



FAO-1778-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-1778-2006 (O&M)

Date of Decision: October 03, 2024

Nirmal Singh

.....Appellant

Vs.

Nachhatar Singh and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ekta Thakur, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent-Insurance Co.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 27.01.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') for grant of compensation.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 17.04.2003, the appellant was going to his home in Sector 32, Chandigarh, while riding on the pillion of Scooter No. CH-01-J-4883. The scooter was being driven by respondent No. 1-Nachhattar Singh. When they reached near small chowk of Sector 32 Market, Chandigarh, the scooter in question developed sudden mechanical defect and respondent No. 1 lost control over it. As a result of which, the scooter had fallen down along with appellant and respondent No. 1. The appellant suffered multiple fractures below his

**FAO-1778-2006 (O&M)**

17.04.2003, vide CR No. A-309305 and was discharged on 18.04.2003. The appellant spent Rs.70,000/- on his treatment and medicines etc.

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

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

- 1) Whether claimant Nirmal Singh received injuries in a road side accident while sitting on pillion seat of Scooter No. CH-01-J-4883 near small chowk of Sector 32 Market on 17.04.2003? OPP
- 2) If Issue No. 1 is proved, to what amount of compensation claimant is entitled. If so from whom ? OPP
- 3) Whether respondent No. 1 was not holding a valid and effective driving license at the time of the accident? If so, its effect? OPR
- 4) Relief

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

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. The learned counsel for the claimant-appellant has made the following submissions:-

(i) That the learned Tribunal has wrongly dismissed the claim petition on the ground that no-accident took place, as the claimant has failed to lodge DDR/FIR in this regard.

(ii) Further the learned Tribunal has not taken into consideration the reply to para No. 24 of the claim petition in the written statement filed by respondent No. 1

**FAO-1778-2006 (O&M)**

wherein it has been stated that “It is submitted that the accident took place due to the sudden development of mechanical defect and loss of control of respondent No. 1 upon the scooter”.

(iii) Further the learned Tribunal has erred in law in not taking into consideration the fact that the appellant was admitted in PGI, Chandigarh due to the accident.

(iv) She has relied upon judgment of this Court in a case of ***Universal Sompo General Insurance Co. Ltd vs. Lakhwinder Kaur and others, 2022 (3) R.C.R (Civil) 477*** wherein it has been held that the claim petition cannot be thrown away only for the reason that the F.I.R was not registered. Merely because the eye witness did not call any person from the family of the deceased or did not accompany the injured to the hospital, is not sufficient to discard the testimony of the witness. The relevant para of the judgment is reproduced as under:-

“8. Having heard counsel for the appellant and having perused the record, this Court does not find any substance in the argument of counsel for the appellant. The counsel for the appellant has laid much emphasis upon the proceedings of the criminal case to impeach the evidence led by the claimants in the claim petitions. However, the criminal case itself is hardly relevant for the purpose of claim petition. Even if no FIR is registered, the claim petition cannot be thrown away only for the reason that FIR was not registered. Even if the FIR is registered, that has a limited relevance qua the claim petition to the extent that Court may take it as a collateral assistance while assessing whether there was possibility of the vehicle being involved or not, in case the challan is filed against the driver of the

**FAO-1778-2006 (O&M)**

offending vehicle. Beyond that, there is no relevance of the criminal proceedings as such.

9. *As far as the evidence on record of the claim petition is concerned, the injured claimant herself has appeared in witness box. She has duly deposed about the accident in question. Moreover, independent eye witness has also been examined by the claimants, who has categorically deposed as to the factum of accident and the manner thereof, as well as, qua the negligence of the offending vehicle. Despite lengthy cross examination, nothing substantial could be extracted which could have impeached the testimony of this witness. Merely because the eye witness did not call any person from the family of the deceased or she did not accompany the injured to the hospital, is not sufficient to discard the testimony of the witness. This could happen for various valid reasons. So far as the testimony of CW-1 Lakhwinder Kaur is concerned, she cannot be blamed for not having disclosed the number of the offending vehicle while getting the FIR registered; because she was sitting in the car which had suffered the accident. It is obvious that when she had suffered the accident, her emphasis would be on getting the treatment at the earliest possible for herself and for her husband and not to go into the details of the offending vehicle. Needless to say, that on the next day itself, the eye witness had made the statement before the police giving even the number of the offending vehicle. Therefore, there is no doubt left in the fact that the offending vehicle was involved in the accident*

10. *Although the claimants have made assertions in their claim petitions and have proved their cases as per the*

**FAO-1778-2006 (O&M)**

requirement of law, however, the respondent/appellant had raised assertions in the reply filed to the claim petitions that the vehicle in question was not involved in the accident. This was a categorical assertion on behalf of the appellant Insurance company. Therefore, to prove the said assertion, the Insurance company was required to lead the requisite evidence. However, undisputedly, the Insurance company has not led any evidence whatsoever. Not only this, even the owner and driver of the vehicle have not dared appear in witness box so as to face the cross-examination by the claimants. This also gives rise to the adverse inference against the driver of the offending vehicle and, therefore, supports the case of the claimants that the offending vehicle was duly involved in the accident in question.”

7. Per contra, learned counsel for the respondents, however, vehemently argues that the claim petition has rightly been dismissed.

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

9. A perusal of the award shows that the accident took place on 17.04.2003, when the appellant was a pillion rider on scooter No. CH-01-J-4883 being driven by respondent No. 1. A perusal of the record further shows that the appellant was admitted in PGI, vide CR No. A-309305 and was discharged on 18.04.2003. Further this fact was admitted by respondent No. 1 in his written statement. The learned Tribunal has wrongly dismissed the claim petition only on the ground that there was no F.I.R/DDR lodged by the appellant regarding the alleged accident. It is well settled proposition of law, as held by this Court in ***Lakhwinder Kaur’s case (supra)*** that merely on the ground that F.I.R was not registered with respect to the accident, the claim petition cannot be dismissed.

**FAO-1778-2006 (O&M)**

10. In view of the above, the learned Tribunal has failed to appreciate the fact that the appellant suffered injuries due to the accident, which took place on 17.04.2003 and thus, the impugned award is liable to be set aside.

11. On the touchstone of here-in-above discussed findings and judicial precedent, the award dated 27.01.2006 passed by learned Tribunal, Chandigarh stands vitiated by a complete absence of application of judicial mind.

12. This Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

“11. Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon’ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with

**FAO-1778-2006 (O&M)**

intelligence, prudence, care and caution and by showing empathy.

The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”

13. In view of the above, the claimant/appellant is held entitled to compensation to the tune of Rs.2,50,000/-.

14. 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 Nandu State Transport Corporation** (2022) 5 **Supreme Court Cases 107**, the appellant-claimant is granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

15. The Insurance Company is directed to deposit the awarded amount of compensation to the tune of Rs.2,50,000/- along with interest with the Tribunal within a period of two months from today. The appellant-claimant is directed to furnish his bank account details to the learned Tribunal. The Tribunal is further directed to disburse the amount of compensation along with interest in the bank account of the appellant-claimant.

16. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

October 03, 2024

G Arora

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No