

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

1.

FAO No. 634 of 1996(O&M)

Date of Decision: August 26 , 2015.

Satya Vir Singh

..... APPELLANT(s)

Versus

State of Haryana and others

..... RESPONDENT (s)

2.

FAO No. 2961 of 1996(O&M).

Joginder Singh

..... APPELLANT(s)

Versus

Azad Singh and others

..... RESPONDENT (s)

3.

FAO No. 3076 of 1996(O&M).

Azad Singh

..... APPELLANT(s)

Versus

Joginder Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashit Malik, Advocate
for the appellant in FAO No.634 of 1996.

Mr. A.S.Virk, Advocate
for the appellant in FAO No.2961 of 1996 and
for respondent No.1 in FAO No.3076 of 1996.

Mr. Shokeen S.Verma, Advocate for
Mr. Keshav Partap Singh, Advocate
for the appellant in FAO No.3076 of 1996,
for respondent No.1 in FAO No.2961 of 1996 and
for respondent No.3 in FAO No.634 of 1996.

Mr. Ram Tilak Redhu, DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This order shall dispose of FAO No.634 of 1996 (Satyavir Singh v. State of Haryana and others), FAO No.2961 of 1996 (Joginder Singh v. Azad Singh and others) and FAO No.3076 of 1996 (Azad Singh v. Joginder Singh and others) as they arise on account of the same motor vehicular accident which took place on 01.10.1993.

Separate awards dated 11.08.1995 and 16.07.1996 have been passed in respect to claim arising from the same accident by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as, the 'Tribunal'). Vide award dated 11.08.1995, learned Tribunal has decided the claim petition filed by claimant – Satya Vir Singh (appellant in FAO No.634 of 1996) alongwith five other claim petitions. Claim petitions of appellants in FAO No.2961 of 1996 and FAO No.3076 of 1996 have been decided by a common award dated 16.07.1996 passed by the learned Tribunal.

Brief facts of the case are that, Haryana Roadways bus bearing registration No. HR-05-3584 proceeded from Delhi at night on 01.10.1993 for Chandigarh. Bus was full of passengers. On reaching a place near village Dadupur i.e., a few kilometers away from Karnal towards Chandigarh at 2.00 a.m. on the intervening night of 01.10.1993 and 02.10.1993, it struck against a truck bearing registration No. HRX-5491 by swerving onto the wrong side of the road. It struck against the truck which was on extreme left side of the road.

Truck was driven at a moderate speed by its driver – Joginder Singh (appellant in FAO No.2961 of 1996), who was not at fault. It was specifically pleaded that the bus was being driven in a rash and negligent manner at a very fast speed. Number of passengers including the Conductor of the bus (appellant in FAO No.634 of 1996) received injuries. FIR No.404 under Sections 279/337/338 IPC was registered against its driver – Azad Singh (appellant in FAO No.3076 of 1996) at police station Butana on 02.10.1993. Joginder Singh, driver of the truck (appellant in FAO No.2961 of 1996) also suffered injuries.

Learned Tribunal in its award dated 11.08.1995 (subject matter of FAO No.634 of 1996) concluded that the accident, in question, had occurred on account of rash and negligent driving of the offending bus by its driver, Azad Singh keeping in view the evidence on record including the site plan, Ex.P2. However, while deciding the claim petitions of Joginder Singh and Azad Singh in the subsequent award dated 16.07.1996 (subject matter of FAO No.2961 of 1996 and FAO No.3076 of 1996), the learned Tribunal concluded that drivers of both the vehicles i.e., Haryana Roadways bus as well as Truck No. HRX-5491 were guilty of contributory negligence. Respondents/State of Haryana has not challenged the finding of the Tribunal in award dated 11.08.1995 rendered prior in time.

FAO No.634 of 1996

Mr. Ashit Malik, learned counsel for the appellant – Satya Vir Singh submits that dispute in this appeal is only qua quantum of compensation awarded to injured-appellant, Satya Vir Singh by the learned Tribunal vide award dated 11.08.1995.

PW2 Satya Vir Singh/claimant was Conductor of the offending bus. His clavicle bone and back bone were fractured. He was shifted to Government Hospital, Karnal thereafter, removed to MCH, Rohtak wherein he remained admitted from 03.10.1993 to 07.10.1993 in the first instance. Thereafter, he remained admitted from 16.10.1993 to 20.10.1993. He had to be admitted yet again in MCH, Rohtak from 07.03.1994 to 12.03.1994. Satya Vir Singh claimed to be confined to bed for 6-7 months and had to obtain leave from 01.10.1993 to 18.04.1994. ₹40,000 to 45,000/- were claimed to be spent on medicines and ₹5,000/- on transportation. As per PW2 Satya Vir Singh, his left hand was not completely functional and he could not walk for a long distance. Ex.P23 is the Disability Certificate issued by the Medical Board, Government Hospital, Sonapat reflecting a disability of 70% but without any mention as to whether it is qua the whole body or a particular limb. Learned Tribunal has awarded a lump sum compensation of ₹1,00,000/-.

