2025:PHHC:045936

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-4677-2010 (O&M)

Fateh Singh

...Appellant

VERSUS

Subhash Chander and others

...Respondents

(ii) FAO-6232-2010 (O&M)

Rishi Raj

...Appellant

VERSUS

Subhash Chander and others

...Respondents

Date of Decision: April 03, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashish Gupta, Advocate
for the appellants.

Mr.Ashok Tyagi, Advocate
for respondents No.1 and 2.

Mr.Ravinder Arora, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The twin appeals have been filed by the appellants-claimants to question the denial of compensation to them by learned Motor Accident Claims Tribunal, on account of injuries sustained by them, in a motor vehicular accident.

The facts germane, to be noticed are as follows:-

That on 01.03.2008, at about 2.30 p.m., both the appellants-claimants had started their journey from Rajond to their village Makhala, on motorcycle bearing registration No.HR-05-1668. Fateh Singh was driving the motorcycle, whereas, Rishi Raj was pillion rider of the same. The motorcycle was driven at a very slow and moderate speed as well as on left hand side of the road. When they reached ITI Chowk, Karnal, then, at that very time, there was green signal for the motorcycle side of the claimants and they started crossing the chowk. Then, one bus bearing registration No.DL-1PB-7339, which was driven by respondent No.1-Subhash Chander, in a rash and negligent manner, started crossing the chowk and hit the motorcycle of the claimants. As a result of this accident, the claimants fell down and sustained multiple grievous injuries. The accident had taken place, due to sole negligence and carelessness, on the part of respondent No.1-Subhash Chander. Had he been little vigilant, the accident could have been averted.

On the other hand, though, respondents No.1 and 2-driver and owner, had admitted about taking place of the accident, but however, they imputed negligence, on the part of claimant Fateh Singh, who was driving the motorcycle in question.

The insurance company, in its separate reply, had denied the accident. In fact, it took the plea that the accident had not taken in the manner, as alleged and all other averments were also denied.

Issues were framed. To substantiate the factum and manner of taking place of the accident, Fateh Singh himself stepped into witness box as

PW-1 and his sworn testimony, in the form of affidavit is Ex.PW1/A. Further, Rishi Raj deposed as PW-2, whose affidavit is Ex.PW2/A. Also, the claimants examined PW-3 Jaswant Rai, Criminal Ahlmad, who had brought the record of criminal case, registered against respondent No.1 and proved various documents, such like, copy of FIR, site plan, chargesheet and report under Section 173 Cr.P.C., which are Ex.P1 to Ex.P4. Also, the claimants examined PW-4 Dr.Ajay Kapoor, Medical Officer, Civil Hospital, Karnal, who deposed about having medico-legally examined Fateh Singh and Rishi Raj, on 01.03.2008 and proved the MLRs, which are Ex.P5 and Ex.P6, as well as, admission and discharge slip Ex.P7 and supplementary MLR Ex.P8. Further, PW-5 Dr.Mej Pal, Medical Officer, Civil Hospital, Karnal, had proved the disability certificate Ex.P9.

Thereafter, learned counsel for the claimants, tendered into evidence, medical bills relating to Fateh Singh i.e. Ex.P10 to Ex.P58 and that of claimant Rishi Raj Ex.P59 to Ex.P72 and closed the evidence.

On the other hand, learned counsel for the respondents had only tendered into evidence, certain documents and closed the evidence.

After hearing learned counsel for the parties and on appraisal of the evidence, brought on record, more particularly, considering the site plan Ex.P2, prepared during the course of investigation of the criminal case, learned Tribunal had concluded about taking place of the accident, on account of negligence, on the part of driver of the motorcycle i.e. Fateh Singh and thus, dismissed the claim petitions.

Being aggrieved, the appellants-claimants have filed the respective appeals, as detailed aforesaid.

At the very outset, learned counsel for the appellants-claimants has assiduously submitted that learned Tribunal has not appraised the evidence in correct perspective. It overlooked the fact of respondent No.1-Subhash Chander, having not stepped into witness box and it also overlooked the fact that upon investigation of the case registered against respondent No.1, prima facie, materials showing negligence, were found, to put him on trial. It is submitted that substantive testimonies of the claimants have been discarded. On mere presumptions and assumptions, learned Tribunal had concluded about negligence, to be there, on the part of driver of the ill-fated motorcycle i.e. Fateh Singh.

On the contrary, learned counsel for the respondents have vehemently refuted the aforesaid claim. They contended that learned Tribunal has rightly considered the road regulations and concluded about the negligence, on the part of driver of the motorcycle and therefore, there is no case made out for acceptance of the appeals and reversal of judgment of denial of the compensation.

