after registration of the FIR was arrested by the police and he has been facing trial, there is no reason to doubt the involvement of his vehicle in the accident because no person would offer himself for suffering the agony of long criminal trial unless he is actually involved in the offence. But this argument of the counsel for the claimant does not hold water in the circumstances of the present case. The claimant is a Head Constable in the police. His brother Randhir Singh is also an Inspector Haryana



Police, as mentioned in the DDR mark "X". vehicle of respondent no.2 was duly insured on in The the date of accident. So, both the respondents no. 1 & 2 could very well presume that in case of their admission of the accident, the claimant will be entitled to compensation and that will be paid by the insurance company. The respondent No.1 must have some tacit understanding with the claimant for undergoing the agony of trial. At least there must be an understanding to the effect that the claimant will not support the prosecution case before the criminal court against respondent no. 1. It is difficult for the insurance company to bring that understanding to light. It can be gathered from the circumstances. The admission of the version of the accident in the very first instance by respondents no. 1 & 2 and then supporting that version before the Tribunal by respondent No.1 clearly speak that the FIR was lodged in this case after more than 1/1-2 months of the accident in collusion with respondents no. 1 & 2.

13. The net result of the above discussion is that claimant has failed to prove that vehicle no.HR-10GA/0193 was involved in the accident in which the claimant suffered injuries, So. this issue is decided against the claimant."

10. A perusal of the record shows that accident took place on 20.07.2003. The claimant suffered multiple injuries. FIR was lodged on 08.09.2003 under Sections 279/337/338 IPC at Police Station Nangoli (Delhi). Immediately after the accident, the claimant-Rajbir was taken to Sanjay Gandhi Hospital, Mangolpuri, Delhi and lateron he was shifted to PGIMS Rohtak where he remained admitted as indoor patient upto 03.09.2003.

11. A perusal of the record further shows that respondents No. 1 and 2 (driver and owner of Tata vehicle No.HR-10-GA-0193) in their joint written statement admitted the factum of accident but pleaded that it was not due to any



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carelessness of respondent No.1 but because of road becoming slippery due to rain, the accident took place. Injured eye witness-Rajbir claimant appeared as PW-1 who stated the factum of accident and deposed that after some time of his accident, he lost his senses which he regained in Sanjay Gandhi Hospital, Mangolpuri Delhi. He further deposed that he remained admitted in the Hospital from 31.03.2003 to 03.09.2003 in PGIMS, Rohtak where his statement was recorded by the police. On the basis thereof, FIR was registered which is proved on record as Ex.P-1.

12. Azad Singh-respondent No.1 appeared as RW-1 and deposed that on 12.07.2003, after loading buffaloes in his Tata vehicle No.HR-10GA-0193, he was driving it from Rohtak to Delhi and when his vehicle reached between village Mundka and Ghevra Mor, it was raining and he applied brakes but it had slipped and the side of his vehicle struck against the scooter as a result of which scooter rider fell down. He further stated that he approached the claimant for compromise but the claimant was not ready for it.

13. The reasoning given by the Ld. Tribunal for dismissal of the claim petition on the ground of delay in lodging the FIR is not acceptable to this Court as already held by Hon'ble the Supreme Court in **Ravi Vs. Badrinarayan and others, 2011(4) SCC 69**, wherein it has been held that delay in lodging of FIR should not be treated as fatal for motor accident claim proceedings, if the claimant is able to demonstrate satisfactorily and with cogent reasons for such delay. The relevant para is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an



accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”



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14. Ld. Tribunal had referred to statement made by Azad Singh-respondent No.1 while appearing as RW-1 who admitted the involvement of his Tata Vehicle in the accident in question but the Ld. Tribunal did not believe the same. Further the Ld. Tribunal totally ignored the factum of accident and the fact that after registration of FIR against respondent No.1, he was arrested by the Police and was facing trial.

15. It is an admitted fact that respondent No.1 after registration of the FIR, was arrested by the police and was facing trial.

16. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 15.09.2005 passed by Ld. Tribunal, Sonipat stands vitiated by a complete absence of application of judicial mind.

17. In view of the above, the award is liable to be set aside and the appellant-claimant is held entitled to compensation.

18. With respect to determination of compensation, the PW-1 appellant claimant Rajbir deposed on oath, the relevant portion of the award is reproduced as under:-

“On 20.7.2003 I was going to Nangloi on my scooter bearing No. HR-11/4499 on my official duty. When I reached near village Mundla, one Tata-407 bearing No. HR-10-GA-0193 came from behind and it was being driven at a very high speed and in a rash negligent manner and it struck its side against and my scooter as a result of which I fell down on the road with the scooter. The offending Tata-407 fled away after causing the accident. I noted down the number of the offending Tata-407 in the light of a truck which had come from behind at that time. I suffered fracture in my left leg and left hand. After some time I lost my senses. I regained my consciousness in Sanjay Gandhi Hospital,



Mangolpuri Delhi. There my family members reached and I was shifted to PGIMS, Rohtak where I remained admitted from 21.7.2003 to 3.9.2003. My left leg and left arm were operated upon. Rods were inserted in my leg and arm. Police came in PGIMS, Rohtak and my statement was recorded on the basis of which formal FIR Ex. P.1 was recorded. I spent a sum of Rs. 50,000/- on my treatment including medicines, special diet, transportation etc. I cannot properly nor I can leave weight on my left leg. I cannot even walk properly nor I can run. I cannot walk without crutches. I am still under treatment. My left leg has become shorten by one inch and I am also limping. I cannot raise my left hand upward as rod was inserted in my left arm. I have suffered permanent disability in my left leg and left arm. I also suffered fracture in my jaw.