Learned counsel for the appellant submits that an extremely meagre amount has been awarded. When the matter was referred before the Lok Adalat, a sum of ₹1,73,400/- had been proposed with ₹1,40,000/- on account of permanent disability, ₹5,000/- on account of transportation and ₹10,000/- on account of pain and suffering, ₹10,000/- for special diet and ₹8,400/- on account of loss of income. It was however not acceptable to the respondent-State. He prays for adequate enhancement of the compensation awarded to the claimant.

It is a matter of record that appellant – Satya Vir Singh, Conductor of the ill-fated bus remained admitted in the hospital on various occasions. He suffered fracture of the clavicle bone as well as spine. Ex.P23 i.e., Disability

Certificate issued by the Medical Board reflects disability to be 70% though it is not crystalized as to whether the same is qua the whole body or a particular part of the body. There is no other evidence on record either to clarify the situation.

Appellant is indeed entitled to ₹1,40,000/- on account of the permanent disability (2000x70), ₹8,000/- on account of transportation and ₹8,000/- for special diet. There is no evidence on record to show that the medical expense incurred by him was not reimbursed therefore, he is not entitled to compensation on that count. In respect to loss of income, learned counsel for the appellant is unable to point out any evidence on record to show that he did not receive his full salary for a particular period of time or that he suffered any loss due to his absence. Appellant – Satya Vir Singh is thus entitled to compensation as under:-

Sr.No.	Heads of claim	Amount
1.	Permanent disability	₹1,40,000/-
2.	Transportation	₹8,000/-
3.	Special Diet	₹8,000/-
4.	Pain and suffering	₹20,000/-
5.	Loss of amenities	₹15,000/-
	Total =	₹1,91,000/-

Appellant is entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization. Amount already disbursed shall be deducted from the amount as aforesaid.

FAO No.2961 of 1996

Mr. A.S.Virk, learned counsel for appellant – Joginder Singh vehemently argues that the finding of the learned Tribunal in respect to

contributory negligence on the part of appellant is illegal, unjust and hence, unsustainable. Evidence on record does not point to contributory negligence on the part of appellant – Joginder Singh, truck driver. Furthermore, quantum of compensation awarded to the appellant on account of the injuries sustained by him in this accident is liable to be enhanced.

Learned counsel for the State resists the claim of appellant and vehemently argues that no ground, whatsoever, is made out to interfere with the findings of the learned Tribunal.

It is not in dispute that the Tribunal, in the matter arising out of the same accident, has itself held the accident in question to have been caused on account of the rash and negligent driving of the Haryana Roadways bus by its driver, Roshan Lal. It has been observed by the learned Tribunal in the award dated 11.08.1995 (subject matter of FAO No.634 of 1996) that:-

“12. It is true that author of the FIR Vipin Kapoor has not been examined but another passenger Mr. Stanley has been examined. Report under Section 173 Cr.P.C. based on the FIR lodged by Sh. Vipin Kapoor corroborates the statement of PW4 Mr. Pintu Stanley. There is copy of site plan Ex.P2 also on record of this case. According to that site plan, the truck coming from the opposite side has been shown extremely on left hand side of the road while coming from Nilokheri towards Karnal whereas the bus which should have been on its left hand side while going from Karnal towards Nilokheri has been shown on extreme right hand side i.e., completely on its wrong side. It is not at all the allegation of the respondents that the investigation was tainted one and the site plan prepared by the I.O. Is false one. With such evidence on record, I have no hesitation in returning issues No.1 and 2 in favour of the claimants and against the respondents to the effect that the accident took place on account of rash and negligent driving of bus No.

HR05-3584 by respondent no.1 Azad Singh and in that accident the claimants of various cases received injuries.”

This finding by the learned Tribunal regarding the accident being caused by rash and negligent driving of the offending bus by its driver Azad Singh has admittedly attained finality. No challenge was even preferred by the respondent/State in this respect.

Site plan, in question, Mark 'B' in the present case (Ex.P2 in FAO No.634 of 1996) reflects the truck to be on extreme left side of the road and the offending bus is clearly on the wrong side i.e., its right side. FIR in this case was registered against the driver of bus, Azad Singh (respondent No.1 in FAO No.2961 of 1996). There is no evidence on record which would point to the negligence on the part of appellant-truck driver, Joginder Singh.

