

(2011) 03 P&H CK 0761

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 2919 of 1999

Jagdish Mitter Puri

APPELLANT

Vs

Baldev Singh and Others

RESPONDENT

Date of Decision: March 16, 2011

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K.Kannan, J.

The appeal is against the dismissal of the petition for what the Tribunal discarded to be a lack of proof of involvement of insured's vehicle. Soon after the accident there was an entry in the MLR that the claimant had suffered head injury by the involvement of a Maruti Van. There was no reference to registration number. However, a FIR had been registered on the same day referring to the Maruti Van as having registration No. CH01J-6769. P.W. 3 Karam Singh stated that while undertaking investigation it was found that number was not CH01J-6769, but, was on the other hand CH01J-8769. The claimant when he gave his evidence stated that the number had been wrongly given, it should have been only 8669. Yet another witness P.W. 7 also stated that number had been wrongly given, it should have been only 8669. Therefore, three registration numbers were introduced in the course of trial and the Tribunal found the discrepancy as not going to establish the involvement of the vehicle.

2. Learned Counsel for the claimant states that even the oral evidence at the trial which makes a reference to 8669 was also a mistake, but there was evidence that the vehicle was a police escort vehicle for a Member of Parliament at that time. The police official P.W. 3 had also stated that in his investigation he found the vehicle No. 8769 was an escort vehicle. Since the identity of the vehicle alleged to have been involved is consistent with reference to the make of the vehicle, namely, Maruti Van and that further that vehicle was an escort van for a Member of Parliament, I will not

take the issue of discrepancy with reference to registration number for the mistake is only with reference to the first digit "6" when it should have been "8".

3. Learned Counsel appearing for the insurance company points out that R.W. 2 was examined to say that the vehicle had been a part of a fleet maintained by the VIP security at the relevant time and entries used to be made for the stationing of these vehicles. R.W. 2 stated that on 22.10.1994, the vehicle had been at the security line at 6.30 p.m. and it was sent on escort duty the following day on 23.10.1994 at 11.20 a.m. vide DDR No. 23 dated 23.10.1994. According to him, if the vehicle had gone out at 9.30, there must have been an entry in the DDR. In the cross-examination of R.W. 2 it was elicited that he had not been posted in the VIP security line where the vehicles were used to be parked and he also admitted as follows:

I do not know if the vehicle in question has moved out during the aforesaid period, because at that time I was not MHC at that place. I have no knowledge if the vehicle was taken in possession by the police.

This admission leaves yet a scope for the vehicle to have gone out and R.W. 2 was not, therefore, the most competent person to say that the vehicle was not still being retained in the same place and that the accident could not have taken place. I take the evidence of P.W. 1 and P.W. 2 as regards the identity of the vehicle by its manufacture and it was a part of a fleet of vehicles that was provided to a VIP for security and take this alongwith the investigation conducted by the police that zeroed-in on this vehicle as having been involved in the accident.

3. The Tribunal has not considered the issue of quantum, but having regard to the fact that the accident was in the year 1994, I proceed to examine the same on the basis of the records available. It is seen from the hospital filed in Court that he had been admitted immediately in the hospital and he was in the hospital for 7 days and in that period operation had been done on his head as a major treatment for an extra-dural haematoma. The operation procedure was also brought through the discharge certificate. There is no Doctor's evidence placed on the outcome of the surgery or how the patient was faring for the rest of the period, but the medical bills produced show that he had fairly long treatment extending for about 10 months. The claimant himself gave evidence to the effect that he had spent Rs. 25,000- Rs. 30,000/- on his treatment and that he was earning Rs. 10,000/- per month, but he was not able to look after his business properly and his income was hardly Rs. 4,000- Rs. 5000/- subsequently. He had also stated that he still feels sudden pain in the head and his eye sight had also gone weak as a result of the injuries and he had lost his memory also. I find the quality of evidence inadequate to assess any disability for the person. However, I am of the view that the claimant shall be provided with the entire medical expenses. The medical bills that had been produced in Court showed that he had incurred expenses of about Rs. 5000/-. Having regard to the fact that he had treatment for a whole year, I would take the medical expenses to be 15,000/-. A head injury and a surgery also must have meant a lot of pain and suffering and I

would award another Rs. 15,000/- towards pain and suffering for his hospitalization for a week. For transportation for the whole period I would provide Rs. 2500/- and make additional provision for Rs. 2500/- towards extra diet. I cannot provide for any loss of earning capacity as having resulted from the accident, since appropriate and adequate proof was not brought before the Tribunal. After all, it was possible for the claimant to have produced the bills pertaining to his printing press to show that if there had been any reduction in income over a period of time. The head injury must have resulted in a complete loss for some time and during the period of his active treatment he must lost at least @ 2500/- per month and I would provide for the same for 6 months. The over compensation shall, therefore, be Rs. 50,000/-.

4. The liability shall be on the Respondents jointly and severally and the claimant shall have the liberty to realize the same against the insurer with interest @ 7.5% from the date of petition till the date of payment.

5. The award is modified and the appeal is allowed to the above extent.