

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

FAO No.1278 of 2012

Date of decision: 11th February, 2015

Amrik Singh

... Appellant

Versus

Ram Kishan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. P.K. Ganga, Advocate
for the appellant.

Mr. Manjeet Singh, Advocate
for respondents No.1 and 1A.

None for respondent No.2.

FATEH DEEP SINGH, J.

The claimant/appellant has impugned the Award dated 17.10.2011 of learned Motor Accident Claims Tribunal, Sirsa on the grounds of holding that it was a case of contributory negligence as well as denial of compensation for the injuries sustained by the claimant in a motor vehicular accident.

The precise allegations that stems from the record after hearing arguments of Mr. P.K. Ganga, Advocate for the

claimant/appellant and Mr. Manjeet Singh, Advocate representing driver and the owner/respondents No.1 and 1A are that the claimant along with Saraj and Subhash Chand, in all three, were going to their village on one motorcycle bearing registration No.HR-40A-0818 being driven by Saraj when near Panihari turning they were hit by the offending vehicle make Maruti Zen bearing No.HR-70-7934 being driven in a rash and negligent manner by Ram Kishan respondent. As has been held, the claimant received injuries resulting in fracture to his right leg which is opined to be temporary disability to the extent of 10%.

Appreciating the arguments of the two sides, it is own stand of the claimant as well as corroborated by the testimony of witness Subhash Chand PW3 that they were triple riding the motorcycle which is a two-wheeler and therefore, it has been rightly concluded by the learned Tribunal to be a case of contributory negligence. The very provisions of Section 128 of the Motor Vehicles Act, 1988 (in short, 'the Act') bar triple riding on a two wheeler which is termed to be a traffic offence and thus, such a conduct is violative of these provisions as has been laid down by a Division Bench of this Court in '**Kanti Devi Sikarwar and others v. Om Parkash and others**' reported in **2007(5) RCR (Civil) 18**, and therefore nothing can be found fault with the findings returned by the learned Tribunal qua this aspect of the matter.

No doubt, the x-ray report Ex.P1, bed-head ticket Ex.P2 and the complaint Ex.P3 corroborate this suffering of the claimant and there is total denial in the replies submitted by the respondents though ownership is accepted and so the vehicle being insured at the time of the alleged accident and similar is the stand taken during the cross-examination of PW2 Amrik Singh claimant as well as PW3 Subhash Chand one of the injured on the motorcycle. However, as has been contended on behalf of the appellant/claimant he has lodged complaint Ex.P3 and on this ground the learned Tribunal that no FIR has been registered has denied compensation. It needs to be kept in mind that it is not a rule of law that FIR is an essential pre-requisite in lodging the claim and law is well settled as has been laid down in **‘Virat Sama v. Mohan Lal and others’ 1994(106) PLR 82**. The entire eye-witness account led by the claimant has remained unrebutted and rather Amrik Singh as well as Subhash Chand are the injured witnesses and therefore, their presence cannot be put to doubt which factum of accident is brought about by the testimony of the Photographer Gurcharan Singh PW4 who has proved the photographs Ex.PW4/B to Ex.PW4/E and the cross-examination of this witness depicts that the number of vehicles involved in the accident are very well depicted therein, are matters which certainly shows that the learned Tribunal has failed to take cognizance of such a vital piece of evidence and therefore, having regard to the fact that the corroborative evidence further lends credence to the case of the

claimant, findings on issue No.1 are palpably incorrect and misinterpretation of evidence and are thus set aside.

Though the driver and the owner are contesting the claim petition however, none has bothered to step into the witness box to rebut the case of the claimant and thus, an adverse inference needs to be drawn against them in terms of Section 114 of the Evidence Act and therefore, issue No.1 is decided in favour of the claimant.

From the testimonies of witnesses, especially of PW1 Pawan Kumar, Medical Officer, General Hospital, Sirsa, disability certificate Ex.PW1/A shows that there is 10% temporary disability. The claimant is a young man aged around 37 years and though claims that he was working as a construction Mason earning ₹3,200 per month but in the absence of any evidence, wages at the time of the accident which are notified for daily-wagers needs to be applied and which at the relevant time was around ₹2,500 per month. Being a fracture, which would have taken almost six months' period to heal and during that period claimant must have been rendered without work and would have lost his earnings during this period of six months, besides he must have been put to disadvantage during the period of this disablement and though nothing is reflected in the light of arguments of the two sides and from the evidence as the period of this temporary disablement which normally prevails over a period of one year and thus, applying the principle of multiplier in terms of Section 163-A of the Act, which provisions of Second Schedule have become obsolete

with the passage of time. On the basis of principles laid down in ‘R.D.Hattangadi v. Pest Control (India) Private Limited’ 1995 (2) PLR 298 SC, the claimant is entitled to compensation under the following heads:

(A) <u>Pecuniary Compensation</u>		
(i)	Compensation assessed on account of loss of earnings during hospitalization and injuries	₹15,000/-
(ii)	Compensation assessed on account of loss of earnings due to temporary disability for a period of one year	₹3,000/-
(iii)	Compensation assessed on account of services of attendant, special diet and conveyance	₹3,000/-
(B) <u>Non-Pecuniary Compensation</u>		
(i)	Compensation assessed on account of physical pain, mental agony and sense of wrong	₹15,000/-
(ii)	Compensation assessed on account of loss of beauty/enjoyment of life	₹15,000/-
Total		₹51,000/-

Thus, the claimant/appellant is entitled to a total compensation of ₹51,000 (rupees fifty one thousand only).

Since it is held that it was a case of contributory negligence, the claimant shall be entitled to half of the total amount of compensation so assessed. Thus, the learned Tribunal has fallen into an error by denying compensation to the claimant and therefore, findings to that effect are set aside.

Besides this, the claimant is also entitled to interest @7.5% p.a. on the amount from the date of filing of the claim petition

till realization. Interim compensation paid, if any, shall be adjusted. Since Ram Kishan respondent is driver of the offending vehicle, which was owned by Gurpreet Singh respondent and as per the own stand of the respondents vehicle was insured with Reliance General Insurance Company, and thus, all the three shall be jointly and severally liable to pay this compensation amount.

With these discussions, the impugned Award is set aside and the appeal stands allowed in those terms.

**(FATEH DEEP SINGH)
JUDGE**

February 11, 2015
rps