It is also not disputed that report/challan under Section 173 Cr.P.C. (Ex.P1 in FAO No.634 of 1996) after investigation of the case, was submitted against the bus driver, Azad Singh. In this view of the matter, the Tribunal has clearly erred in holding the appellant-truck driver to be guilty of contributory negligence. It has been observed by the Tribunal as under:-

“..... To my mind both the drivers were rash and negligent and were responsible in causing the accident in question. If any driver of any vehicle would have been a little vigilant, he might have avoided the accident in question. Joginder Singh as RW1 in claim petition No.122 of 95 admitted in the cross-examination that there was head on collision. If this is so, it means both the drivers had come in the middle of the road and caused the accident in question. If the driver of any vehicle has come in the middle of road, he cannot be said to be moving the vehicle at a normal speed and was not rash in his driving. Under the circumstances, the drivers of both the vehicles can be said to be solely responsible in

causing the accident in question. The liability of each vehicle is thus on the ration of 50:50.”

There is no question of contributory negligence on the part of appellant – Joginder Singh. It has been held by the Hon'ble Supreme Court in Parmeshwari v. Amir Chand and others, 2011(2) RCR(Civil) 153 that proceedings under this Act, matter has to be decided on preponderance of probabilities and court should not insist on proof beyond reasonable doubt as in criminal proceedings. Registration of the FIR and presentation of the challan under Section 173 Cr.P.C. against the driver of the offending vehicle is not disputed. Finding rendered by the Tribunal on this count is clearly not in tune with the evidence on record and is set aside.

Appellant – Joginder Singh claimed to have spent ₹60,000/- on his medical treatment, special diet and transportation. He has been awarded a sum of ₹30,000/- on this count by the Tribunal. A sum of ₹15,000/- has been awarded on account of pain and suffering. Having been held guilty of contributory negligence, he was held entitled to receive only ₹22,500/- out of total amount of ₹45,000/- i.e., 50% of the compensation.

It is to be noted that there is no evidence on record to reflect the income of Joginder Singh. Learned counsel for the appellant submits that there can be no doubt about him being employed as a driver.

As per the disability certificate (Ex.PF), he suffered disability to the extent of 55% in respect to the right lower limb i.e., 35% on account of severe limitation of motion of the right knee and 20% on account of shortening of the leg by two inches. He suffered a fracture of the shaft femur. Therefore,

he was unable to carry on his vocation as a driver.

PW3 Dr. G.P.Bharal, Orthopaedic Surgen, LNJP Hospital, Kurukshetra has testified that the patient cannot do his routine chores because there are no chances of full recovery due to stiffening of knee.

It cannot be ignored that the appellant was driving a truck at the relevant time. His income can safely be assessed at ₹1,500/- per month as drawn by a daily wager in the year 1993. He was 40 years of age at the time of accident, therefore, a multiplier of 15 is to be applied. Keeping in view the principles and guidelines as set down by the Hon'ble Supreme Court in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765, the injured-claimant being 40 years of age, is entitled to 30% increase in his income. A perusal of the evidence on record indicates the functional disability of the claimant to be 35%. He is thus entitled to compensation of ₹1,22,850/- [(1500 x 35%) + (30% x 35% x 1500) x12x15] on account of loss of income. He is thus entitled to compensation as under:-

Sr.No.	Heads of claim	Amount
1.	Loss of future income	₹1,22,850/-
2.	Medical expenses and incidental charges including transportation/special diet	₹35,000/-
4.	Pain and suffering	₹25,000/-
5.	Loss of amenities	₹10,000/-
	Total =	₹1,92,850/-

Appellant is entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization. Amount already disbursed shall be deducted from the amount as aforesaid.

FAO No.3076 of 1996

In the foregoing paras, it has been concluded that the accident was caused on account of the rash and negligent driving of the offending bus by appellant – Azad Singh. Learned counsel for appellant – Azad Singh is unable to point out any illegality, infirmity or perversity in the impugned award which would warrant interference by this Court in favour of the appellant.

A sum of ₹43,000/- was awarded on account of medical treatment including the cost of medicines, special diet and transportation and ₹15,000/- was given on account of physical, mental agony, suffering financially and for remaining on bed for many days. Learned Tribunal has, thus, awarded a sum of ₹58,000/-. However, he was held entitled to compensation of ₹29,000/- i.e. 50% of the amount, on account of contributory negligence.

No ground is made out for interference by this Court.

Consequently, FAO No.3076 of 1996 is dismissed.

FAO No.634 of 1996 and FAO No.2961 of 1996 are allowed in the aforesaid terms.

August 26 , 2015.
'om'

(**LISA GILL**)
JUDGE