

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.2046 of 2000 (O & M)

Date of Decision: *December 23, 2015*

Jagmohan Singh

..... APPELLANT

VERSUS

Subhash @ Sube Singh & others

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Neeraj Khanna, Advocate, for Mr. S.P. Bansal, Advocate, for the appellant.

Mr. D.K. Dogra, Advocate, for respondent No.3.

Mr. Ram Tilak Redhu, Deputy Advocate General, Haryana.

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Jaspal Singh, J

1. The instant appeal has been preferred by claimant – Jagmohan Singh seeking enhancement of compensation on account of injuries sustained by him in a vehicular accident on July 19, 1997 involving Maxi Cab No.HR-07B-7627.

2. Briefly stated, the facts of the case are that on July 19, 1997, Jagmohan Singh – appellant was going to his residence from duty. When he reached near Karahmi Turn on S.K. Road, Maxi Cab No.HR-07B-7627 being driven by respondent No.1 – Subhash @ Sube Singh in a rash and negligent manner, struck against Bus No.HR-02-309 and ran away from the alongwith his cab. Appellant – claimant sustained multiple injuries. He was taken to Civil Hospital, Ladwa, by driver of the bus where he was given first-aid and thereafter, he was admitted to CMC Ludhiana where he remained admitted for 5 ½ months.

3. Jagmohan preferred a claim petition viz. MACT Case No.1 of 1998 on January 09, 1998. The petition was contested by the respondents by filing separate written statements. On appraisal of evidence available on file and after hearing counsel for the parties, the Motor Accident Claims Tribunal, Kurukshetra (for short, ‘Tribunal’) awarded the claimant compensation to the tune of ₹ 1 lac alongwith interest @ 12% per annum from the date of petition, inclusive of interim compensation, if any, already paid. Respondent Nos.1 to 3 were held liable to pay the compensation, jointly and severally.

4. Dis-satisfied by the amount of compensation awarded by the Tribunal, Jagmohan Singh – appellant has approached this Court for its enhancement.

5. Learned counsel for the appellant has vehemently argued that approach of the Tribunal in calculating the quantum of compensation is erroneous. The accident took place due to rash and negligent driving of bus and maxi cab. Though, the Tribunal, assessed the amount of

compensation to the tune of ₹ 1,50,000/-, however, awarded a sum of ₹ 1 lac only. Finding of Tribunal with regard to holding 33% negligence of claimant is based on surmises and conjectures. The Tribunal has ignored the evidence led by claimant in this regard. The claimant – appellant remained hospitalized for about 5 ½ months and suffered 65% per permanent disability. Thus, the award passed by the Tribunal deserves to be modified and compensation awarded to the claimant – appellant is liable to be enhanced.

6. Per contra, learned counsel for the respondents have submitted that the award passed by the Tribunal is absolutely in consonance with the evidence available on file and settled canons of law. Just and adequate compensation has been awarded to the claimant. Thus, the findings recorded by the Tribunal are liable to be affirmed and appeal preferred by the claimant – appellant be dismissed.

7. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and have perused the record available on file.

8. Undisputably, the Tribunal has assessed the amount of compensation of ₹ 1,50,000/- but restrained the award to the tune of ₹ 1 lac on account of contributory negligence on the part of claimant. It is a matter of common knowledge that passengers sitting near the window rest their hand on the window sill specially when on a long journey in the countryside. The driver of a bus carrying passengers on long journeys is expected to have knowledge of this fact. The drivers of both the vehicles were bound to take precaution against the possibility that while grazing

against each other, some person might be placing his elbow or hand on the window-sill. Since the two vehicles came too close to each other resulting into an accident without there being justification for the same, it has to be presumed that the drivers had failed to take reasonable care for the safety of passengers and, therefore, they were negligent. In Jamnagar Motor Transport Union (P) Ltd. v. Gokaldas Pitamber's L.Rs., 1966 ACJ 42 (SC), the Supreme Court in similar situation where the two buses grazed while crossing each other, held that both the drivers were negligent.

9. In the case in hand, accident had occurred since both the vehicles grazed each other in speed without leaving sufficient space between them and caused accident. Therefore, it cannot be said that the claimant was guilty of contributory negligence. In the case of Jamnagar Motor Transport Union (P) Ltd. (supra), the Hon'ble Apex court observed that the act of resting his head could not be said to be a rash act and held as follows:

“Exactly identical is the situation before me, namely, that applicant was resting his hand on the window and the hook of the incoming vehicle caused injuries to him and on this basis it could not be said that the injuries were suffered by him by keeping his hand on the window.”

10. In the case of Uttaranchal Transport Corporation vs. Navneet Jerath, 2013 ACJ 1966, The Delhi High Court, in a similar situation held as under:-

“13. Simply because the First Respondent was resting the elbow on window sill and even if his elbow was protruding by a few inches, it was the duty of Appellant's driver to drive the bus in such a manner that there is safe distance between the two vehicles. That having not been done, it has to be held that the accident took place on account of rash and negligence driving of driver of bus number UP-02B-6972 owned by the Appellant.”

11. In the case in hand, the claimant-appellant has been held guilty of contributory negligence on account of the fact that he was taking out his right hand outside the window of the bus. As has been held by a catena of judgments, even if his hand/arm was protruding by a few inches, it was the duty of driver of the bus as well as that of Maxi Cab to drive the vehicles in such a manner that there is safe distance between the two vehicles. As such, no contributory negligence can be attributed to the claimant – appellant. Thus, this Court is of the considered view that 33% negligence fixed by the Tribunal on the part of the claimant is liable to be set aside.

12. In the light of what has been discussed above, the appeal is allowed and compensation awarded by the Tribunal to the tune of ₹ 1 lac is enhanced to ₹ 1,50,000/-. Since, the offending vehicle was duly insured with respondent No.3 – Insurance Company, the enhanced compensation of ₹ 50,000/- shall be paid by the Insurance Company within 45 days of the receipt of certified copy of the award. On its failure to pay the enhanced compensation, the claimant – appellant shall be entitled to interest @ 12% per annum, as already awarded by the learned Tribunal.

13. No order as to costs.

December 23, 2015
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(Jaspal Singh)
Judge