

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

**FAO No.472 of 1995 (O&M).
Date of Decision: 02.12.2015.**

Gurpreet SinghAppellant.

VERSUS

Sanjiv Gupta and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Argued by: Mr. Ravi Ghakhar, Advocate for the appellant.

Mr. L.M. Suri, Sr. Advocate with
Ms. Rajni Paul, Advocate for respondent No.3.

SNEH PRASHAR, J.

1. This appeal has arisen from an award dated 15.11.1994 passed by learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as, “the tribunal”) in MACT Case No.176 of 1992 titled “Gurpreet Singh vs. Sanjiv Gupta and others” filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) awarding compensation to the appellant for the injuries suffered by him during a vehicular accident that took place on 02.05.1992 at about 9 p.m. at the I.T.I. Chowk, Ambala.

The claimant-appellant pleaded that he was driving his scooter

No.HR-01A-6130 (hereinafter referred to as, “the scooter”) in a slow speed and on his left side of the road whereas the Maruti car No.HR-07-1990 (for short, “the offending car”), which came from his opposite direction, was being driven at a fast speed and in a zigzag manner and had hit his scooter by coming on wrong side of the road. As a result of accident, he had sustained multiple injuries including a grievous injury on his right leg.

The petition was contested by the respondents (driver, owner and insurer of the offending car). In their joint written statement filed by respondents No.1 and 2 (driver and owner), the occurrence of accident was admitted but it was denied with vehemence that the driver of the car was rash and negligent. They submitted that the claimant had himself admitted in his statement recorded vide Daily Diary Report dated 03.05.1992 with the police that the car and the scooter slightly struck against each other in a bid to save a cyclist and that none of them was at fault.

In the written statement filed by respondent No.3-insurance company, all preliminary objections available to the insurer under the Act of 1988 were raised.

2. Considering the evidence adduced by both the parties in support of their respective narration of the accident, learned tribunal held that all the facts and circumstances of the case go to prove that the drivers of both the vehicles were rash and negligent. The ratio of their liability in causing the accident was fixed at 50:50.

For the pecuniary and non-pecuniary loss suffered by the claimant on account of injuries sustained by him during the accident,

learned tribunal awarded Rs.10,000/- on account of expenditure on treatment, medicines, transportation, special diet, room rent and operation fee etc.; Rs.5,000/- for the loss in income and Rs.15,000/- on account of disability to the extent of 15% suffered by the claimant. In all, an amount of Rs.30,000/- was allowed as compensation and it was held that since the claimant was equally responsible for causing the accident, he would be entitled for only 50% of the award amount i.e. Rs.15,000/- alongwith interest at the rate of 12% per annum from the date of petition till its realization. Costs of the petition was counted as Rs.500/-.

3. Feeling aggrieved by the award dated 15.11.1994 passed by learned tribunal, the claimant-appellant filed the instant appeal.

4. The submissions made by Mr. Ravi Gakhar, learned counsel representing the appellant and Mr. L.M. Suri, learned senior counsel representing respondent No.3 have been heard and record perused.

5. Learned counsel for the appellant argued that the factum of accident was not denied by the respondents. In his deposition made as PW1, the claimant testified that the offending car was being driven in a fast speed and in the bid to save the cyclist coming ahead of the car, respondent no.1-driver of the car turned his car towards his right side and as he lost control over the vehicle he drove towards the wrong side and struck his scooter which was stationery at that point of time. Learned counsel contended that there was no fault on part of the claimant which could lead to the accident and learned tribunal had erroneously held that the claimant and the driver of the car were equally negligent in driving their respective vehicles which

resulted in accident.

6. There appears to be no force in the argument of learned counsel for the claimant. At the very outset, it is important to note that in his pleadings, it was not the story of the claimant that a cyclist was coming ahead of the offending car who took a sudden turn towards his right side and in a bid to save the cyclist the driver of the car also took a turn and as he could not control his vehicle, the car struck into his stationery scooter. In the pleadings, the claimant had simply stated that the offending car had come from the opposite direction and as it was being driven in a zigzag manner it struck against his scooter on its right front side. His change in narration of the accident shows that he had tried to conceal the actual cause of accident.

7. Respondent No.1 Sanjiv Gupta, driver of the offending car stepped into the witness box as RW4. He gave a crystal clear version of the accident and deposed that at the spot of accident, claimant before all the persons and also before the police had admitted that there was no rash or negligent driving on part of the driver of the offending car. To support his testimony, respondent no.1 examined Sham Lal, Constable from Police Station Baldev Nagar, who produced the original register containing Daily Diary Report No.4 dated 03.05.1992 and proved the copy of the same as Ex.RW3/A. The claimant had also produced copy of the said Daily Diary Report in evidence i.e. Ex.PC. Learned tribunal found that the claimant in his pleadings and also through his deposition had tried to retract from the statement given by him to the police on the plea that his signatures on some

papers were obtained in the hospital by the police without explaining the contents to him and the said papers were later on converted into compromise, whereas he is a matriculate and he admitted that he had studied Hindi language upto matriculation and that just after 10-15 days of the accident his father had obtained copy of the police report/compromise but he never agitated or complained to any higher police authority with regard to recording of the compromise. Analyzing the testimony of the claimant-PW1 and driver of the offending car RW1, the findings of learned tribunal are as under:-

“The accident was caused on the main road connecting Ambala Cantt. and Ambala City. It is also called old Delhi Road. Width of the road is such that two vehicles can pass easily. Both the vehicles i.e. scooter and car coming from opposite direction. It is the deposition of both the drivers that a cyclist was going ahead of the car and that he took sudden turn towards ITI gate. Hence, there was no occasion for the driver of car to have turned his car towards right side of the road to save the cyclist from collision. Driver of the car was not to follow the cyclist towards his right side of the road to save the cyclist from colliding with the car. Rather if the cyclist had taken sudden turn, he could have turned his car towards kacha portion of the road on the left side so that the car may not hit cyclist. Rather it seems that when the cyclist took sudden turn towards his right side, the scooterist might have turned his scooter towards his right side of the road to save the cyclist colliding with the scooter and in that process he might have lost control over his scooter. Hence, circumstances go to prove that the scooter being driven with every fast speed even on this busy road at night time and the same was not

slowed down even at ITI crossing as on one side of the road there is ITI gate and on the other side, there is gate of doctors colony. Had the scooter been driven with a slow speed the accident could have been avoided. Similarly the car was also being driven with a fast speed. Had the car been slowed down at the chowk of ITI, when the cyclist took a sudden turn towards his right side and when the scooterist had to turn his scooter towards his right side of the road to save the cyclist, the accident could have been avoided if the car could be stopped or if it could be taken in kacha portion towards extreme left side of the road. All the facts and circumstances of the case go to prove that the part of drivers of both the vehicles and it is held that they are negligent to the extent of 50% each in causing the accident.”

8. Having considered all facts and circumstances relating to the accident as above, learned tribunal rightly concluded that there was equal fault on part of drivers of both the vehicles and accordingly their ratio of negligence in causing the accident was held as 50:50. There being no illegality or perversity in the above finding, the same is hereby upheld.

9. Coming to the quantum of compensation, as already observed above, learned tribunal awarded Rs.30,000/- to the claimant for expenditure on treatment, medicine etc., loss in income and disability. Apparently, nothing was awarded to the claimant for the pain and suffering undergone by him. From the ocular and documentary evidence produced by the claimant, learned tribunal recorded a finding in Para No.19 of the award that the claimant had suffered a fracture in lower part of the right femur. He had remained hospitalized at Civil Hospital, Ambala City for a period of 21

days and the plaster applied on his leg was opened after 1-1/2 month of his discharge from the hospital. Thereafter, he had taken treatment from Preet Hospital, Ludhiana where he was operated upon and he remained admitted w.e.f. 17.07.1992 to 21.07.1992 i.e. for four days. As such, for the agony, pain and suffering undergone by the claimant, he is allowed compensation to the tune of Rs.20,000/-.

As regards expenditure on treatment, medicine, transportation etc., no medical bill raised by any hospital or receipt against purchase of medicines etc. was produced by the claimant, however, considering the nature of injuries sustained by the claimant and the treatment taken by him, learned tribunal allowed him Rs.10,000/- on account of expenditure on medical treatment, purchase of medicines, transportation, special diet, room rent and operation fee etc. The claimant had suffered grievous injury. The total period of his hospitalization comes to about 25 days and even after his discharge from the hospital, he must have taken follow up treatment as initially his leg had remained under plaster and subsequently his leg had to be operated upon. Even if due to ignorance he was unable to preserve the bills, receipts etc., it cannot be denied that he must have spent good amount on treatment, medicine, his own transportation and transportation of his family member who had been attending on him during the period of his hospitalization as well as on special diet etc. Under the said heads, the amount of Rs.10,000/- awarded by the tribunal is enhanced to Rs.25,000/-.

10. For 21 days, the claimant remained hospitalized at Civil Hospital, Ambala City. The plaster on his leg was opened 1-1/2 month after

his discharge from the hospital, yet having not cured he took treatment from Preet Hospital, Ludhiana where he was operated upon. After operation also, he may not have been able to attend to his normal duties/occupation for about 2/3 months. He stated that he was earning Rs.3000/- to Rs.4000/- per month. The facts and circumstances indicate that he may not have been able to earn for a period of about five months after the accident. Taking his income as Rs.3000/- per month, instead of Rs.5000/- awarded by the tribunal, an amount of Rs.15,000/- is awarded to him for loss in income.

11. Lastly, as per the disability certificate Ex.PD produced by the claimant he suffered disability to the extent of 15%. No doctor of the Board of Doctors, who issued the disability certificate, was examined by the claimant. Therefore, it cannot be held to have been established that the disability to the extent of 15% was permanent. In any case, the claimant suffered no loss in future income as it was his own version that prior to accident he was running business in the name of Rose Poultry Feed and when he appeared in the witness box he was doing business in the name of his wife. Neither he stated nor he examined any doctor that because of the disability he was unable to discharge all duties relating to his business. Anyhow, the amount of Rs.15,000/- awarded as compensation by the tribunal for the disability suffered by the claimant is enhanced to Rs.30,000/-.

12. In the above premises, the compensation of the claimant-appellant is enhanced to Rs.90,000/- (which includes the compensation of Rs.30,000/- already awarded by the tribunal). Since the ratio of negligence

of the claimant has been fixed as 50% and the finding of learned tribunal to that extent has been upheld here-above, the claimant will be entitled to only 50% of the enhanced amount i.e. Rs.30,000/-. The insurance company to deposit the enhanced amount of compensation within 45 days of receipt of copy of this order failing which it shall be liable to pay interest on the enhanced amount from the date of order till realization at the rate of 7.5% per annum. With the above modification in the award dated 15.11.1994, the appeal stands disposed of.

(SNEH PRASHAR)
JUDGE

02.12.2015.

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