

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

FAO No.598 of 1999
Date of decision: 14.05.2015

State of Haryana and othersAppellants

Versus

Subhash and othersRespondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Gaurav Bansal, Advocate
for the appellants.

Mr. H.P.S. Bhinder, Advocate
for Mr. Arvinder Arora, Advocate
for the respondents.

K.C. PURI J. (Oral)

This is an appeal directed by the State of Haryana against the award dated 04.12.1998, vide which the claimant-Subhash was allowed a sum of Rs.3,30,000/- in respect of injuries sustained by him in a motor vehicular accident.

Briefly stated, the case set-forth by the claimant-Subhash is that he was a pillion rider on a scooter being driven by one Nathi Ram on 16.10.1996. At about 11.30 A.M. when Nathi Ram was driving the scooter near village Sabalpur after crossing bus stop Chhapar on Ambala-Jagadhari Road, then a bus bearing No.HNX-5966 of Haryana Roadways came from the opposite side being driven rashly and negligently in zigzag manner and it struck

against the scooter. Due to impact, both the occupants of the scooter received injuries and they were taken to Civil Hospital, Jagadhri and Nath Ram succumbed to his injuries. The claimant had suffered injuries which were fracture shaft femur left side, fracture upper part of tibia left side and wound on forehead. From the hospital, he was referred to Yamuna Nagar where he remained admitted for 3 days. Then, on 19.10.1996, he was taken to Kohli Nursing and Maternity Hospital, Jagadhri where he remained admitted upto 06.11.1996. Operations were performed and plaster was applied. After being discharged from the said hospital, the claimant continued getting treatment as OPD patient from Kohli Hospital, Jagadhri and Mann Hospital, Ambala.

The claimant has further pleaded that he has spent Rs.50,000/- on his treatment, special diet, transportation, etc. He was earning Rs.4,000/- and now he is rendered jobless. So, the claim of Rs. 10,00,000/- was made.

Respondents No.1 and 2 filed written statement in which it is pleaded that bus was standing, a truck was coming from the front side, a bus passenger had come on the road in front of the truck, the driver of the truck applied brakes, the scooterists who were behind that truck did not find any other place and came on the wrong side and hit against the stationary bus. It is further pleaded that the scooterists were carrying certain quantity of liquor which was prohibited in the State of Haryana in those days. It is

pleaded that since the scooter has struck the bus and as such no negligence can be attributed to them.

From the pleadings of the parties following issues were framed:-

- 1. Whether the accident took place due to rash and negligent driving of bus No.HNX-5966 by respondent No.3? OPP.*
- 2. To what amount of compensation, the petitioners are entitled to claim and from whom? OPP*
- 3. Relief.*

In order to prove his case, the claimant examined PW-1 Dr. Pardeep Kumar, PW-2 Dr. J.P.S. Walia, Sr. Lecturer, Deptt. Of Orthopaedic, Govt. Medical College and Rajindra Hospital, Patiala, PW-3 Kanihya Lal, and the claimant-Subhash himself stepped into the witness box as PW-4. The claimant produced the Disability Certificate Ex.P-2 along with other documents.

In rebuttal, the respondent examined RW-1 Karam Singh-driver of the bus and RW-2 Balbir Singh-conductor of the bus.

Learned Tribunal after appraising all the evidence returned the Issue No.1 in favour of the claimant and against the respondent-appellant. Issue No.2 was also partly accepted in favour of the claimant and the claimant was allowed a sum of Rs.3,30,000/- as compensation.

Feeling dis-satisfied with the abovesaid award, the appellant-State has directed the present appeal.

The contentions raised by learned counsel for the appellant is two fold, firstly, learned counsel for the appellant has submitted that claimant has failed to prove the factum of negligence against the driver-Karam Singh. Secondly, it is submitted that Nathi Ram-driver of the scooter was a drunken person. The illicit liquor was being carried on the scooter by him and in order to avoid the recovery of certain illicit liquor, the accident has taken place due to rash and negligent driving of scooter by Nathi Ram. Therefore, Karam Singh cannot be blamed for that.

Learned counsel for the claimant has supported the award and has submitted that the accident has taken place due to rash and negligent driving of bus in question.

I have given my thoughtful considerations to the rival submissions made by learned counsel for both the parties and have gone through the records of the case carefully.

The question arises whether on re-appreciating the evidence produced on record, the case is made out for interference regarding Issue No.1. The answer to that question is in negative. The Tribunal has given so many reasons for arriving at the conclusion that the accident has taken place due to rash and negligent driving of bus in question. The post-mortem report of Nathi Ram-driver of the scooter has not been produced. The basis of negligence has been withheld by the appellant. The other

reasoning given by the Tribunal is that according to them, police was present at the spot and if the accident has taken place due to rash and negligent driving of scooter, in that case, the FIR would not have been registered against Karam Singh-driver of the offending vehicle. The learned Tribunal has rightly accepted the testimony of claimant regarding the manner of accident and has rightly rejected the statement of Karam Singh-respondent No.2. So, in these circumstances, the finding of the Tribunal on Issue No.1 does not call for any interference.

The other point raised by learned counsel for the appellant is regarding quantum. It is submitted that the injured-claimant is aged about 32 years and as such, the multiplier of 17 is on higher side. It is further submitted that as per authority "***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another***" reported in **2009(3) R.C.R. (Civil) 77**, the multiplier applicable at the age group of 31 to 35 is 16. So, the multiplier of 16 should have been applied. The Tribunal has taken the income of the claimant as Rs.100/- per day on account of 45% disability and the amount has been calculated as Rs.1,350/- per month. The yearly loss has been taken as Rs.16,200 and multiplier of 17 regarding future income has been applied. So, the total loss has been calculated as Rs.2,75,400/-.

The Tribunal has allowed a sum of Rs.30,000/- in respect of medicines, attendant charges, special diet, etc. Another

sum of Rs.24,600/- has been allowed in respect of physical pain and mental agony. Even if the multiplier of 16 is applied, the excess amount comes to Rs.16,200/- but the amount of Rs.24,600/- in respect of 45% disability is on lower side. So, by taking the overall view no ground for interference is made out.

In view of the above, the present appeal stands dismissed.

A copy of this order be sent to the Tribunal for compliance.

14.05.2015

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(K.C. PURI)
JUDGE