

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.1073 of 1989

Date of Decision: 03.09.2015

Jai Chand

.....Appellant

Vs.

Subhash Chander and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- None for the appellants.

Mr.Ajit Sihag, Advocate for the respondent No.1.

Mr.R.K.Bashamboo, Advocate for respondent No.3.

RITU BAHRI, J.

FAO No.1073 of 1989

The appellant has filed this appeal against the award dated 23.05.1989, whereas, he has been awarded compensation of Rs.37,322/-. After assessing of Rs.37,322/- as compensation, appellant was held entitled to claim of Rs.18,661/- as the accident had taken place on account of negligence of both the drivers and the liability was assessed as 50:50.

FACTS NOT IN DISPUTE

On 11.02.1988, the appellant-Jai Chand was going to Hissar from Uklana while driving truck No.HRU No.9545. At that time, it was loaded with gunny bags of wheat. When the appellant reached near village Sarsod, truck No.HYF 4270 being driven by respondent-Subhash Chander came from the opposite direction at a fast speed. On seeing this truck, the appellant slowed down the speed of his truck and took it to his extremely left hand side of the road but as respondent No.2 was driving in a rash and negligent manner and hit his truck with the truck of the appellant as a result of which, it turned turtle.

The appellant suffered injuries and accordingly, he was taken to Dr.P.S.Sangwan's hospital, Uklana by conductor Bhim Sain, who was also present in the said truck. The appellant remained admitted for about two months and accordingly, he spent a sum of Rs.10,000/- on his treatment. As he could not do any work during this period, he also suffered Rs.25,000/- due to loss of work. So far as truck No.HRU 9545 was concerned, it was completely damaged in this accident and the appellant had to spend a sum of Rs.91,450/- on its repair and replacement of its damaged parts. Thus, the appellant had claimed a sum of Rs.1,16,450/- before the learned Tribunal.

In the joint written statement, respondents No.1 and 2 had denied the allegations of the appellant and asserted that in fact this accident took place due to rash and negligence of the appellant who was driving truck No.HRU 9545 and that due to this accident, truck No.HYF 427- was badly damaged. Respondent No.1-Subhash Chander was appeared as RW2 before the learned Tribunal. The paragraph 7 of the award, it was held by the learned Tribunal that both the trucks came from the opposite directions when this accident took place. The right hand side of truck No.HYF 4270 was damaged and hence, both the drivers were negligent while driving their respective trucks because otherwise, they could very easily taken their vehicles on their left hand sides on seeing each other's truck, coming from opposite directions. Therefore, it was held that this accident took place due to contributory negligence of the drivers of both the vehicles and their contribution was fifty-fifty.

COMPENSATION ASSESSED BY THE MACT

The compensation has been assessed by the learned Tribunal in respect of injury suffered by the appellant and damage to the truck bearing No.HRU 9545. The claimant had remained admitted from 11.02.1988 to

upto the period till 05.03.1988 and a sum of Rs.1289/- was spent on his treatment. He had also been awarded Rs.2000/- on account of loss of income during this period as truck was being repaired during this time.

Compensation for damage to the truck has been assessed by the learned Tribunal after taking into consideration all the bills in details at paragraphs 13 to 18 produced before the learned tribunal. The total compensation on account of damage to the truck was assessed at Rs.34,033/- after depreciation. As such, total compensation was assessed on account of injury suffered by the appellant and loss to the damage of truck at Rs.37,322/- and the claimant was held entitled only 50% of this amount i.e. Rs.18,661/- due to contributory negligence of both the drivers.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. The appellant suffered injuries as a result of the accident.

The calculation of the award shows that all the bills had been duly taken into consideration and there is no error in so far as the calculation on account of the damage to the truck and on account of injury suffered by the appellant assessed by the learned Tribunal. However, the above said compensation has been awarded without giving anything on account of diet charges and pain and suffering. Keeping in view that accident took place in the year 1988, Rs.4000/- is being awarded towards special diet and pain and suffering. Since, the accident had taken place due to negligence of both the drivers and their liability was assessed as fifty-fifty, the appellant is entitled to

claim only 50% of this amount i.e. Rs.2000/-.

The enhanced amount of compensation of Rs.2000/- shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and Others, 2015(1) SCC 539.** Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

03.09.2015
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