In view of the rival submissions aforesaid, one must note that proceedings under the Motor Vehicles Act, are summary proceedings. It is well settled legal position that the claimants were required to establish their case, on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt, cannot be applied by the Tribunal, while dealing with the motor accident cases. It is true that occurrence of the accident, having regard to the provisions contained in Section 166 of Motor Vehicles Act, is a sine qua non, for entertaining a claim petition, but that would not mean that learned Tribunal should adopt hyper technical and

trivial approach, more particularly, considering the site plan, prepared during the course of investigation of the criminal case, registered against the driver of the offending vehicle and also, when the author/investigating officer, has not been examined and that driver of the offending vehicle, had also not stepped into witness box.

The claim petitions cannot be decided, on the basis of the documents of the criminal case. At the same time, it is required to take into consideration that some discrepancies in the evidence of the claimants' witnesses, might have occurred, but the core question before the Tribunal is establishment of the accident and the role assigned to be proved by preponderance of probability.

In this backdrop, adverting to the case in hand, it is pertinent to mention that as already observed aforesaid, in the earlier portion of the judgment, the categoric claim of the appellants-claimants is that the accident was caused, due to sole negligence, on the part of respondent No.1, while driving the bus bearing registration No.DL-1PB-7339. Both the claimants, who were occupants of the ill-fated motorcycle, at the relevant time, while in the witness box, have categorically deposed to this effect and reiterated the same, in their respective affidavits.

Also, it should be noted that respondent No.1-Subhash Chander, though, had admitted about the accident, but had imputed negligence, on the part of driver of the motorcycle. That being so, it is further to be noticed that respondent No.1 has not stepped into witness box. Why so, no reason, as such, has been assigned. In fact, he was the best person, who could have substantiated about manner of taking place of the accident, but however, he

had chosen to remain away from the witness box. In this context, reliance, as such, has been solely placed upon site plan Ex.P2, without examination of the investigating officer.

The documents of the criminal case, proved through sole examination of the Ahlmad of the Court, where the criminal trial is faced by respondent No.1, as such, cannot be considered as substantial evidence, while discarding the testimonies of the claimants. Apart from bald assertion of negligence, at the behest of driver and owner of offending bus, no evidence, as such, has been produced to substantiate this plea.

The lodging of the FIR, was followed by filing of the chargesheet, for the offences under Sections 279, 337 and 338 IPC, which again, re-inforces the allegations in the FIR, insofar as, the occurrence of the accident was concerned and the role of respondent No.1, in causing the said accident.

Proceeding further, even if, for the sake of arguments, the site plan Ex.P2, proved through PW-3 Jaswant Rai, Criminal Ahlmad, as such, is taken into consideration, then also, close perusal of the same reveals that there is note given on the site plan, thereby, depicting Mark ‘A’ to be the point, where the accident had taken place. However, close perusal of the site plan reveals that there are two point ‘A’, shown in the site plan. Nothing as such, is coming forth, to which ‘A’, the note given relates to. Further, also it should be noticed that it is categoric claim that claimants were coming from Rajond and proceeding towards Makhala. However, both the said places are not depicted in the site plan. In the given circumstances, things still would have worked better, had the author of the site plan i.e. the investigating

officer, having been examined, who could have straightened the things further, but however, he has not been examined.

In the given circumstances, even though, learned Tribunal had considered that there were no lights, as spelt out in the cross-examination and on this account, it was held that the claimants have not approached the Court with clean hands, but however, such is a very hyper technical interpretation given. This is myopic approach, more particularly, when in the cross-examination, PW-1 Fateh Singh had explained away, as he stated that lights installed at ITI Chowk, were not in working condition and the traffic constable had signalled and only then, they started to proceed further.

Thus, on scrutiny of the evidence aforesaid and also taking into consideration the fact of respondent No.1-Subhash Chander, not having stepped into witness box, more particularly, while he was facing criminal trial and also considering the clear and specific testimonies of both the claimants, tested on the touchstone of preponderance of probability, the factum and manner of taking place of the accident, being outcome of negligence, on the part of respondent No.1-Subhash Chander, stands amply established and thus, the finding on this count, as recorded by learned Tribunal, is hereby reversed.

In this backdrop, now let us consider the extent of compensation, to be awarded to the appellants-claimants.

Firstly, let us take up the case of appellant-claimant Fateh Singh. He was the driver of the ill-fated motorcycle, at the relevant time. It is his categoric claim that he was 30 years old and was doing agricultural work and also working as an agent of Mahindra and Mahindra Insurance

Company. From both the said sources, he had income of Rs.1,00,000/- and Rs.20,000/- respectively. It is also his categoric claim that he had sustained multiple serious injuries on vital parts of the body i.e. on his head, right leg, right thigh, left eye, left arm etc., as detailed in the MLR. In his affidavit Ex.PW1/A, he has deposed about having sustained injuries, as asserted in the claim petition and further also deposed about having remained admitted in General Hospital w.e.f. 01.03.2008 to 15.03.2008 and thereafter, he was shifted to Dr.Sachdeva Nursing Home, Karnal, where he remained admitted till 26.03.2008. Besides the same, he also asserted that he had become permanent disabled upto 30%.

