

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.6589 of 2012

Date of Decision: 09.04.2015

Krishan Kumar

..... APPELLANT

VERSUS

Sanjeev and others

..... RESPONDENTS

PRESENT: - Mr. Neeraj Gupta, Advocate
for the appellant.

Mr. Sanjay Verma, Advocate
for respondent No.2.

Mr. Binni Thomas, Advocate
for respondent No.3.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 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?

SHEKHER DHAWAN, J.

The claimant-appellant has filed the present appeal seeking enhancement of amount of compensation awarded to him vide award dated 26.07.2012 pronounced by the Motor Accident Claims Tribunal, Kaithal (for short 'The Tribunal').

Taking the case from undisputed facts that on 08.12.2009 appellant Krishan Kumar along with Pradeep Kumar and Deepak Kumar were going on motorcycle bearing registration No.HR-05T-5528. The said motor cycle was being driven by Pradeep Kumar and the same met with an accident as tractor Sonalika came from Kaithal side which was being driven by respondent No.1 in a rash and negligent manner. Resultantly, all the three fell down and sustained injuries. Appellant Krishan Kumar was admitted in General Hospital. The matter was reported to the police.

The respondents contested the claim petition.

'The Tribunal' awarded compensation to the tune of ₹21,000/-.

Being dis-satisfied with the awarded amount of compensation, the appellant has preferred the present appeal taking the plea that the appellant had sustained multiple injuries on his right lower leg, right arm, elbow and sustained fracture both bone right leg and right arm and also remained admitted in General Hospital for number of days. Sufficient amount has not been awarded as compensation. More so, the Tribunal fell in error while fixing the liability on the principles of contributory negligence on the part of motorcycle driver as well as negligence on the part of respondent No.1, who was driving Sonalika tractor

involved in the accident.

Learned counsel for the respondents took the plea that 'The Tribunal' had already awarded 'just compensation'. There are no grounds to satisfy the findings of contributory negligence on the part of driver of motor cycle to the extent of 50% each.

At the time of arguments, Mr. Neeraj Gupta, Advocate for the appellant took the plea that 'The Tribunal' has recorded the finding that it was a case of contributory negligence on the part of driver of motor cycle as well as driver of tractor and mainly based his findings on the point that there were three persons riding on motor cycle, which is not permitted by law. Mere fact that a person is committing violation under motor vehicle act does not make out a case of negligence or contributory negligence. In support of his arguments, learned counsel for the appellant placed reliance upon judgment from Hon'ble Supreme Court in case of **Parmod Kumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak** 2002(3) RCR (Civil) 688. On the same point, reliance was placed upon judgment from Coordinate Bench of this Court in **Karnail Singh Vs. Balwinder Singh** 2013(1) PLR 774.

While arguing on this point, Mr. Binni Thomas, learned counsel for respondent No.3 took the plea that

'The Tribunal' has already awarded adequate compensation keeping in view the nature of injuries sustained by the appellant and the amount spent on medical treatment. 'The Tribunal' has rightly returned the findings regarding contributory negligence and the appeal be dismissed.

Having considered the rival contentions, this Court is of the view that appellant Krishan Kumar had sustained injuries in this accident. The appellant had produced on file bills for the medicines from Exhibits PW5/1 to PW5/8 for a sum of ₹5,310/- and another sum of ₹4,000/- was also charged regarding his treatment. Total of these expenses come to ₹9,310/- Another sum of ₹7,500/- was awarded on account of pain and sufferings for fracture and a sum of ₹10,000/- as transportation charges. The total amount of compensation was determined to be ₹41,810/- and 50% of the same comes to ₹20,905/- and after rounding off, compensation of ₹21,000/- was awarded.

Learned counsel for the appellant could not lay his hand on any such claim which remains unattended, so the quantum of compensation awarded in this case cannot be said to be insufficient or inadequate and, as such, no interference is required on that.

I have also considered the rival contentions raised by learned counsel for the appellant and law laid down by

Hon'ble Supreme Court and view expressed by Coordinate Bench of this Court and of the view that in **Parmod Kumar Rasikbhai Jhaveri's case (supra)**, Hon'ble Apex Court had also recorded the observations that while deciding the factor of contributory negligence the entire evidence and material available on the file is to be taken into consideration whether there was some act or omission on the claimants part which materially contributed to damage and, as such, the nature which may be described is as negligence.

In the case in hand, 'The Tribunal' has returned findings based on evidence adduced before 'The Tribunal' including statement of Pradeep as PW-1, Krishan Kumar as PW-2 and Deepak Kumar as PW-6. All these witnesses deposed before 'The Tribunal' that they had seen the tractor at the time of accident. So relying upon the oral testimony of these witnesses as clubbed with the fact that three persons were travelling on a motorcycle is probably loss of control of the vehicle and resulted into accident and that was a contributory factor for causing the accident as well. The said findings recorded by 'The Tribunal' cannot be said to be unjustified. It is also settled proposition of law that the statement of the witnesses are to be read as before and 'The Tribunal' applied its judicious mind while appreciating

the statement of PW-1 Pardeep, PW-2 Krishan Kumar and PW-6 Deepak Kumar and returned the findings of fact. The said findings do not call for any interference. Reliance was rightly placed upon **National Insurance Co. Ltd. Vs. S. Chitra and others**, 2010 ACJ 1316.

In view of the above, the present appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 09, 2015
jt