

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

FAO No.6319 of 2012 (O&M)

Date of decision: 13.08.2015

Hari Ram

....Appellant

Versus

Ankit Rustogi and others

....Respondents

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

Present: Mr. Rajesh Lamba, Advocate
for the appellant.

Mr. M.B. Jain, Advocate
for respondent No.2.

K.C. PURI J. (Oral)

This is an appeal directed by the injured-claimant against the award dated 24.05.2012, passed by Sh. Bharat Bhushan Parsoon, the then Motor Accident Claims Tribunal, Gurgaon, vide which the claim petition was partly accepted and a sum of Rs.2,13,300/- was assessed, but it was observed that since Ishwar Singh-driver of motorcycle was also negligent and as such, it is a case of contributory negligence and 50% amount was deducted, therefore, a sum of Rs.1,06,650/- was allowed.

The brief facts of the case are that on 21.02.2011, the injured-claimant along with Ishwar Singh son of Raghbir Singh was going to the clinic of Dr. Ahuja, Sector-4, Railway Road, Gurgaon for surgery of his eye. He was a pillion rider on

motorcycle bearing registration No.HR-26X-7154, it was being driven by Ishwar Singh. At about 08:15 a.m. when after crossing flyover of IFFCO Chowk, they reached on service road of NH-8, in the meantime a Maruti Swift car bearing registration No.DL-8C-NB-2936 driven by respondent No.1 in a rash and negligent manner as also at a very high speed came from front side and hit the motorcycle. As a result thereof, the claimant and Ishwar Singh fell on the road and sustained injuries. The claimant had sustained serious multiple injuries. The claimant and Ishwar Singh were shifted to Orbit Hospital, Gurgaon. FIR No.22 dated 23.02.2011 under Sections 279 and 337 IPC was registered at Police Station Sector 17/18, Gurgaon against respondent No.1 on the statement of Ishwar Singh.

The learned Tribunal after adjudication reached at a conclusion that it is a case of negligence of both the vehicles and as such, 50% amount has been deducted.

The only point urged by learned counsel for the appellant is that appellant has not contributed in the accident in any manner and qua appellant it can be a case of composite negligence and not contributory negligence.

On the other hand, learned counsel for the insurance company has supported the award.

I have considered the submissions made by learned counsel for both the parties and have gone through the record of

the case.

So far as the applicant-claimant is concerned, he was a pillion rider and qua him it was a case of composite negligence. The Hon'ble Apex Court in authority *“Khenyei vs New India Assurance Company Limited and others”* reported in 2015 (2) R.C.R. (Civil) 1019, has held that in case of composite negligence the claimant is entitled to claim the amount from any of the tortfeasors. However, in that case rights were given to the other tortfeasors to claim the amount from the remaining tortfeasors. So, in these circumstances, the finding of the Tribunal that it is a case of contributory negligence qua appellant is against the law and it is held that it is a case of composite negligence qua appellant. The claimant can claim the amount from any of the tortfeasors. So, that part of the judgment stands set-aside and it is held that both the respondents are jointly and severally liable to pay the whole of the amount, however if, the respondent-Insurance Company make the payment of more than its share they are at liberty to file a separate suit against the joint tortfeasors i.e. Ishwar Singh and the owner of the vehicle.

Appeal stands disposed of, accordingly.

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

13.08.2015

yakub

(K.C. PURI)
JUDGE