

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 2679 of 2004 (O&M)
Date of decision: February 09, 2015

Mubin

.....Appellant

versus

Badan Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Tribhavan Dahiya, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent No.3-Insurance Company.

JASPAL SINGH, J

The instant appeal has been preferred by Mubin for modification of award by way of enhancement of compensation awarded to him vide impugned award dated January 13, 2004 in MACT case No. 27 dated 19.02.2003/28.08.1998 on account of injuries sustained by him in a vehicular accident occurred on August 02, 1998 due to rash and negligent driving of Gypsy No. HR-51-C-6791 by respondent No.1.

2. Vide impugned award dated January 13, 2004, learned Tribunal awarded a sum of ₹61,437/-. By observing that it was a head on collusion, appellant was only held entitled to 50% of

aforesaid awarded amount from respondent No.3-Insurance Company.

3. The contention of learned counsel for the appellant is that learned Tribunal has gone patently wrong in holding that appellant is only entitled to 50% of amount of compensation, as he also contributed negligence which led to accident but in fact, findings recorded by learned Tribunal in this regard is not based on any cogent evidence. While rendering findings on issue No.1, it has been observed that accident solely occurred due to rash and negligent driving of Gypsy No. HR-51-C-6791 by respondent No.1 whereas, while granting the relief, 50% amount has been deducted on account of contributory negligence.

4. Further, it has been argued by learned counsel for appellant that learned Tribunal has awarded only a meagre amount as compensation. It is a known fact that a person suffering from such serious injuries is not able to keep record of all the medical bills, as his primary attention is to get treatment of injuries sustained by him and not to collect evidence. No amount has been awarded as compensation on account of attendant's charges, special diet, transport expenses, loss of income etc. Thus, impugned award deserves to be modified by way of enhancement of amount of compensation.

5. On the other hand, learned counsel for respondent No.3 has supported the award submitting that the same is absolutely inconsonance with the evidence available on file and settled cannons

of law. The learned Tribunal has rightly concluded that it was head on collision when the accident took place and appellant sustained injuries. So, contributory negligence to the extent of 50% has rightly been fastened upon the appellant/claimant. Moreover, just and adequate compensation has already been awarded by learned Tribunal especially, in the circumstances that there is no permanent disability. Thus, no interference of this Court is justified in the impugned award.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and have minutely gone through the records available.

7. A glance at the impugned award transpires that while rendering findings on issue No.1, it has been categorically observed by learned Tribunal that accident occurred due to rash and negligent driving of Gypsy No. HR-51-C-6791 by respondent No.1 on August 02, 1998, in which, appellant sustained injuries. But while granting relief, it has been mentioned that PW-1 as well as PW-3 have admitted that it was a head on collision. This observation of learned Tribunal is against actual facts. Respondent No.1, though contested the petition but he did not appear in the witness box to deny the testimony of injured, coupled with statement of an eye witness. The mere fact that it was a head on collision is not sufficient to hold the liability or negligence on the part of injured/appellant. Issue No.1 has been decided in favour of appellant-claimant and against respondent No.1 by learned Tribunal.

8. Moreover, it is not the case of any of the respondents that it was a head on collusion. The findings in this regard, thus, are not sustainable and deserves to be reversed. It is held that liability fastened upon appellant/claimant is not sustainable and is set aside.

9. As far as the contention of learned counsel for the appellant with regard to enhancement of amount of compensation is concerned, total compensation payable to the appellant/claimant was determined by learned Tribunal to the tune of ₹61, 437/-. A sum of ₹20,000/- was awarded on account of pain and suffering where a sum of ₹41,437/- was awarded on account of medical bills. Admittedly, appellant/claimant suffered fracture proximal shape right femur and report in this regard is Ex.PW-4/1. Appellant/claimant must have been operated for that and she must have remained on bed for a considerable period. She remained admitted in Escorts Medical Centre, Faridabad for about 15 days and after dischrgage, from the hospital, she must have not been able to perform her daily chores for a period of atleast two months. It also cannot be expected from a person who sustained serious injuries in an accident to get all records of medical bills as his/her primary attention would be to get the treatment of injuries sustained by him/her. It is also an admitted fact that no amount has been awarded as compensation on account of attendant charges, special diet and transportation etc.

10. Taking into consideration all these facts, this Court is of the considered view that ends of justice would meet in case appellant/claimant is awarded a sum of ₹20,000/- in lump-sum on

these grounds making a total compensation of ₹81,437/-.

11. Accordingly, appellant shall be entitled to a sum of ₹20,000/- by way of enhancement and entire amount of compensation shall be payable by respondent No.3 including amount of compensation awarded by learned Tribunal making the liability of respondent No.3 to 100%.

12. In the light of what has been discussed above, instant appeal is partly allowed and appellant is held entitled to a sum of ₹20,000/- in addition to amount of compensation already awarded by learned Tribunal, that too alongwith interest as already awarded by learned Tribunal from the date of institution of claim petition till realization of the compensation amount. No order as to costs.

(JASPAL SINGH)
JUDGE

February 09, 2015
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- 1. Whether the Reporters of the Local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or? Yes**
- 3. Whether the judgment should be reported in the digest? Yes**