
Kaju alias Gurwinder Singh and Another Vs Sondhi Ram and Another
**
 Sondhi Ram Vs Kaju and Another**

FAO No"s. 4547 and 7060 of 2010 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 1, 2013

Acts Referred:

Penal Code, 1860 (IPC) " Section 279, 338

Citation: (2014) 2 ACC 15

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: Vineet Chaudhary in FAO No. 4547 of 2010 and Mr. Sanjay Verma in FAO No. 7060 of 2010, for the Appellant; Vineet Chaudhary, Advocate in FAO No. 7060 of 2010 and Mr. Sanjay Verma, Advocate in FAO No. 4547 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

CM No. 19170 of 2010 in FAO No. 4547 of 2010

1. Delay of 12 days in filing the appeal by Kaju alias Gurwinder Singh and another is condoned for the reasons given in the application.

FAOs No. 4547 and 7060 of 2010

The aforesaid are the two appeals brought against the award dated 08.04.2010 passed by learned Motor Accidents Claims Tribunal, Yamuna

Nagar at Jagadhri (for short "the Tribunal"). Vide the impugned award, the claim made by Sondhi Ram for compensation on account of the injuries

suffered in the accident that took place on 05.10.2008 has been allowed and a sum of Rs. 92,261/- with interest @ 7.5% per annum from the

date of filing the petition till the date of realization of the amount has been awarded. While Kaju alias Gurwinder Singh and Manjit Singh challenged

this award as having been wrongly passed, Sondhi Ram, the claimant has brought his appeal for enhancement of the compensation. The facts

necessary to be noticed for disposal of the aforesaid two appeals are as under:--

Sondhi Ram was riding pillion of a motorcycle bearing registration No. HR-02-2404 which was driven by Gurdial Singh. Two bags of vegetables

were being carried on the motorcycle. When the motorcycle was in village Dera Salimpur, a tractor trolley bearing registration No. HR-01N/4972

came from the opposite side. It was driven by Kaju, respondent No. 1 in a rash and negligent manner, at a fast speed and by coming on the wrong

side of the road, had hit the motorcycle, on which the claimant was travelling. The claimant suffered multiple injuries including fractures. FIR No.

131 dated 11.10.2008 for an offence punishable under sections 279 and 338 IPC was registered against respondent No. 1. The claimant took

treatment at Kohli Hospital, Jagadhri and had spent about Rs. 60,000/- in his treatment. He also suffered disability which affected his working and

earning capacity. He also became dependent on others. He claimed his age at the time of accident as 52 years and to have been earning Rs.

5000/- per month under the employment of Gurbax Singh as labourer.

2. The appellants Kaju and Manjit Singh resisted the claim petition denying involvement of their vehicle in the accident. It is further claimed that the

claimant met with an accident out of his own fault as he lost control of the vehicle on account of heavy load placed on the same.

3. On the pleadings of the parties, the following issues were settled by learned Tribunal:--

1. Whether the accident in question causing injuries to the claimant had been caused by respondent No. 1 by driving the tractor-trolley bearing No.

HR-01N/4972 in a rash and negligent manner, as alleged? OPP

2. If issue No. 1 is in affirmative, what amount of compensation the claimant is entitled for and from whom? OPP

3. Whether the petition is bad on account of non-joinder of necessary party i.e. owner of motorcycle bearing No. HR-02/2404 ?OPR

4. Relief.

4. The parties led their respective evidence. Hearing learned counsel for the parties, learned Tribunal allowed the claim petition and awarded a sum

of Rs. 92,261/- as compensation to the claimant Sondhi Ram.

5. Learned counsel for the appellants Kaju alias Gurwinder Singh and Manjit Singh has drawn my attention to para No. 3 of the award where

Sondhi Ram is shown to have pleaded that the motorcycle was driven by Gurdial Singh son of Pritam Singh. According to him, while appearing in

the witness box, he had stated that the motorcycle was driven by Avtar Singh. In this regard, he drew my attention to para No. 9 of the award.

According to him, this contradiction itself shows that he was not telling the truth.

6. Learned counsel for Kaju alias Gurwinder Singh and Manjit Singh has further submitted that it was a case of old disability. According to him,

Dr. Deepender Singh, PW-4 clearly prove that the disability was on account of old case of lateral condyle of right femur fracture with restricted

right knee movement and difficulty in squatting and sitting cross legged. According to him, this clearly proves that he was not entitled to any amount

as compensation. He has further submitted that the motorcycle was carrying two bags of vegetables and the accident took place due to the loss of

stability of the motorcycle on account of the hanging bags of the vegetables. He has further submitted that there is delay in lodging the FIR which

shows that the version of the occurrence has been concocted.

7. Learned counsel for Sondhi Ram, the appellant in FAO No. 7060 of 2010 and for the respondents in FAO No. 4547 of 2010 has submitted

that the delay in lodging the FIR stands explained. According to him, no difference is made to the case by variations in names of the driver of the

motorcycle. According to him, it may be possible that the driver had two names and the same person might have been known by the name of

Gurdial Singh as well as Avtar. He has further submitted that carrying of bags of vegetables would not mean anything in this case because nothing

has come on the record to prove that by hanging of the bags of the vegetables, the motorcycle had become unstable and that it could not be

properly driven by its driver. He has further submitted that the disability was assessed much after the accident and Dr. Deepender Singh, PW-4,

was bound to say that it was a old case of fracture. According to him, Dr. Pardeep Kumar Kohli, PW-5 had brought the record and proved that

the claimant Sondhi Ram had suffered this fracture in the accident that took place on 05.10.2008.

8. The fact that at one point of time, Sondhi Ram, the claimant told the name of the driver of the motorcycle as Gurdial Singh and at another to be

Avtar strikes the mind. However the same appears to be inconsequential for various reasons. The first is that the claimant is only a pillion rider.

Some other person was driving the motorcycle and the question is only as to whether the motorcyclist was rash or negligent in driving his vehicle or

the accident is an outcome of rash and negligent driving of the tractor-trolley. It can also be said that the claimant forgot the name of the driver and

wrongly told the name of the driver as Avtar in the witness box. It can also be possible that a person might have been known by these two names.

There can be other reasons also. One thing can be said certainly that this circumstance does not help the driver of the tractor-trolley in any way.

9. There is cogent evidence that the tractor driver took the tractor to the wrong side of the road and had hit the motorcycle. The accident,

therefore, is not on account of any zigzag or unstable movements of the motorcycle which was having bags of vegetables hanging to it.

10. The statement of Dr. Kohli, PW-5 is clear enough to prove that Sondhi Ram suffered injuries in the accident in question. He was brought to

Dr. Kohli on 05.10.2008 with compound fracture of right knee joint. Though it has not come in the award as to when the claimant was examined

to assess his disability, yet the disability is assessed only when the injuries became stable. Naturally in that event it would be called old fracture of

femur.

11. For these circumstances, I find that the appeal brought by Kaju alias Gurwinder Singh and another has no merit. On the other hand, nothing

could be brought to my attention to prove that any amount as compensation has been wrongly calculated by learned Tribunal or learned Tribunal

has failed to assess the compensation under any other head. In these circumstances, I do not find any merit in both the appeals and consequently

dismissed the same with no order as to costs.