
(2009) 05 SHI CK 0023
In the High Court Of Himachal Pradesh

Sanjay Rathore

APPELLANT

Vs

Prakam Singh and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 05 SHI CK 0023

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The injured has come in appeal against the award dated 31.7.2004 passed by the learned Motor Accident Claims Tribunal (II), Mandi in Claim Petition No. 13 of 1999, dismissing the claim petition of appellant which was filed by him u/s 166 of the Motor Vehicles Act, 1988 (for short Act).

2. The pleaded case of the appellant is that on 9.6.1998 at about 7.15 a.m., he was riding motor cycle No. DHT-785 as a pillion rider which was being driven by his brother Vinay Rathor, a tempo bearing No. HP-53-947 came from Joginder Nagar side in high speed and collided with motor cycle No. DHT-785. In the accident, occupants of the motorcycle sustained injuries. The tempo No. HP-53-947 was being driven by respondent No. 2 rashly and negligently at the time of accident. The appellant sustained fracture of right knee and other multiple injuries. The appellant filed petition claiming Rs. 2.5 lac compensation.

3. The petition was contested by respondent No. 1 by filing reply, in which he denied the rash and negligent driving on the part of respondent No. 2. It was contended that accident took place due to rash and negligent driving on the part of Vinay Rathor. The compensation claimed is excessive. The vehicle was insured with respondent No. 3 and therefore, respondents No. 1 and 2 are liable to be indemnified by respondent No. 3.

4. The respondent No. 2 also filed reply to the petition, he denied that accident

was caused due to his rash or negligent driving. He has submitted that accident took place due to rash and negligent driving of motorcycle No. DHT-785. The respondent No. 3 also contested the petition and submitted that tempo driver was not holding valid and effective driving licence at the time of accident. There was breach of terms and conditions of the Insurance Policy and therefore, respondent No. 3 is not liable to indemnify respondent No. 1. The amount of compensation claimed is excessive. The learned Tribunal had framed the following issues:

1. Whether the petitioner suffered multiple injuries on his person on account of the accident took place on 9.6.98 at 8.15 AM near girls school Joginder Nagar while he was riding on the motorcycle bearing No. HP-53-947 owned by respondent No. 1 and driven in rash and negligent manner as alleged? OPP
2. If issue No. 1 is proved in affirmative whether the petitioner is entitled to claim compensation if so, to what extent and from whom? OPP
3. Whether the accident took place due to rash and negligent driving of the motorcycle by its driver Vinay Rathor as alleged ? OPR 1 & 2
4. Whether the respondent No. 2 was not having valid and effective driving licence and he was driving the vehicle in violation of terms and conditions of Insurance Policy? OPR-3
5. Whether the petitioner is bad form non-joinder of necessary parties? OPR-3.
6. Relief.

The issues No. 1 to 3 were answered in negative, no findings were returned on issues No. 4 and 5 and the petition was dismissed on 31.7.2004 , hence injured has come in appeal.

5. I have heard Mr. G.R. Palsra, Advocate, learned Counsel for the appellant, Mr. Sanjeev Sood, Advocate, learned Counsel appearing on behalf of respondent No. 3, none appeared on behalf of respondents No. 1 and 2. I have also gone through the record. Mr. G.R. Palsra has submitted that the learned Tribunal has held that appellant had sustained injuries in the accident which was attributable to rash and negligent driving of respondent No. 2 who was driving his vehicle at excessive speed. He has submitted that learned Tribunal has erred in awarding nil compensation to the appellant. The appellant has proved injuries sustained by him and his hospitalization but those documents have not been properly considered. The appellant is entitled to compensation on account of pain and suffering and of his down grading in service by the army authorities on medical grounds which are directly connected with the accident. There is no rebuttal of the statement of appellant regarding his pain and suffering and expenses incurred by him on his treatment. He has prayed for setting aside the impugned award and awarding of compensation to appellant. Learned Counsel for respondent No. 3 has supported the impugned award.

6. The learned Tribunal has held that accident took place due to rash and negligent driving on the part of respondent No. 2 who was driving vehicle No. HP-53-947. The respondents have accepted the finding recorded by the learned Tribunal on negligence in as much as they have not filed any cross-objections in the appeal. In these circumstances limited question left in the appeal is regarding the amount of compensation.

7. PW-2 Sanjay Rathor claimant has stated that he sustained fracture injury in the accident, he was taken to CHC Joginder Nagar and thereafter to Army Hospital Northern Command, Udhampur. His further promotion has been stopped due to medical disability. The army doctors have down graded him medically vide Ex.PW-2/A and Ex.PW-2/B. He has spent Rs. 15000 to Rs. 20,000 on his treatment. He has not recovered and cannot work properly. In cross-examination he has stated that he has not brought record of expenses. He has also denied the suggestion that now he has completely recovered.

8. PW-3 Amar Thakur has stated that truck No. HP-53- 947 was involved in the accident. PW-4 Vinay Rathor, brother of the appellant has stated about the accident. He has also stated that he and his brother sustained injuries in the accident. RW-1 Surjit Dogra, Licence Clerk Licensing Authority, Bainath has proved licence Ex.RW-3-1/A of Ashok Kumar which was valid for Light Motor Vehicle non transport. He has stated that there was no endorsement in the licence for driving transport vehicle. The licence was valid from 15.7.1997 to 14.7.2002. RW-2 Prakam Singh has stated that he was owner of tempo No. HP-53-947 which is a Light Motor Vehicle. He has proved cover note Ex.PW-2/A of the vehicle. He has stated that he had engaged PW-2 for driving the vehicle after examining his driving licence. Respondent No. 3 through its advocate in the learned Tribunal had tendered Insurance Policy along with terms and conditions Ex.R 3/X.

9. The Medical Board on 5.4.1999 examined Sanjay Rathor and issued Ex.PW-2/A. The disability of the appellant has been mentioned open fracture Patella (Rt) in Ex.PW-2/A. The previous medical category CEE(T) X 6/12 years w.e.f. 22 Sept. 98 has also been mentioned in Ex.PW-2/A. As per Ex.PW-2/A the appellant was placed in low medical category CEE(P) w.e.f. 22nd March 99 on the basis of medical board held on 5.4.1999. The summary of opinion has been mentioned in Ex.PW-2/B. As per Ex.PW-2/B patient was advised for surgery for which he was unwilling and he was recommended to be placed in medical category CEE (P).

10. The perusal of Ex.PW-2/A and Ex.PW-2/B would show that the appellant had sustained open fracture Patella (Rt). The accident took place on 9.6.1998. The appellant was treated at CHC Joginder Nagar, Army Hospital, Udhampur, but he had not recovered from the accident upto 5.4.1999 when Ex.PW-2/A was issued. The next date for considering the case of appellant was fixed on 22.3.2001 in Ex.PW-2/A. PW-2 Sanjay Rathor was examined on 26.10.2002 and on that date he has stated that till then he was not recovered. He has been down graded by army doctors in medical category which has affected his promotion. In these

circumstances, it cannot be said that the grievance of appellant for compensation is without any substance.

11. The fact cannot be denied that appellant must have spent some amount on his treatment but there is no proof of such expenses and it is reasonable to infer that since appellant is serving in army, therefore, he must have been treated by the Army free of cost. Therefore, in absence of proof of medical expenses actually incurred by appellant he is not entitled to any amount on account of expenses incurred by him on his treatment. However, this is not the end of the matter, the accident took place in the year 1998, the appellant had sustained fracture around knee and had not recovered till he made the statement before the learned Tribunal, the medical category of the appellant has been down graded by the army doctors. It is common knowledge that army needs absolutely fit persons and medical disability in a soldier will definitely affect his service career. There are no fixed norms to assess compensation in such type of a case. The appellant was about 26 years of age at the time of accident and he has long career in the army. In peculiar facts and circumstances of the case, compensation can be assessed on the basis of some conjectures. Therefore, I am of the opinion that appellant is entitled to at least lump sum amount of Rs. 25,000/- compensation, if not more on account of injuries sustained by him in the accident on account of pain and suffering, lowering him in medical category by army medical authorities etc. The accident took place due to rash and negligent driving of vehicle No. HP-53-947 by respondent No. 2 which is owned by respondent No. 1, therefore, respondents No. 1 and 2 jointly and severally are liable to pay the amount of Rs. 25,000/- along with 9% interest to the appellant from the date of filing of the petition till deposit/realization.

12. The next question is regarding the liability of respondent No. 3-insurer. The Policy Ex.RW-2/A and Ex.R3/X of vehicle No. HP-53-947 for the period of 12.1.98 to 11.1.99 have been proved on record. The accident took place on 9.6.1998 during the currency of the policy. RW-2 Prakam Singh has stated that he was the owner of vehicle No. HP-53-947, a Light Motor Vehicle. Clause 21 of Section 2 of the Act defines Light Motor Vehicle where the unladen weight does not exceed 7,500 K.G. There is nothing on record to show unladen weight of vehicle HP-53-947. In these circumstances, it can not be said that vehicle No. HP-53-947 was Light Motor Vehicle. PW-3 has stated that licence Ex.PW-3/A of Ashok Kumar was of LMV non transport. In Policy Ex.RW-2/A vehicle No. HP-53-947 has been shown goods vehicle. Goods carriage comes in the category of transport vehicle as per Clause 41 of Section 2 of the Act. The driving licence Ex.RW-3/A of Ashok Kumar is valid for LMV non transport and not for driving heavy goods vehicle or medium goods vehicle. It has not been established that vehicle No. HP-53-947 was light goods carriage vehicle. On the contrary in Ex.P3/X policy the vehicle has been shown as truck. In other words Ashok Kumar was not holding valid and effective driving licence to drive goods vehicle HP-53-947 at the time of accident and therefore in view of Policy Ex.RW-2/A, respondent No. 3 insurer is not liable to indemnify respondent No. 1

13. No other point was urged.

14. The result of above discussion, the appeal is allowed, award dated 31.7.2004 passed by learned Motor Accident Claims Tribunal (II), Mandi in Claim Petition No. 13 of 1999 on the point of compensation is set aside and an amount of Rs. 25,000/- is awarded as compensation to appellant/claimant alongwith 9% interest per annum from the date of filing of the petition till deposit/realization. The respondents No. 1,2 jointly and severally shall be liable to pay the awarded amount of compensation Rs. 25,000/- along with 9% interest per annum to appellant/claimant. The respondent No. 3 insurer is exonerated. No costs.