



FAO-4431-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4431-2006(O&M)

Date of Decision: November 27, 2024

Chander Bhan

.....Appellant

Vs.

Charan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Bhargavi, Advocate with
Mr. A.P. Bhandari, Advocate
for the appellant.

Mr. Suvir Dewan, Advocate
for respondent-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 26.05.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, whereby the claim petition filed before the learned Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal') was dismissed.

FACTS NOT IN DISPUTE

2. On 22.5.2002, the present claimant along with other persons was occupant of Maruti Van No. HR-51-H-8019. They were going to Bulandshahar to attend the marriage of one Mam Raj son of Rattan Singh. At about 8.30 p.m. when the said van reached near Village Nizampur, its driver respondent no. 1 while driving the van rashly and negligently struck the same against the Pulia (Culvert) on the road side, which resulted into the injuries to the occupants of the van and death of an occupant. The accident in question took place due to rash and negligent driving of the van in question by respondent no.1 within the jurisdiction of Police

**FAO-4431-2006 (O&M)**

Station Sikandrabad, District Bulandshahar, U.P. where FIR No. 399/02 was lodged regarding this accident under section 279/337/304-A of Indian Penal Code.

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

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

“1. Whether the accident took place due to rash and negligent driving of Maruti Van No. HR-51-H-8019? OPP

2. Whether the respondent no. 1 was not holding a valid and effective driving licence at the time of alleged accident? OPR.

3. If issue no. 1 is proved, to what amount of compensation the petitioner(s) is/are entitled and from whom? OPP

4. Relief.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

4. The learned counsel for the appellant-claimant contends that though the learned Tribunal decided issue No. 1 in favour of appellant-claimant but dismissed the claim petition on the ground that the claim petition was filed after a long gap. Further on the ground that there was a gap between the medical treatment and the date of the accident. Learned counsel for the appellant contends that once the accident is proved, the Tribunal ought to award the compensation on account of the injuries suffered by the appellant.

5. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the claim petition has rightly been dismissed.

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

7. Before proceeding further, it is necessary to reproduce the relevant portion of the award, which reads as under:-

**FAO-4431-2006 (O&M)**

“16. After hearing both the parties and careful perusal of evidence adduced by the petitioners, I am of the considered view that they are not entitled to compensation because it is not proved to the satisfaction of this Tribunal that they suffered injuries out of the same accident. Although, petitioners have relied upon statement Ex. P.6 of PW.2 Rajesh in the earlier claim petitions but even in that statement, nothing has been mentioned about suffering of injuries by the present petitioners in the said accident.

17. If the medical evidence adduced by the petitioners is perused between the lines, then there is a long gap between medical treatment and date of accident which is not explained by the petitioners. For example, PW.4 Dr. S.V. Gupta stated that he medico legally examined Bhoop Singh on 29.5.2002 who suffered injuries in a road side accident on 22.5.2002 and also stated that Bhoop Singh was under treatment elsewhere with some Orthopaedic Surgeon but there is no evidence present on the record as to who was that other Orthopaedic Surgeon under whom Bhoop Singh got medical treatment immediately after the accident. Similarly, PW.5 Dr. Bharat Mittal testified that petitioner Beg Ram was under his treatment in Sarvodya Hospital with effect from 5.6.2002 to 9.6.2002 but there is no other medical evidence present on the record as to from where petitioner Beg Ram got medical treatment with effect from 22.5.2002 till 5.6.2002. There is also no medical bill of the expenses of petitioner Beg Ram. Moreover, this witness had the record of dated 4.6.2002 only and there is no other medical record with him. Similarly, Dr. Pankaj Bhatia PW6 stated that X-ray film Ex. P.4 shows fracture superior and interior pubic ramus of

**FAO-4431-2006 (O&M)**

petitioner Chander Bhan but in the cross-examination, this witness admits that he cannot say as to whom x-ray film Ex. P.4 belongs because there is no report of medical treatment on the file. Moreso, medical bills Mark A and Mark D produced by PW7 are not proved at all. In this way, the link evidence is missing to explain the delay in medical treatment and, therefore, it can be safely said that there is no cogent and convincing evidence available on the record to connect the alleged injuries on the persons of petitioners as a result of accident dated 22.5.2002.

18. Lastly, it is worth-while to note that the present claim petitions have been filed on 17.7.2004 i.e. after two years of the accident which occurred on 22.5.2002. No doubt, the claim petitions cannot be dismissed only on the ground of being barred by limitation but there must be sufficient explanation for not filing the present claim petitions within a reasonable time. Although, it is argued by the learned counsel for the petitioners that the delay in filing the claim petitions was due to illiteracy of petitioners and paucity of funds but this explanation is not satisfactory because the earlier two claim petitions were filed by the close relatives and friends of present petitions and they could have also filed these claim petitions within a reasonable time. Further more already discussed above, there is no connecting evidence available on record to show that alleged injuries suffered by the petitioners were direct result of the accident.”

8. A perusal of the award shows that though the learned Tribunal decided Issue No. 1 in favour of the appellant but wrongly dismissed the claim petition on the ground that the injuries suffered by the appellant were not proved. However, a



FAO-4431-2006 (O&M)

perusal of the record reveals that the appellant suffered injuries due to the accident in question. However, the injuries attributed are not permanent in nature, therefore, the case of the appellant can be dealt with under Section 163-A of the Motor Vehicles Act, 1988 because if the case is remanded to the Tribunal, it will cause further delay. Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act.

9. The case is covered by the judgment rendered by this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others.**” wherein the claim under Section 163-A of the Motor Vehicles Act, 1988 was converted to Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) by relying upon the judgment of Hon’ble *Supreme Court in the case of Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]* wherein it was held that Section 164 of the Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) provides for payment of compensation in case of death in the amount of Rs.5 lakh and in the case of grievous hurt of Rs.2.5 lakh.

10. In view of the above, the present claim petition is converted in to Section 164 of the Motor Vehicles Act, 1988, keeping in view the 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 lakh.

11. Further, 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



FAO-4431-2006 (O&M)

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 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."*

12. In view of the above, the present appeal is allowed and award dated 26.05.2006 is set aside. Accordingly, the claimant/appellant is held entitled to compensation to the tune of Rs. 2.5 lakh under Section 164 of the Motor Vehicles Act.

13. 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

**FAO-4431-2006 (O&M)**

Supreme Court Cases 107, the appellant-claimant is granted the interest @ 9% per annum on the awarded amount from the date of filing of claim petition till the date of its realization.

14. The Insurance Company is directed to deposit the awarded amount 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 Insurance Company/Tribunal. The Tribunal is further directed to disburse the awarded amount of compensation along with interest in the bank account of the appellant-claimant.

15. Further Insurance Company is directed to disburse the current schedule fees to Mr. Suvir Dewan, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

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

(SUDEEPTI SHARMA)
JUDGE

November 27, 2024

Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes