

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

**FAO No.1976 of 1994
Date of decision : 16.03. 2015**

Ricky @ James Kumar, minor, through his father Shri Janak Raj

....Appellant

vs.

Sucha Singh and others.

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Kawaljit Singh, Advocate,
for the appellant.

Mr. Raj Kumar Bashamboo, Advocate,
for respondent No.3-Insurance Company.

AMOL RATTAN SINGH, J.

This appeal has been filed against the Award of the learned Motor Accident Claims Tribunal, Jalandhar, dated 28.07.1994.

2. The appellant, Ricky @ James Kumar, is stated to have been aged 9 years at the time when the claim petition was filed before the learned Tribunal, in the year 1992. Consequently, he was represented through his father, Janak Raj, before the Tribunal, as also this Court.

3. Vide the impugned judgment/Award, the learned Tribunal dismissed the claim petition before it, by holding that the accident in which

the appellant was injured was not caused by the rash and negligent driving of the offending vehicle, driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3.

Consequently, since the respondents were not held liable for having caused the accident at all, the issue of compensation payable by them was not gone into by the Tribunal.

4. The facts giving rise to the claim were that, the appellant is stated to have been standing near the "Rehri" (hand-cart) operated by his father, a fruit seller, on 16.06.1992, at about 4:00 PM, at Chowk Maqsoodan, Jalandhar.

5. As per the claim petition, the contents of which have been reproduced in the impugned Award, truck No.PB07-A-9722, driven by respondent no.1, came at a high speed from the side of Jalandhar city and struck against the appellant, as a result of which he suffered injuries on various parts of his body.

He was removed to the Sacred Heart Hospital, from where he was referred to the Christian Medical College and Hospital, Ludhiana, his condition being serious.

A report about the accident is stated to have been lodged at Police Post Maqsoodan, vide DDR No.11, on 16.06.1992 (actually given as DDR No.14 in the claim petition).

6. The appellant is stated to have been a student of Class 3 in a Government Primary School in Jalandhar, at the time of the accident.

Though the injuries suffered by the appellant have not been discussed in detail in the Award, the claim petition having been dismissed on account of the finding on issue no.1 as already noticed, a perusal of the

claim petition itself, a copy of which is on record, shows that multiple grievous injuries, causing permanent disablement to the appellant, resulted from the accident. It has also been stated therein that (as on the date of filing of the petition), the appellant was still admitted in the hospital.

The claim petition also states, as is also contained in the pleadings before this Court, that the appellant suffered permanent disablement at the age of 9 years, thus affecting his entire life. Therefore, after including medical expenses etc. incurred by the appellants' father, a compensation of Rs.4 lacs was claimed, along with 15% interest thereupon.

7. Mr. Kawaljit Singh, learned counsel appearing for the appellant, submitted that the finding on negligence, by the learned Tribunal, was wholly lopsided, and the reliance placed, in the Award, on the alleged compromise entered into by the appellants' father with respondent no.2, by which a sum of Rs.15,000/- is stated to have been decided upon to be paid, was also non-appreciation by the Tribunal, of the fact that, firstly, such an alleged compromise was never fully proved and, in any case, cannot be binding upon a minor, against his interest.

8. As regards the finding on there being no negligence on the part of respondent no.1, learned counsel further submitted that, even factually, the finding was not fully supported by evidence, but also, in any case, such a finding could not be held against the appellant, because of his tender age, even if there was some fault on his part.

9. Learned counsel further submitted that the appellant has actually become permanently sterile, as per the testimony of the doctor who had appeared before the Tribunal as AW1; and as per the testimony of his father, Janak Raj, even his testicles and penis were crushed and a pipe had to be

inserted to help him to urinate, which could also be seen from the photograph of the appellant, exhibited before the Tribunal.

Other than that, Mr. Singh submitted, he also suffered other grievous injuries on his femur and abdomen and skin avulsion even on his thigh.

As such, learned counsel submitted that the appellant deserves all the relief as can be given to him, his whole life having been ruined.

10. On the other hand, Mr. R. K. Bashamboo, learned counsel appearing for the respondent-Insurance Company, submitted that upon the finding of negligence having come wholly against the appellant, inasmuch as he is found to have gone onto the highway/metalled road, upon which the truck was coming, the Tribunal was absolutely correct in its conclusion, and therefore, no compensation would be awardable to the claimant, despite the gravity of the injuries described.

