

**IN THE COURT OF DR. PANKAJ, MOTOR ACCIDENT CLAIMS
TRIBUNAL, FARIDABAD.**

MVA Petition No.26 of 2013
Date of Instt: 1.6.2013/9.8.2014.
Date of Decision: 1.7.2015

Ajab Singh son of Shri Karan Singh, resident of House No.279-A/MCF, Arya Nagar, Ballabgarh, Tehsil Ballabgarh, District Faridabad.

..... Petitioner

Versus

1. Bhure Khan son of Shri Chhotey Khan r/o Village Chhatnaure, P.S. Babugarh, Chhawani, District Hapur (UP) (Driver of offending Indica Car No. UP-16T-6642).
2. Life Time Travels, J-92, Jalvayu Vihar, Sector 25, NOIDA (UP),, through its Manager/Director/authorized representative. (Owner of offending Indica Car No. UP-16T-6642).
3. M/s National Insurance Co. Ltd., through its Divisional Manager/Branch Manager, Office at Neelam Bata Road, Faridabad Tehsil and District Faridabad. (Insurer of offending Indica Car No. UP-16T-6642).

..... Respondents.

**Claim petition under Section 166 of the Motor
Vehicles Act for grant of compensation of
Rs.10,00,000/-.**

Present: Shri C.P. Sharma, Advocate for the petitioner.
Shri R.C. Parashar, Advocate for respondent No. 1
Respondent No.2 ex-parte VOD 26.8.2013
Shri Jatinder Singh, Advocate for the respondent No.3.

AWARD

The petitioner Ajab Singh has filed this petition seeking compensation for injuries sustained by him in a road accident.

2. As per the petitioner, on 8.4.2013 the petitioner was coming back to his house on his motor-cycle No. HR-29R-7333 after closing his hotel and when he was crossing G.T. Road, the offending Indica Car No. UP-16-T-6642 being driven by the

respondent no.1 in a very rash and negligent manner without blowing horn, came from Delhi side heading towards Palwal side, at a very high speed came and hit the motor-cycle of the petitioner as a result of which he fell down and sustained multiple grievous injuries. Initially he was shifted to Government Hospital, Ballabgarh and later on he was got admitted in Sarvodya Hospital, Sector 8, Faridabad. He remained admitted there for about 4-5 days. His left leg was operated upon. He is still under treatment. He has become a permanently disabled person. He remained bed ridden for long. Due to fracture in his leg he suffered a lot of pain and agony and his working capacity has been diminished. The accident took place due to sole rash and negligent driving of Indica Car No. UP-16-T-6642 by respondent No.1. He was running hotel business and was earning approximately Rs.20,000/- per month and thus he has sustained loss of earnings. FIR No. 183 dated 10.4.2013 was registered in Police Station City Ballabgarh under Sections 279, 337, 338 IPC. It has thus been prayed that the petition be allowed as prayed for.

3(a) Respondent No.1 has contested the petition but has not filed any written statement.

3(b) Respondents No.3 also challenged the petition taking preliminary objections regarding maintainability, concealment of facts, violation of the terms and conditions of the insurance policy, respondent No.1 was not possessing a valid driving licence. On merits, it has been denied that the accident had taken place with the alleged offending vehicle. It has been denied that the

petitioner had sustained any such injuries or that he had spent amount of Rs.1,50,000/- on his treatment. The petitioner himself was a wrong doer and is himself author of the accident as he was under the influence of liquor. Rest of the averments of the petition have also been denied and it was, therefore, prayed that the petition be dismissed.

4. From the pleadings of the parties, the following issues were framed on 17.9.2013 :

1. Whether on dated 8.4.2013 at about 11.00 p.m. at Ballabgarh, which falls within the jurisdiction of Police Station City Ballabgarh, resident No.1 Bhure Khan had driven the vehicle bearing registration No. UP-16-T-6642 rashly and negligently and caused the accident in which petitioner Ajab Singh had sustained injuries on his person ?
OPP.
2. Whether the claimant is entitled to compensation, if so, to what amount and from whom ?OPP.
3. Whether h petition is not maintainable in the present form ?
OPR.
4. Whether the petitioner has got no cause of action and locus-standi to file the present petition ?OPR.
5. Relief.

5. In support of his case, the petitioner has examined and proved the following witnesses/documents :

PW-1	Ajab Singh- petitioner	Tendered in evidence affidavit, Ex. CW1/A, tendered discharge summary, Ex.CW1/B, copy
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		of MLR, Ex. CW1/C, FIR, Ex. CW1/D
PW-2	Nitin Aggarwal, Guardian Pharmacy	Proved bills, Ex. P-1 to Ex.P-10.
CW-2	Dr. Ravi Shankar Gaur, Orthopaedic Surgen, B.K. Hospital, Faridabad	Proved disability certificate as Ex. CW2/A

On the other hand, respondent No.1 appeared in the witness box as RW-1 and tendered in evidence his affidavit as Ex. RW1/A and documents as Ex. R-1 to Ex. R-4.

6. Arguments have been heard and records have been perused carefully.

The issue-wise findings with reasons thereof are as under :

ISSUES NO.1

7. The Ld. counsel for the petitioner has submitted that he had suffered serious injuries in a road side accident caused by the rash and negligent driving of Indica Car No. UP-16-T-6642. The respondents were liable to compensate him as the vehicle belonged to the respondent No.2 and was insured with the respondent No.3. The respondent No.1 had driven it at a high speed, rashly and negligently and had caused the accident. He had suffered serious injuries including fractures and had become permanently disabled. The testimony of the petitioner and the medical evidence on record was sufficient to prove his version. It has, therefore, been prayed that the petition be allowed as prayed for.

The Ld. counsel for the respondents 1 & 3 have submitted that the petitioner has set up a false case. No such

accident was ever caused by Indica Car No. UP-16-T-6642. False FIR has been lodged against the respondent No.1 by the petitioner in collusion with the local police. Ld. Counsel for the respondent No.3 contended that the offending vehicle was not being driven by a person holding a legally valid driving licence and the respondent No.2 has contravened and violated the terms and conditions of the insurance policy. The petitioner had not suffered any serious injuries. It has been further contended that even if this Hon'ble Tribunal comes to the conclusion that the accident had taken place with Indica Car No. UP-16-T-6642, then it was a case of head on collision and the injured was also negligent in driving the car in question and he was also under the influence of liquor and thus it was a case of contributory negligence. It was, therefore, prayed that the petition be dismissed.

8. From the perusal of the records of the case, it is observed that the petitioner had suffered injuries in a road side accident caused by rash and negligent driving of Indica Car No. UP-16-T-6642 by respondent No.1. In this regard, the petitioner Ajab Singh himself appeared as PW-1 and reiterated the above version. He has deposed that on 8.4.2013 at about 11.00 p.m. He was coming to his house on his motor-cycle bearing No. HR-29R-7333 TV Star after closing his hotel work and when he was crossing G.T. Road with care and observing traffic rules, the offending Indica Car No. UP-16-T-6642 being driven by respondent No.1 rashly and negligently without blowing horn at a high speed came and hit his motor-cycle as a result of which he sustained

grievous injuries. He has further deposed that the respondent procured a false report regarding drunk of the petitioner in collusion with the doctors. He further deposed that his left leg bone was crushed in the accident. He spent more than Rs.2,00,000/- on his treatment. Copy of FIR has been produced on record as Ex. CW1/D a perusal of which shows that the registration number of the offending vehicle is mentioned therein. Though the name of the respondent No.1 is not mentioned in the FIR but later on during investigations, the police might have known his name.

Though respondent No.1 has appeared in the witness-box as RW-1 and has tried to rebut the claim of the petitioner, but he has admitted in his cross-examination that he is driver of Indica Car No. UP-16-T-6642 and a criminal case was registered against him for the said accident. He was also arrested in that criminal case which is still pending. Police had filed challan against the respondent No.1 after thorough investigations and after finding him to be negligent and responsible for the accident in question. Thus, it cannot be said to be a case of contributory negligence. The standard of evidence required for the purpose of this enquiry is not as stringent as that required in civil or criminal litigation. In these circumstances, this Tribunal has no hesitation in holding that the petitioner has successfully proved that he had sustained injuries in an accident caused by the rash and negligent driving of Indica Car No. UP-16-T-6642 by respondent No.1.

This issue is accordingly decided in favour of the petitioner.

ISSUES NO.2 TO 4

9. All these issues are interlinked and interconnected and are being taken together for decision.

The Ld. Counsel for the petitioner has submitted that on account of his injuries, he was initially taken to Govt. Hospital, Ballabgarh and then was shifted to Sarvodya Hospital, Faridabad where he remained admitted for several days and his left leg was operated upon. He further deposed that the petitioner also remained admitted in Sheetal Hospital, Palwal. He has spent more than Rs. Two lacs on his treatment and he is still under treatment. A huge amount is still required for his future treatment. It has been further contended that the petitioner was running a hotel and was earning Rs.20,000/- per month. Due to the accident, he has lost his source of earning. The disability certificate issued by Civil Surgeon, Faridabad is Ex. CW2/A, vide which the disability of 33.33 percent of left lower limbs have been assessed. He remained admitted in different hospitals for long time. He has undergone lot of pain and agony and his entire life has become a dark. It has thus been prayed that the petitioner may be awarded compensation as prayed for.

The Ld. counsel for the respondents submitted that the petitioner had filed this petition merely to extract compensation by falsely implicating Indica Car No. UP-16-T-6642. In fact, no such accident had occurred with the vehicle in question. Ld. Counsel for

the respondent no.3 also contended that the respondents No.1 and 2 were conniving with the petitioner in order to evade liability. The respondent No.1 was not possessing a valid and effective driving licence and the respondent no.2 has contravened and violated the terms and conditions of the insurance policy and as such, the respondent No.3 is not liable to compensate the petitioner in any manner. It has, therefore, been prayed that the petition be dismissed.

10. It is observed from the records of the case that the petitioner has already successfully proved that the accident in question was caused by the rash and negligent driving of Indica Car No. UP-16-T-6642 by the respondent No.1. It may next be pointed out that the petitioner has clearly stated that he had sustained serious injuries in the accident. In this regard, he himself deposed as PW-1. Discharge summary issued by Sarvodya Hospital, Ex. CW1/B, shows that the the petitioner had sustained fracture left tibia/fibula (type II open). Nitin Aggarwal, Senior Purchase Assistant from Guardian Pharmacy, Sarvodya Hospital, Sector 8, Faridabad has been examined as PW-2 who has proved medicine bills, Ex. P-1 to Ex. P-10. Dr. Ravi Shankar Gaur, Orthopaedic Surgeon of B.K. Hospital, Faridabad has been examined as CW-2 who has proved disability certificate, Ex. CW2/A. Disability to the extent of 33.33% for left lower limbs has been assessed by the Board of Doctors. Ex. CW2/A has been issued by Civil Surgeon, Faridabad. As per petitioner, he also remained under treatment in Sheetal Hospital, Palwal and bills, Ex.

P11 to Ex. P-14 and Ex. P-16 have also been produced on record. Ex. P-15 is the discharge card issued by Sheetal hospital. The total of all these bills comes to approximately **Rs.37,000/-**. The petitioner is entitled to this amount. The disability certificate, Ex. CW2/A shows that the petitioner had disability to the extent of 33.33% of his left lower limb. He is awarded a sum of **Rs.67,000/-** on this count. Though the petitioner has failed to establish on record any loss of income suffered by him but keeping in view the injuries to the petitioner, a sum of **Rs.10,000/-** is awarded on account of loss of earnings. The petitioner must have undergone pain and agony due to the injuries sustained by him. He must have spent some amount on special diet, transportation etc. He is awarded another sum of **Rs.30,000/-** on all these counts. The petitioner is thus entitled to Rs.37,000/- + Rs.67,000/- + Rs.10,000/- + Rs.30,000/- = **Rs.1,44,000/-**.

11. The next question which arises for determination is as to who is liable to make the payment of compensation. Driving licence of respondent no.1 has been placed on record as Ex. R-1. A perusal of this document shows that this driving licence was issued in the name of the respondent No.1 by Licencing Authority, Hapur and the same is meant for Motor-cycle and light motor-vehicle and the same was issued on 21.4.2004. There is nothing on record to doubt the genuineness of this driving licence. Ex. R-2 is the copy of registration certificate of vehicle No. UP-16T-6642, Ex. R-3 is the copy of authorisation certificate of Tourist Permit, Ex. R-4 is the fitness certificate. As such, respondent No.1 was possessing a valid

and effective driving licence on the date of accident and there is nothing on record to show that the respondent No.2 has contravened and violated the terms and conditions of the insurance policy in any manner. The petitioner has locus-standi and cause of action to file the present petition and there is nothing on record as to how the petition is not maintainable.

Thus issue No.2 is decided in favour of the petitioner in the above terms while issues No.3 and 4 are decided against the respondents.

ISSUE NO.5 RELIEF.

12. In view of the foregoing discussion and findings, the petition is allowed with costs and the petitioner is held entitled to a total amount of **Rs.1,44,000/-** from the respondents No.1 to 3 jointly and severally alongwith simple interest @ 9% per annum from the date of filing of the petition till its realisation. However, since the offending vehicle was duly insured with the respondent No.3, it is the respondent No.3 who shall pay the aforesaid compensation amount. The petitioner shall be liable to supply the particulars of his bank account to the respondents within **fifteen days** from today. Memo of costs be prepared accordingly. File be consigned to records.

Announced in open Court.
1st day of July, 2015.

Dr. Pankaj,
Motor Accident Claims Tribunal,
Faridabad.

Present: Shri C.P. Sharma, Advocate for the petitioner.
Shri R.C. Parashar, Advocate for respondent No. 1
Respondent No.2 ex-parte VOD 26.8.2013
Shri Jatinder Singh, Advocate for the respondent No.3.

No evidence in rebuttal is to be led. Arguments heard.

Vide separate order of even date, the petition has been allowed.

File be consigned to records after due compliance.

Dr. Pankaj,
MACT,Fbd. 1.7.2015.