XXmn on behalf of the respondents.

I am Head Constable posted in P.S. Kharkhoda. I am still in service. I am getting full salary after the accident. I had gone unconscious after the accident. It is correct that I am fully aware regarding the procedure of lodging of the FIR. The accident took place on 20.7.2003 whereas the FIR was lodged on 8.9.2003. It is correct that rapat was recorded on the date of the accident in Nangloi. I cannot say as to what was written in the rapat earlier made to the police because my thumb impression was obtained and I was unconscious at that time. Whatever was written in rapat mark X has been got written at the instance of my family members. I do not know when my family members reached in the hospital. I came to know regarding the registration number of Tata-407 on the same day. I do not remember whether I had stated to the police regarding the registration



number of the offending Tata-407. I regained my consciousness the next day of the accident in called the police in the hospital PGIMS, Rohtak. I called the police in the hospital on 2.9.2003. It is wrong to suggest that I had stated before the police that I lost my balance as the switch of my scooter stopped functioning and I fell with the scooter and sustained multiple injuries. I do not remember whether I had stated before the police the name of the driver and the registration number of the offending vehicle. Actually I am not aware of this fact since I had gone unconscious after the accident and I regained my senses after 24 hours of the accident. It is wrong to suggest that no accident with Tata-407 mentioned above took place with my scooter or that a false FIR was lodged by me taking undue advantage of my being an employee of the police department. It is correct that PGIMS, Rohtak is a Govt. Hospital and free treatment is provided there. But I had purchased medicines from the market. It is correct that expenses of treatment/ purchase of medicines are reimbursable by the department. But I did not reimburse my medical bills. I did not give any intimation regarding the expenses incurred by me on my treatment. I do not remember when I informed my higher authorities regarding my accident. I informed the department/higher authority on telephone. I remained on leave for about 1-1/2 months. But this period of leave was my rests. my presence was marked. I was treated on duty. It is wrong to suggest that I have not incurred any expenses or that I did not sustain any injury due to the accident as stated by me. It is wrong to suggest that I did not suffer any permanent disability or that I am deposing falsely.”



19. Further regarding the injuries suffered by the appellant-claimant, Dr. Raj Singh, Sr. Resident was examined as PW-2 who deposed as under:-

“I have been authorised by Dr. S.S. Sangwan, Head of Unit-1 Department of Orthopaedics, under which patient Rajbir was treated vide C.R. No. 334526. Rajbir patient was admitted in PGIMS, Rohtak on 21.7.2003 with injuries of fracture supra-condyler left femur with fracture patella with fracture shaft of humerous with penetrating wound. Patient was operated on 27.8.2003 by Dr. S.S. Sangwan for open reduction internal fixation with DCS plate with partial patellectomy with bone grafting with plating left Then patient was humerous. 3.9.2003. discharged Discharge card is Ex. P.2 (Objected to). Authority letter given to me by shri S.S. Sangwan (doctor) to depose in this case is Ex. P.3. Patient also took follow up treatment, as is reveals from OPD Card Ex. P.4 (Objected to).

20. A perusal of the above statements shows that the appellant claimant has categorically stated in his evidence as PW-1 that he was Head Constable posted in Police Station Kharkhoda. He further deposed that he had spent a sum of Rs.50,000/- on medical treatment including medicines, special diet, transportation etc. He further deposed that he cannot walk properly and his left leg has become shortened by one inch. Moreover, he remained on leave for about one and half months. There is no rebuttal qua his statement.

21. Further, the statement of Dr. Raj Singh, Sr. Resident PGIMS Rohtak (PW-2) reveals that the injured has suffered injuries of fracture supra-condyler left femur with fracture patella with fracture shaft of humerous with penetrating wound. He further deposed that the patient/Rajbir (appellant) was operated on 27.08.2003 by Dr. S.S. Sangwan for open reduction internal

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fictation with DCS plate with partial patellectomy with bone grafting with plating left humerous.

22. The undisputed fact is that it has been observed by Ld. Tribunal that the claimant remained admitted from 21.03.2003 to 03.09.2003.

23. In view of the above, this Court is of the considered view that it would be just and reasonable to grant a compensation amounting to Rs.5,00,000/- lumpsum to the appellant/claimant in the present case.

RELIEF

24. In view of the above, the present appeal is allowed. The award dated 15.09.2005 is set aside. The appellant-claimant is entitled to grant of compensation to the tune of Rs.5,00,000/-.

25. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellant-claimant is granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.

26. The Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from the date of receipt of copy of judgment. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.



27. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Rahul Bansal, Advocate within a period of ten days from the date of receipt of the copy of this judgment.
28. Disposed off accordingly.
29. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 21, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes