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PARMESHWARI

v.

AMIR CHAND & ORS.

(Civil Appeal No. 1082 of 2011)

JANUARY 28, 2011

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**[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]**

*Motor Vehicles Act, 1988 – s.166 – Motor Accident – Right leg of appellant-claimant fractured – Appellant suffered 32% permanent disability – Her leg was shortened by two inch – PW1, one of the witnesses to the accident, took the appellant to the doctor's clinic from where she was referred to a Nursing Home in Hisar – Appellant filed complaint in the office of SSP Hisar which was sent in original by SSP Hisar to SSP Hanumangarh – Compensation claim – Tribunal awarded to the appellant, compensation of Rs.1,36,547/- along with 9% interest – High Court set aside the award of the Tribunal, inter alia, on the ground that none from the office of SSP, Hanumangarh came to prove the complaint; that the testimony of PW.1 was not reliable and further that the claim petition was filed four months after the accident –Held: Filing of complaint by the appellant is not disputed as it appears from the evidence of PW.3, the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar – Consequently, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint – PW1 is not related to the appellant but as a good citizen, he extended his help to her to ensure that she got medical treatment – His evidence cannot be disbelieved just because he did not file a complaint himself – Finding of the High Court that as the claim petition was filed after four months of the accident, the same was “a device to grab money from the insurance company” was perverse in the absence of any material – In a road accident claim, strict principles of proof*

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*in a criminal case are not attracted – Judgment of High Court quashed and that of the Tribunal is restored.* A

The appellant was going on a Motor Cycle sitting on the pillion seat, when respondent no.2, came from the other direction in a scooter and hit her right leg as a result of which she fell down and her right leg was fractured and she received multiple injuries. The appellant suffered 32% permanent disability and in view of the combined fracture of both bones of her right leg, her leg was shortened by two inch. B

The accident was witnessed by certain persons and one of them, PW1, took the appellant to the doctor's clinic from where she was referred to a Nursing Home in Hisar. The appellant filed a complaint in the office of SSP Hisar which was sent in original by SSP Hisar to SSP Hanumangarh. Subsequently, the appellant filed a compensation claim petition. On consideration of the materials on record, the Motor Accident Claims Tribunal awarded to the appellant, compensation of Rs.1,36,547/- along with 9% interest. C D E

The High Court set aside the award of the Tribunal on grounds that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh but none from the office of SSP, Hanumangarh came to prove the complaint; that the testimony of PW.1 was not reliable and further that the claim petition was filed four months after the accident. The instant appeal was filed challenging the order of the High Court. F G

Allowing the appeal, the Court

HELD:1. In the instant case, the compensation was certainly not an excessive one. Rather the computation had been made modestly. [Para 9] [1101-E] H

A 2. The well considered decision of the Tribunal was set aside by the High Court, inter alia, on the ground that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh but none from the office of SSP, Hanumangarh came to prove the complaint. The filing of the complaint by the appellant is not disputed as it appears from the evidence of PW.3, who is the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar. If the filing of the complaint is not disputed, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint. The official procedure in matters of proceeding with the complaint is not within the control of the appellant, who is an ordinary village woman. She is not from the upper echelon of society. The general apathy of the administration in dealing with complaints lodged by ordinary citizens is far too well known to be overlooked by High Court. In this regard the perception of the High Court in disbelieving the complaint betrays a lack of sensitized approach to the plight of a victim in a motor accident claim case. [Para 10]

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E [1101-F-H; 1102-A-B]

3. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of PW.1. Such disbelief of the High Court is totally conjectural. PW1 is not related to the appellant but as a good citizen, he extended his help to the appellant by helping her to reach the Doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of PW1 cannot be disbelieved just because he did not file a complaint himself. [Para 11] [1102-C-D]

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4. The total approach of the High Court was not sensitized enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from

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the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. [Para 12] [1102-E-F]

*Bimla Devi and others vs. Himachal Road Transport Corporation and others* [(2009) 13 SCC 530] – relied on.

5. The judgment given by the High Court is not sustainable and is therefore quashed while that of the Tribunal is restored. [Para 13] [1103-B]

**Case Law Reference:**

(2009) 13 SCC 530                      relied on                      Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1082 of 2011.

From the Judgment & Order dated 08.10.2009 of the High Court of Punjab and Hayana at Chandigarh in F.A.O. No. 2484 of 2009.

Kanwar Udai Bhan, Dr. Kailash Chand for the Appellant.

The Judgment of the Court was delivered by

**GANGULY, J.** 1. Heard learned counsel for the appellant.

2. Despite service of notice on the respondent Nos.2 and 3, nobody appeared.

3. The appellant is impugning herein the judgment and order of the High Court of Punjab and Haryana dated 8th October, 2009 in FAO No.2484 of 2009. An appeal was filed before the High Court by the owner of the scooter, Amir Chand, against an award dated 12.2.2009 passed by the Motor Accident Claims Tribunal, Fast Track Court, Hisar, awarding to

A the appellant, compensation of Rs.1,36,547/- along with 9% interest.

B 4. The contention of the owner of the scooter, before the High Court, was that the accident and his involvement in it was not proved and the claim petition should have been dismissed. The High Court ultimately upheld the appeal of the owner and set aside the findings of the Tribunal.

C 5. The material facts are that on 22.01.2003 at about 12.00 noon the appellant herein, the claimant before the Tribunal, respondent No.1 before the High Court, was going from Baganwala to Tosham on a Motor Cycle (No.HR 16C-8379), driven by Balwan with the claimant on the pillion seat. When the Motor Cycle was half a kilometer away from Baganwala, Suresh – respondent No.2 herein, came from the other D direction in another scooter (No.HR 20-5793) from the wrong side and hit the right leg of the appellant as a result of which she fell down and her right leg was fractured and she received multiple injuries. The accident was witnessed by certain persons and one of them, Umed Singh, took the appellant to Dr. Punia's E clinic from where she was referred to Chawla Nursing Home, Hisar, where she remained admitted till 6.2.2003. The matter was also reported to SSP, Hisar. Ultimately, the claim petition was filed by her on account of her serious injuries.

F 6. The Tribunal in its judgment considered the evidence of PW.1-Umed Singh as also the evidence of Dr. Parveen Chawla-PW.2, Dr. R.S. Dalal as PW.5 apart from examining the appellant-PW.4 and also one Satbir Singh as PW.3. It has come on evidence of PW.2-Dr. Parveen Chawla that on 22.1.2003 the appellant was admitted with diagnosis of fracture of tibia. Plating and bone grafting was done by P.W.2-Dr. G Parveen Chawla and the appellant was discharged on 6.2.2003. The discharge card was also proved. PW.3-Satbir Singh deposed that the appellant moved a complaint in the office of SSP Hisar on 11.3.2003 and the same was sent in H

original on 2.4.2003 by SSP Hisar to SSP Hanumangarh. PW.5-Dr. R.S. Dalal also deposed that the appellant was examined on 17.12.2003 by a Medical Board comprising of Civil Surgeon Dr. O.P. Phogat, Orthopedic Surgeon Dr. T.S. Bagri and Dr. Dayal himself and on examination the appellant was found to have 32% permanent disability. In view of combined fracture of both bones of her right leg, her leg was shortened by two inch. The disability certificate was also proved.

7. The Tribunal also considered the evidence of RW.1-Amit Chand and RW2-Suresh Kumar. Apart from the aforesaid evidence, the Tribunal also considered the detailed account of the accident given by the appellant as PW.4.

8. This Court finds that on consideration of the aforesaid materials on record, the Tribunal granted compensation to the appellant to the extent of Rs.1,36,547/- with interest at 9% per annum from the date of filing of the petition till its realization.

9. This Court finds that the compensation is certainly not an excessive one. Rather the computation has been made modestly.

10. Unfortunately, this Court finds that the said well considered decision of the Tribunal was set aside by the High Court, inter alia, on the ground that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh but none from the office of SSP, Hanumangarh came to prove the complaint. The filing of the complaint by the appellant is not disputed as it appears from the evidence of PW.3-Satbir Singh, who is the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar. If the filing of the complaint is not disputed, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint. The official procedure in matters of proceeding with the complaint is not within the control of the appellant, who is an ordinary village woman. She is not

- A coming from the upper echelon of society. The general apathy of the administration in dealing with complaints lodged by ordinary citizens is far too well known to be overlooked by High Court. In this regard the perception of the High Court in disbelieving the complaint betrays a lack of sensitized approach to the plight of a victim in a motor accident claim case.

11. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh-PW.1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the Doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself.

12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitized enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in *Bimla Devi and others vs. Himachal Road Transport Corporation and others* [(2009) 13 SCC 530] are very pertinent.

- G "In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance
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of probability. The standard of proof beyond reasonable doubt could not have been applied." A

13. This Court, therefore, is unable to sustain the judgment given by the High Court and quashes the same and restores that of the Tribunal. B

14. The entire payment of the compensation amount must be deposited with the Tribunal in terms of its award within a period of six weeks from today by a demand draft and thereupon the Tribunal will immediately send notice to the appellant and handover the demand draft to the appellant only within two weeks thereafter. The copy of the order may immediately be transmitted to the Tribunal. C

15. The appeal is, thus, allowed with the aforesaid directions and observations. D

B.B.B.

Appeal allowed.