

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5700 of 2012 (O&M)

Date of Decision.28.10.2015

Prince Kumar

.....Appellant

Versus

Ashwani Kumar and others

.....Respondents

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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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K. KANNAN J. (ORAL)

1. Delays of 81 days in refiling and 3 days in filing the appeal are condoned.

2. The appeal is against the dismissal of claiming compensation for injuries suffered in motor accident. The claimant's contention was that while travelling in motor cycle along with the pillion rider, the insured's vehicle coming from behind struck against him and resulted in him and the fellow traveller falling from the motor cycle. The contention was that the insured's driver stopped the vehicle at a further distance of 50 mtrs and left the spot seeing that the claimant and the other person were in serious condition. Admittedly, the petitioner had been taken to the hospital on 13.06.2010 on the date of accident itself and was discharged on 25.10.2010 after a prolonged treatment. In the

meanwhile, he had been operated upon and a traction had been applied for relieving the pain and for correcting the fracture. The fractures were at the femur and tibia. The further evidence was that he had gone to the hospital four times as an outdoor patient and engaged an ambulance paying ₹1500/- every time. The doctor who had treated him also came to the Court to say about the injuries suffered and the treatment that he had given prescribing to him the medicines. The claimant had filed the medical bills Ex.P-14 to P-123 for the accident. The owner and driver had filed a reply admitting to the accident but contended that the accident was a result of the petitioner's own negligence. The Court dismissed the petition holding that apart from the ipse dixit of the claimant himself, there was no other evidence to speak about the negligence and therefore, inferred that the accident could have resulted only by the negligence driving of the claimant himself. The claim petition was accordingly dismissed.

3. I find the approach of the Tribunal to be wholly wrong and untenable. If there is a version of negligence attributed to the driver of the other vehicle and the driver would not even come to the witness box to support his own version to what he had contended in the written statement, the Tribunal ought to have found that the negligence was established. It must be remembered that nobody comes to road to get killed or get injured and if there is any collision involving the motor cyclist, I would look for a greater circumspection and care by the driver of a heavier vehicle. If the petitioner was driving a motor cycle and collision had taken place with the respondent vehicle which was a maruti car, I would expect him to explain that how instead of his own careful

driving, the rider of the motor cycle had invited an accident upon himself. It was not even a case of claimant coming from the opposite direction. It was, on the other hand, a vehicle coming from behind hitting the driver of the motor cycle and sped away without stopping the car or admitting the injured at hospital. There is duty cast under the Motor Vehicles Act on the driver of any motor vehicle to give the first aid at the place of accident and if in this case, the driver had not been even stopped at the place to ensure that appropriate medical attention was given, I would draw an inference of guilt on the 1st respondent himself and not on the petitioner. There was no necessity for the petitioner to prove anything beyond the fact of involvement of his vehicle with the 2nd respondent's vehicle and if the fact of accident itself was not in doubt, there was no scope for a Court to make inference the way it has done. The finding of the Tribunal that the claimant had not proved the negligence is set aside.

4. As regards the nature of injury and treatment, the medical expenses incurred have been borne through the bills which were produced Ex.P-14 to P-123. There are two fractures that resulted in a prolonged treatment of 3 ½ months. I will provide for ₹ 25,000/- as pain and suffering and make the assessment of the other heads as follows:-

INJURY CASES			
Age	26 years		
Period of Hospitalization 13.6.2010 to 25.10.2010			
Occupation	Goldsmith		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Loss of income		14,000
2	Medical expenses		

INJURY CASES			
(i)	Medicines		1,48,371
(ii)	Hospital Charges		
(iii)	Attendant Charges		7500
(iv)	Special Diet		5000
(v)	Transport		10,000
3	Pain & Suffering for fracture/per surgery		25,000
4	Disability		
5	Loss of earning capacity		
	income		
	Multiplier		
	% of loss of earning capacity		
6.	Loss of amenities		
7	Reduction in life expectancy		
8	Loss of prospect of marriage		
	Total		2,09,871

5. I am making no special provision for loss of amenities, for there has been nothing elicited through the evidence of doctor about any permanent disability for him. I will assume the petitioner considering his age to be 26 years as earning ₹3500/- per month and take the period of hospitalization to be also a period when he had lost his income. There shall be an award of ₹2,09,871. The amount of compensation shall also attract interest @9% from the date of petition till the date of payment. The liability shall be on the insurance company.

6. The decision rendered by the Tribunal is set aside and the appeal is allowed.

(K. KANNAN)
JUDGE

October 28, 2015
Pankaj*