He further submitted that even the identity of the truck that struck the appellant was not fully established and that, further, respondent no.1 had a fake driving licence, which fact has not been disproved before the Tribunal.

11. Having considered the arguments addressed by the learned counsel for the parties and having gone through the record before this Court, I find myself in agreement with the arguments raised on behalf of the appellant, inasmuch as, even if the negligence is attributable to the appellant, it cannot be lost sight of that he was a child about 9 years of age at the time of the accident and as such, cannot be held fully responsible for his actions. No doubt, children coming on to roads unchecked is a huge safety hazard not only to themselves but to drivers of vehicles and other

passersby who may also be affected by any such accident; still, in view of the fact that our roads, including our highways, have not been made “entry proof” from pedestrians, cyclists and animals, the burden falls eventually on motor vehicle drivers to be further more careful while driving their vehicles, especially in areas which are populated and prone to such like incidents and consequent accidents.

12. Before this Court discusses the evidence on negligence, as adjudicated upon by the Tribunal, it further needs to be noticed, at this stage itself, that a compromise of acceptance of Rs.15,000/- as total compensation by the appellants' father, from respondent no.2, cannot be held to be binding upon the appellant, he being a minor of tender age at the time of the accident, whose entire life, even as per the medical evidence led before the Tribunal, has been ruined due to the accident.

13. Therefore, before proceeding to decide upon the question of any compensation payable by the respondents, the facts leading up to the accident, as discussed in the Award of the Tribunal, need to be looked at.

14. As per the testimony of the appellants' father, Janak Raj, who appeared as a witness before the learned Tribunal, he was selling fruits from his “Rehri” (hand-cart) at Maqsoodan Chowk on 16.06.1992, and at about 4:00 PM, when his son was standing near the “Rehri”, a truck driven by respondent no.1 at a very high speed and in a rash and negligent manner, came from the Jalandhar side and struck against the appellant, who was stated to be standing about 10 to 12 ft. from the metalled portion of the road, on the “katcha” path.

15. The same version was corroborated by one Paul Singh, Carpenter, resident of village Maqsoodan, who is stated to have been known to the

appellants' father.

16. The learned Tribunal, however, disbelieved the testimonies of these two persons, firstly, on an appreciation of the factual situation, and secondly, as regards Paul Singh, his very presence at the spot, at the relevant time, was doubted.

Paul Singhs' testimony was not believed by the Tribunal because he admitted that he had not accompanied the injured to the hospital and he even did not know whether any case had been registered for rash and negligent driving against respondent no.1. He also denied knowledge of as to whether any compromise had ever been effected between the appellants' father and the truck owner, or not. He also did not know as to who had brought the police at the spot and had admitted that he had not gone to the police either. Lastly, he had also stated that he had been told the name of the driver by some other person, whose name he did not wish to disclose.

The learned Tribunal further found that this witness, Paul Singh, neither gave any statement before the police on 16.06.1992 when the accident took place, nor on 18.06.1992, when a report is stated to have been lodged by the father of the appellant.

17. The Tribunal also held that the appellants' father had not given the proper number of the truck and still further held that since the truck was coming from the Jalandhar side and going to Amritsar, with the appellant admittedly standing on the side of the road, where his fathers' "Rehri" was parked, it would mean that the truck, after crossing the entire metalled portion, had gone on to the "Katcha" path up to a distance of upto 12 feet, which was not the version given in the DDR filed before the police and that it was also not the version given even in the claim petition.

18. It needs to be noticed here, that though the Tribunal, in para-2 of its Award, states that the report of the accident was lodged at Police-Post Maqsoodan, vide DDR No.11 on 16.06.1992, it subsequently specifically does not refer to the said DDR, but only to DDR No.14 dated 18.06.1992, which was exhibited as Ex.AW2/A before it.

In fact, in para-24 of claim petition, it is stated that a report was lodged in Police Post Maqsoodan, Jalandhar, on 16.06.1992, which was recorded as DDR No.14 on that date itself.

