



FAO-4442-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4442-2006(O&M)

Date of Decision: November 27, 2024

Bhoop Singh

.....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. Sahej Mahajan, Advocate for
Mr. R.K. Bashamboo, 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

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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. 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.”

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

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 LEARNED COUNSEL FOR THE PARTIES

6. 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 one and a half year of the accident. 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 have awarded the compensation on account of the injuries suffered by the appellant.

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

8. I have heard learned counsel for the parties and perused the whole

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

“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

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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 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.”

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10. 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. A perusal of the award further shows that the statement of the doctor has been totally ignored by the learned Tribunal while dismissing the claim petition on the ground that no injuries were suffered by the appellant.

11. A bare reading of the award shows that the doctor was also examined, who proved the factum of the injuries to the claimant/appellant. Since the Motor Vehicles Act is a beneficial legislation, therefore, the reasoning given by the learned Tribunal in dismissing the claim petition on the ground that it has been filed after a delay of one and a half year, is not acceptable to this Court, as there was no such limitation provided under the Motor Vehicles Act, 1988 when the claim petition was filed in the year 2004.

12. Further, it is undisputed that the appellant suffered injuries. Though the claimant has filed claim petition under Section 166 of the Motor Vehicles Act, 1988, since this is an old matter pertaining to the year 2006 and the whole record is fully burnt, therefore, it would not be appropriate to remand the matter back to the Tribunal to decide the claim petition afresh for grant of compensation.

13. In view of the above, in the interest of justice, this Court by exercising its appellate powers, is converting the claim petition from Section 166 to Section 164 of the Motor Vehicles Act, in view of judgment of this Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, wherein it has been held as under:-

“26. The Appellate Courts for the purpose of doing complete justice between the parties and completely adjudicating upon all the disputes, after appreciating the whole evidence on

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record, have power under Section 107 read with Order XLI Rule 33 of the Code of Civil Procedure, 1908 to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

27. *Motor vehicle statute is a beneficial legislation. Generally the victims/claimants/legal-representatives are not aware of their right to compensation and it is Advocates who decide under which provision of the statute the claim petition is to be filed. Before deciding the claim petitions, after appreciating the evidence on record, it is the bounden duty of the Court to apprise the parties of their legal rights as to under which provision they can get the maximum of benefit/compensation. The Judges should apply their judicial mind after appreciating the evidence on record, gravity of offence, gravity of loss, conduct of parties and over all facts and circumstances of each case and after that decide the same. The Court should not go into the technicalities that under which provision of statute case is to be filed, specially in the motor accident cases. If at any stage after appreciating the evidence, since it is original jurisdiction of the Court and the case is at initial stage, normally a person of ordinary prudence can calculate the loss of near and dear one's/relationship, the Judge feels that case of the claimant falls under a particular section he should apprise the parties regarding*

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the same. The Courts should not apply straight jacket formula in every case and are presumed actually to do the justice by applying their judicial mind to the facts and circumstances of each and every case. The beneficial intent of the legislation ought to be borne in mind and procedural and technical formalities cannot be invoked to defeat the purpose of the legislation.

28. *The Courts have to be very cautious and careful while accepting the prayer of the claimants/appellants to convert the claim petition filed under Section 163-A to Section 166 of the Motor Vehicles Act, 1988. Under Section 107 read with Order XLI Rule 33 of CPC the general rule is that an appeal is persistence of a suit and, therefore, an Appellate Court can do, while the appeal is pending, what the original Court could have done while the suit was pending. Thus, as per Section 107 Order XLI Rule 33 of CPC, an Appellate Court is empowered to re-appreciate the evidence. While hearing the appeal it is very important for a judge to apply his judicial mind. The Appellate Authority can re-appreciate the evidence before it. The grant of just and fair compensation is a statutory responsibility of the Court.*

29. *Over all conclusion of the above is that the Appellate Court has power to convert the petition under Section 163-A to Section 166 of the Motor Vehicles Act, 1988 to give justice to the claimants.”*

14. In view of the above and 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 lakh and in the

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case grievous hurt of Rs.2.5 lakh, the present claim petition is converted under Section 164 of the Motor Vehicles Act, 1988,

15. Accordingly, 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.

16. 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 awarded amount from the date of filing of claim petition till the date of its realization.

17. 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.

18. Further Insurance Company is directed to disburse the current schedule fees to Mr. Sahej Mahajan, Advocate appearing for Mr. R.K. Bashamboo, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

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

(SUDEEPTI SHARMA)
JUDGE

November 27, 2024

Gaurav Arora

Gaurav Arora
2024.12.04 15:48
I attest to the accuracy and
integrity of this document

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