

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3273 of 2013 (O&M)
Date of Decision: June 29, 2015

Gurwinder Singh

...Appellant

Versus

Suresh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bhanu Partap Singh, Advocate
for the appellant.

Mr.Vinod Gupta, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present appeal has been filed by appellant Gurwinder Singh against respondents Suresh Kumar, owner, New India Assurance Company Limited, Insurer and Dilbag Singh, driver of the truck bearing registration No.HR-46-5466 (offending vehicle) challenging the impugned Award dated 07.03.2013 passed by learned Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter referred to as 'Tribunal'), for enhancement of the compensation amount.

The brief facts of the case are that appellant-claimant Gurwinder Singh filed claim petition against Suresh Kumar and other respondents stating therein that he along with Rajinder Singh and Varinder Singh was going on motorcycle from Mukerian to village

Kolian being driven by Varinder Singh. When they reached in the area of village Bhattain Rajputan, the offending truck bearing registration No.HR-46-5466 was wrongly parked on the metaled road without switching on the indicators or back lights, parking lights or bushes or lime powder etc. The truck was not visible due to the darkness of the night and as such, due to poor visibility, the motorcyclist struck against right hand side of the truck. It is alleged in the claim petition that accident took place due to wrong parking of the truck. Varinder Singh died on the spot and Rajinder Singh expired later on. Claimant Gurwinder Singh sustained serious injuries. He remained admitted in the hospital from 08.07.2007 to 18.08.2007. The matter was also reported to the police. The accident was witnessed by Jaspal Singh.

In the written statement, respondent-owner took the plea that no accident had taken place with the offending vehicle. Similarly, respondent-Insurance Company took the plea that offending vehicle was not involved in the accident. Respondent-driver also denied the allegations levelled in the claim petition.

Both the parties led evidence. The Tribunal after going through evidence, calculated the compensation amount of ₹3,20,000/-. However, the Tribunal held that it is a case of equal contributory negligence and therefore, an amount of ₹1,60,000/- was awarded as compensation along with interest @ 7% per annum from the date of decision of the Award till recovery.

Aggrieved from the above-said Award, present appeal has

been filed for enhancement of the compensation.

Notice of motion was issued to respondent No.2-Insurance Company and learned counsel for respondent No.2 appeared and contested the appeal.

At the time of arguments, learned counsel for the appellant argued only on one point that it is not a case of contributory negligence whereas learned counsel for respondent No.2 argued that it is a case of contributory negligence as the driver of the motorcycle could see the parked truck through the lights of the motorcycle. Rather, the driver of motorcycle was negligent. Therefore, he argued that there is no merit in the appeal.

I have heard learned counsel for the parties and have gone through the record.

From the pleadings as well as the evidence on record, first of all, I find that there is no pleading by any of the respondent including the Insurance Company that it is a case of contributory negligence. Secondly, there is no evidence produced by any of the respondent to show that it is a case of contributory negligence. No eye witness has been produced by the respondents to prove any negligence on the part of driver of the motorcycle. Rather, the case of respondents is that no accident occurred with the alleged offending vehicle. The claimants have produced eye witness before the Tribunal, who has deposed consistently regarding the version of the claimant. There is nothing on the record to disbelieve the eye witness as well as the claimant's version. As per their version, the truck was

parked on metaled road and accident occurred at night time. No indicator or parking lights were switched on nor any other precaution has been taken from where the parking of the truck can be seen on metaled road. The Tribunal has correctly relied upon the law in which it is held that it is the responsibility of the drivers of the buses and trucks to take care not only while driving their vehicles, but also while parking them on the road sides.

Keeping in view the evidence on record and the fact that there is no case of any of the respondent regarding contributory negligence, I find that the Tribunal has wrongly reached to the conclusion that it is case of contributory negligence, there being no evidence on record to that extent and also against the law relied upon by Tribunal. Therefore, the claimant-appellant is entitled to compensation to the tune of ₹3,20,000/- along with the interest as awarded by the Tribunal in the impugned Award, which is to be paid by the Insurance Company as the liability of the Insurance Company has not been disputed by the Insurance Company.

Therefore, finding merit, the present appeal is allowed accordingly.

June 29, 2015
Vgulati

(INDERJIT SINGH)
JUDGE