Furthermore, PW-4 Dr.Ajay Kapoor, has deposed about having medico-legally examined Fateh Singh, on the day of accident and he deposed that he found injuries mentioned in the MLR, which is Ex.P6. Perusal of Ex.P6 reveals that claimant-Fateh Singh had sustained injuries. Two injuries were lacerated wound over left temporal area of scalp and left pinna. Also, the other injuries were the abrasions on the left arm as well as right leg. PW-5 Dr.Mej Pal, Medical Officer, had proved the disability certificate Ex.P9. On the basis of the recitals of the said disability certificate, it is emphatically submitted that disability was to the extent of 30%. Besides the same, various bills have also been tendered into evidence by counsel for the claimants, which are Ex.P10 to Ex.P58.

Considering the aforesaid evidence, it is pertinent to mention that no satisfactory evidence has come on record, with regard to the indulgence of claimant Fateh Singh in agricultural pursuit and also about working as an agent with Mahindra and Mahindra Insurance company, as

asserted. Besides the same, the MLR, as observed aforesaid, contained as many as three injuries. Most importantly, the disability certificate, coming on record is Ex.P9. Even though, the doctor has been examined, but however, no details, as such, of the injuries found, on the person of Fateh Singh has been stated by the doctor. Close perusal of the disability certificate reveals that diagnosis was, as herein given:-

> "***Vision Rt Eye 6/24 Left eye-Hand movements close to face. Refraction-Right eye-0.75 DS/-0.50DCx90-6/6 Left eye- -0.5DS/-0.75DCx115 Hand movement. Anterior segment B/E-Within Normal limits.***"

On the basis thereof, also it was observed that in view of the above findings, the candidate has thirty person (30%) visual handicap.

More importantly, there is no mention made about the injuries to be permanent. There is stated to be partial optic atrophy, on the basis whereof, it was stated that he was 30% visual handicap. The partial optic atrophy is a condition, where the optic nerve, which carry signals from the eye to the brain is damaged, leading to vision loss, which can be partial or complete. If we co-relate the MLR to the disability certificate, the detail of the injury as mentioned in disability certificate, stands sufficiently connected to the injury caused in the accident in question. However, it being the temporary or permanent, as such, is not evident. No evidence, in this regard, has come on record. No doctor, as such, who extended the treatment to the patient has been examined. Even the doctor, who had conducted medico-legal examination has not deposed about the kind of injuries so suffered. Moreover, the doctor, who had proved the disability certificate, did not further dilate upon the nature of the injuries, on the basis whereof, 30%

assessment of the disability was worked upon.

Was there any vision loss or not, that does not stand established and whether the condition, could be reversed, the same also does not stand established. But, anyhow, some wild guesswork, very close to the proximate reality, has to be made, with regard to the compensation, on account of injuries sustained by claimant Fateh Singh.

During the course of treatment, Fateh Singh must have been put on special diet and he must have been taken care of by one attendant as well as must have spent some amount on mode of transportation, adopted by him, during his visits to the hospital. Even though, the bills, as such, have been tendered into evidence, but however, the bills have not been duly proved. The complete particulars of his identity, as such, have not been stated therein, to sufficiently connect the bills with him. But anyhow, Fateh Singh must have spent some amount on his treatment also.

Considering all the aforesaid facts, it is appropriate to grant a consolidated amount of Rs.80,000/- to appellant-claimant Fateh Singh, as compensation.

Now, let us consider the case of claimant-Rishi Raj. It is categoric claim of Rishi Raj that he was 45 years, at the time of accident. He was doing agricultural work and was also running a milk dairy by keeping 10 buffaloes. On account of the accident, he had sustained injuries on his right foot, right thigh, right knee etc., as detailed in his MLR. In his affidavit Ex.PW2/A, he deposed to this effect and further also categorically deposed about having sustained extensive injuries, on the vital parts of his body, as detailed in the claim petition and that he remained admitted in the

hospital. He also deposed that he had become permanent disabled. Besides the claimant himself, PW-4 Dr.Ajay Kapoor, had also deposed about having medico-legally examined Rishi Raj, on the day of accident and proved MLR, copy whereof is Ex.P5. Close perusal of Ex.P5 reveals that he had sustained lacerated wounds on his right great toe as well as ventral aspect of 3rd, 4th and 5th finger of right foot. Besides the same, there was red abrasion on the front of right knee and there is another abrasion on the middle of right leg.

However, there is no evidence adduced, to establish his hospitalization or the kind of treatment undergone by him. In his case also, the bills, which are produced on record, do not stand sufficiently connected to him and as such, the bills, are not taken into consideration. But anyhow, considering the kind of injuries, a consolidated amount of Rs.30,000/- is granted to appellant-claimant Rishi Raj as compensation.

The liability of the respondents, to pay the amount of compensation, as worked upon aforesaid, in both the cases, is held to be joint and several. The appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the claim petition, till realization of the amount of compensation.

With the above observations, both the appeals stand allowed.

April 03, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**