

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3872 of 2001

Date of decision: 20.10.2015

State of Haryana and another

..... Appellants

Versus

Prem Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the 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?*

PRESENT: Mr. Saurabh Mago, Advocate for the appellants.

None for the respondents.

RAMENDRA JAIN, J. (ORAL)

The appellants have preferred the present appeal against the impugned Award dated 30.07.2001, passed by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal').

2. Brief facts, are that on 09.08.1997, respondent No. 1-Prem Singh (claimant) was going on his motorcycle No. HR-06-B-3189, from Hand Weave Factory, G.T. Road, Panipat, having Maninder Singh as a pillion rider. When they reached in the revenue estate of village Nangal Kheri, a bus No. HR-45-0682 of Haryana Roadways, driven by respondent No. 2-Avtar Singh came from behind in a rash and negligent

manner and also at a high speed without blowing any horn and struck against his motorcycle. As a result thereof, respondent No. 1-claimant and the aforesaid pillion rider fell down and suffered grievous and serious injuries. FIR No. 542 dated 10.08.1997 under Sections 279/337/338 of the Indian Penal Code (IPC) was registered qua this accident. Since the accident had taken place on account of rash and negligent driving of bus owned by the appellants, respondent No. 1-Prem Singh filed a petition under Section 166 of the Motor Vehicles Act (in short called as 'the Act'), claiming compensation of ₹ 8 lacs against the injuries and permanent disablement suffered by him in the impugned accident.

3. Upon notice, respondent No. 2-Avtar Singh in his written statement controverting the allegations levelled against him pleaded that, in fact, the accident had taken place on account of negligence of respondent No. 1-Prem Singh himself. Appellants (respondents No. 2 and 3 before the learned Tribunal) in their separate joint written statement took the similar stand as taken by respondent No. 1.

4. The learned Tribunal after framing necessary issues and recording evidence to the satisfaction of parties, passed the impugned Award dated 30.07.2001, holding respondent No. 2 solely responsible for causing the impugned accident while driving the aforesaid bus in a rash and negligent manner and awarded a sum of ₹ 1,13,000/- to respondent No. 1-claimant along with interest @ 9% per annum from the date of filing of claim petition till realization.

5. Learned counsel for the appellants argued that it was a case of contributory negligence, because respondent No. 1-claimant as PW-3

could not successfully face the test of his cross-examination. At one stage, he told that after coming out from the factory, he was going towards village Siwah, whereas in the next breath he admitted that the road where the accident occurred does not lead to Siwah. The learned Tribunal has awarded ₹ 50,000/- to respondent No. 1-claimant for his future medical treatment/second operation, but respondent No. 1-claimant did not produce any such evidence that he ever got operated himself in between the date of accident i.e. 09.08.1997 till 09.05.2001 on which date his cross-examination was completed. Thus, the said amount of compensation may kindly be reduced by modifying the impugned Award. Even otherwise, respondent No.1-claimant in his cross-examination on 10.11.1999 had admitted that he had come into the Court without any support. Hence, it is evident on record that the claimant did not suffer any permanent disability and suffered, if any, had recovered from the same, in due course of time.

6. I have given my thoughtful consideration to the submissions made by learned counsel for the appellants.

7. Undisputedly, a sum of ₹ 50,000/- was granted to respondent No. 1-claimant by the learned Tribunal towards his future medical treatment. The impugned accident took place on 09.08.1997. Respondent No. 1-claimant filed his claim petition on 01.10.1997. He examined Dr. PN Gandhi as PW-2, whose deposition was concluded on 18.12.2000 i.e. after three years. During this period of 03 years, respondent No. 1-claimant did not got himself operated second time, because had it been so, this doctor or respondent No. 1-claimant would

have produce some evidence in this regard. Even respondent No. 1-claimant in his deposition on 10.11.1999 deposed that he require replacement of his hip joint for which a sum of ₹ 60,000/- to ₹ 70,000/- was required, meaning thereby, even after elapsing of two years from the date of accident, respondent No. 1-claimant had not got operated himself for the second time. Hence, I find merit in the contention of learned counsel for the appellants that since there was no evidence on record with regard to second operation of respondent No. 1-claimant for which he was awarded ₹ 50,000/- by the learned Tribunal, therefore, he is not entitled for the same, in the absence of any evidence and accordingly, the impugned Award is liable to be modified to this extent.

8. As far as the arguments of learned counsel for the appellants with regard to contributory negligence of respondent No. 1-claimant is concerned, the same is completely devoid of any merits, because respondent No. 2-Avtar Singh in his cross-examination as RW-1 has admitted that he was charge-sheeted under Section 338 IPC in relation to this accident. He did not made any written complaint to the higher officers of his Department or the police authorities regarding his false implication. From the above deposition, it is evident that the police during investigation had found respondent No. 2 (driver of the offending bus) solely responsible for causing the impugned accident and not this case as of contributory negligence of him as well as of respondent No. 1-claimant. More so, not making of any complaint to higher authorities of his own Department or to the Police Department by respondent No. 2, requires to draw an adverse inference against him that he did not adopted

any such exercise, being guilty in his mind for causing the impugned accident.

9. As far as permanent disability of respondent No. 1-claimant is concerned, PW-4 Dr. Ved Gupta, Medical Officer, Civil Hospital, Panipat, has proved the disability certificate Ex. PW-4/A showing 16% permanent disability to him. The learned Tribunal has granted ₹ 32,000/- to respondent No. 1-claimant i.e. ₹ 2000/- per per cent. Besides above, respondent No.1-claimant had produced the medical bills of the total amount of ₹ 17,571/-. The learned Tribunal has, thus, granted a sum of ₹ 18,000/- to respondent No. 1-claimant towards medical bills and ₹ 3000/- for special diet. Respondent No. 1-claimant has also been awarded a sum of ₹ 10,000/- for mental torture, mental pain and sufferings. Thus, it can safely be said that the learned Tribunal has taken care of all the circumstances, while awarding the aforesaid compensation to respondent No. 1-claimant under various heads. It is pertinent to mention here that the permanent disability of 16% suffered by respondent No. 1-claimant as per disability certificate Ex. PW-4/A might have further been reduced with the passage of time, because on 10.11.1999, respondent No. 1-claimant in his cross-examination, as discussed above categorically admitted that he had attended the Court on that date without any support.

10. In view of the discussion made above, the instant appeal is partly allowed. Resultantly, the impugned Award is hereby modified to the extent that respondent No. 1-claimant in all is held entitled to a compensation of ₹ 63,000/- (₹ 1,13,000/- - ₹ 50,000/-) instead of ₹ 1,13,000/- as awarded by the learned Tribunal as he is held not entitled

for a sum of ₹ 50,000/- awarded by the learned Tribunal for his second operation. The amount of ₹ 63,000/- would carry interest @ 9% per annum from the date of filing of claim petition till realization.

October 20, 2015

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**(RAMENDRA JAIN)
JUDGE**