Thus, there is obviously confusion with regard to whether only a single DDR on 16.06.1992 was lodged, or two DDRs were lodged; one on the date of the accident, on 16.06.1992, and thereafter again on 18.06.1992, which was exhibited as AW2/A. The one dated 18.06.1992, was a DDR recording the statement of the appellants' father, to the effect that he did not want to pursue any legal proceedings against respondent no.1 or any other person. That DDR (Ex.AW2/A), also records that on 17.06.1992, a Head-Constable and a Constable had gone to the Christian Medical College and Hospital, Ludhiana, and had sought the opinion of the doctor, who had opined that the patient was unfit to make a statement. Thereafter, as per the said DDR, on 18.06.1992 a head-constable was present at the Police Post when the father of the injured, i.e. Janak Raj, came present and recorded his statement with regard to his desire not to pursue with the proceedings.

Thus, though no DDR report lodged on 16.06.1992 is on record, however, the factum that police personnel went to the hospital on 17.06.1992, shows that a report had been lodged on 16.06.1992.

19. Given the above facts, the situation on the date of occurrence, would be that the appellant went on to the road at some point while standing

with his father, beside his handcart, and therefore got struck by the offending truck, on 16.06.1992. A DDR was lodged and between 16.06.1992 to 18.06.1992, some kind of compromise was struck between the appellants' father and respondent No. 2, i.e. the owner of truck No. PB07A-9722, by which the latter paid a sum of Rs. 15,000/- to the former, upon which Janak Raj made his statement on 18.06.1992 before the police, that he did not wish to pursue legal proceedings. Therefore, in my opinion, respondent No. 1 cannot be held wholly responsible for negligence leading to the accident.

However, as already observed hereinabove, even if a child is negligent in crossing the road or, in fact, enters on to a busy road/highway, the entire liability for that cannot be foisted upon the child, as it is incumbent upon a motor vehicle driver, driving in Indian road conditions, to ensure that the vehicle he/she is driving is at an extremely low speed, while crossing populated areas, in view of the fact that we do not have civic sense on either side, i.e. either in pedestrians/by-standers, or in motor vehicle drivers, so as to ensure even reasonable road safety. Thus, keeping in view the existent conditions, even though such conditions are to be deprecated, it is incumbent upon motor vehicle drivers to ensure that they are driving at extremely low speeds in populated areas, so as to further ensure that in case any person/animal, especially a human child, comes on to the road, the chances of a serious accident are minimised, even in case of impact after having applied the brakes on a vehicle.

Yet, even though finding that respondent no.1 cannot be wholly absolved of negligent driving, it can also not be lost sight of that it was also incumbent upon the appellants' father, through whom the claim petition and

the present appeal have been filed on behalf of then minor child (appellant), to have ensured that his son was adequately protected and looked after by the side of the road by the father himself, so as to ensure that he did not run on to the road.

Further in this regard, even though this Court has time and again noticed the fact that the appellant was only a 9 year old child at the time, it also cannot ignore that a child that age, with the appellant admittedly being a student of Class 3, is not wholly unmindful of the consequences of negligently coming on to a road with heavy traffic.

Hence, keeping in mind all these facts & factors on the issue of negligence, it is held that the appellants' father, as also respondent no.1, were equally negligent in the accident having been caused.

20. We now come to the issue of the other reason for the Tribunal to have dismissed the claim petition. It is seen that the Tribunal relied upon the compromise entered into between the appellants' father and respondent no.2, which was exhibited as Ex.R2 before the Tribunal, to hold that even though the appellants' father had denied such compromise, he could not deny his signatures on the said document or the fact that he told the police that he did not wish to pursue legal proceedings.

Having seen the reasoning given by the Tribunal and the circumstances given above, I find no reason to find fault with such finding of fact by the Tribunal, that such a compromise was actually entered into by the appellants' father with respondent No. 2.

However, no such compromise, in the opinion of this Court, could have been entered into against the interest of the minor, by his father, whether he did so voluntarily, or as claimed before the Tribunal, under

pressure. Hence, compensation on account of any such compromise, cannot be denied to a minor child, who has been maimed and shall remain ill-fated to be unable to procreate for the rest of his life. Though further reasoning on this is not required, however, it also cannot be lost sight of, that the compromise was obviously entered into by the appellants' father at a time when he was under extreme mental pressure, with his son having been injured in the manner that he was, and with him having to run between Jalandhar and Ludhiana for his treatment, which continued for a very long period, even upto and beyond the date of filing of the claim petition, as is stated in that petition and as can also be seen from the testimony of the witnesses who appeared from the hospital (AW4).

Hence, the reasoning given by the Tribunal that compensation is not payable, even on account of the compromise entered into by the appellants' father with respondent No. 2, is not accepted by this Court.

21. As regards Mr. Bashamboos' argument that respondent no.1 was not carrying a valid driving licence, firstly, no evidence in that regard seems to have been led before the Tribunal, as none has been pointed out to this Court. Secondly, even if such contention was to be proved, that can only give cause of action *inter se* respondents no.1 and 2 on the one hand and respondent no.3, i.e. the insurance Company, on the other hand. It would not detract from the rights of a victim of an accident to be paid compensation by the Insurance Company which had insured the vehicle, admittedly by a valid insurance policy, which is also on record of the Tribunal, as drawn attention to by learned counsel for the appellant (Ex.R-3).

22. Having held as above, it is now to be seen as to what compensation is awardable to the appellant on account of the accident

having been caused.

23. Though, normally, having decided the question on negligence, this Court would remit the case back to the Tribunal for determination of compensation, however, since the appellant was a minor who suffered permanent disability even as per the evidence led before the trial Court, in the form of testimonies of Dr.Amrit Lal, Registrar, Surgery, Christian Medical College and Hospital, Ludhiana, there would be no issue regarding determination of compensation on account of loss of income to the minor. The major part of the compensation would be with regard to pain and suffering and permanent disability. No doubt, hospital bills etc. need to be proved, but the evidence in that regard is on record, including the testimonies of witnesses relatable to such record.

24. Other than compensation to be paid for the permanent disability of sterility and loss of penis and testicles, as is obvious from the 3rd injury testified to by the doctor, which is also seen in the photograph of the child, that is exhibited in the record of the Tribunal at pages no.101 and 103 thereof (though strangely not assigned a specific exhibit number), and further read with the testimony of the appellants' father, the appellant would also be entitled to compensation for severe trauma, pain and suffering.

His father, who incurred the expenditure on his treatment, including hospital charges, medicines and transportation, as also suffered loss of income on the days that his son was admitted in the hospital and thereafter for follow-up treatment, even about one year after the accident, would also require to be compensated.

In addition, the father would also obviously be entitled to compensation for the pain, suffering and agony gone through by him, on

account of firstly seeing his child in that condition and secondly, on account of the harassment of running between hospital, home and Police Station etc.

Though in his testimony, the appellants' father (Janak Raj), who appeared as AW8 before the Tribunal, also stated that he had sold his house for Rs.80,000/- and had also sold a plot for Rs.92,000/- to meet the expenditure on the medical treatment of his child and he spent a total amount of Rs.2 lacs to Rs.3 lacs, no specific documents are on record to prove such sale etc.

25. The hospital charges were testified to by the Accounts Clerk of the hospital, who appeared before the Tribunal as AW4. As regards the medicines, the shop owner/partner of M/s Gurmail Medicines Centre, Ludhiana, testified as AW3 and admitted to the cash memos, Ex.AW3/1 to Ex.AW3/16, to have been issued by his shop.

Paramjit Singh, Proprietor of Dugg Medico, Ravi Dass Nagar, Jalandhar, also appeared as AW7 and testified to having issued the cash memos and bills of medicines, exhibited as Ex.AW7/1 to Ex.AW7/14.

26. All in all, a sum of Rs.4 lacs had been claimed on behalf of the minor claimant-appellant by his father, before the Tribunal, as already noticed earlier, which included medical expenses and compensation for permanent sterility etc.

27. Thus, if the matter has to be remitted to the Tribunal, it would only be to assess the loss of actual income to the father on account of the appellants' admission and follow-up treatment, as also to compute the actual medical expenditure in respect of which bills were exhibited before that Tribunal. However, since more than 20 years have gone by since the appeal was filed and it has been almost 23 years since the accident itself, in my

opinion, it would not be appropriate to remit the matter again to the Tribunal, possibly giving rise to another round of litigation.

Consequently, with the entire evidence available on record, this Court itself proceeds to determine the compensation to the appellant.

28. First, as regards the actual expenditure on the basis of bills exhibited before the Tribunal, read with the testimonies of the relevant witnesses mentioned above, it is seen that as per the Accountant of the Christian Medical College and Hospital, Ludhiana, Samuel Mall, Accounts Clerk, a total amount of Rs.31,000/- was paid as hospital expenses. Rs.25,000/- were paid by the appellants' father on discharge after the first admission, i.e. paid on 04.08.1992. Thereafter, Rs. 6,000/- were paid by him on the 2nd discharge on 13.06.1993, admission having taken place on 30.04.1993.

As regards the bills and medicines purchased, first between 13.08.1992 to 21.08.1992 from Gurmail Medicine Centre, Ludhiana, the bills on record amount to Rs.2750.50 paise and the amount of the bills that are on record, of M/s Dugg Medico, G. T. Road, Jalandhar, for the period from 18.05.1993 to 03.06.1993, comes to Rs.3442.85 Paise.

Hence, the total amount of expenditure on medicines, as per bills on record, was Rs.6193.35 paise; adding to that, the sum of Rs.31,000/- paid to the hospital, the amount spent on treatment comes to Rs.37,193.35 paise, which is rounded off to Rs.37,200/-.

29. Obviously, the appellants' father spent money on taxis and buses to go between Jalandhar and Ludhiana as deposed by him, for which a sum of Rs.10,000/- is awarded, wholly on probabilities, since no specific bills in that regard are seen on the record.

30. Coming now to the major compensation to be paid to the appellant, for permanent sterility and loss of limb. Though no specific percentage of disability has been assessed, and obviously the sterility and loss of penis and testicles would have no direct bearing on the earning capacity of the appellant, after attaining his adulthood, however, the fact that AW1 (Dr. Amrit Lal) specifically and emphatically stated that he had become sterile and could not procreate, itself would be reason enough to grant the appellant a high amount of compensation on that count, which, seen again with the obvious pain and suffering that he would have gone through, both, physical, and then mental, for the rest for his life, should not be less than Rs.10 lacs at least, in my opinion.

However, since this Court has held both, the appellant/his father and respondent no.1 equally negligent in causing the accident, the amount of compensation payable would be Rs.5 lakhs. But as the total amount of compensation claimed was Rs.4 lacs, the amount now ordered to be paid is Rs.4 lacs, payable by all the respondents, jointly and severally, to the appellant.

Thus, though the total sum which was claimed by the appellant was Rs.4 lacs only, the amount of compensation to be paid is not being restricted to Rs.2 lacs on account of 50% contributory negligence, as the total amount of compensation payable has been assessed by this Court to be Rs.10 lacs as already stated, but on account of the contributory negligence, it is being restricted to Rs.4 lacs.

31. The above amount of Rs.4 lacs would carry an interest at the rate of 10% per annum, from the date of filing of the claim petition, till the actual payment thereof.

32. Of the above amount, Rs.1 lac with 10% annual interest thereon, for the aforesaid period, would be paid to the appellants' father, Janak Raj, through whom this appeal and claim petition was filed, on account of the medical expenses incurred by him and the trauma and suffering and loss of income that he suffered on account of the treatment of his son, he being a daily income earner by sale of fruit from his hand-cart. Of course, if a sum of Rs.15,000/- has been already paid to him in terms of the compromise document, Ex.R/1, then the said amount would be deducted from Rs.1 lakh, from the date that Rs.15,000/- were paid.

33. The rest of the amount, i.e. Rs.3 lacs plus interest thereupon, would be payable to the appellant, to be initially deposited in a nationalized Bank, in the shape of a fixed deposit, giving the highest rate of interest, for a period of one year from the date of deposit, after which it would be released to the appellant.

In case the Insurance Company (respondent no.3) has any legal claim against respondents no.1 and 2 on account of a fake driving licence or for any other reason, it would be free to take legal remedies as are available to it in law, against the said respondents. However, the compensation now awarded to the appellant, shall be paid by the Insurance Company (respondent no.3) itself, at the first instance.

The appeal is, accordingly, allowed in the above terms.

**(AMOL RATTAN SINGH)
JUDGE**

16.03.2015
dinesh