

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 4159 of 2013

Date of decision : 04-11-2015

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Riyazuddin

.....Appellant

Versus

Sanjay and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Kunal Dawar, Advocate for the appellant.

Mr. J.S Chatrath, Advocate for
Mr. Ashwani Talwar, Advocate for
respondent no.2.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The claimant-appellant has come up in appeal against the award of the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') dated 5.7.2013, whereby he has been awarded a compensation of Rs.1,65,566/- on account of injuries suffered by him in a road accident on 18.12.2011.

Brief facts of the case are that on 18.12.2011 at about 10:00 p.m, the claimant-appellant was returning from Badarpur Border to his house at Sector 3 Ballabgarh, Faridabad in his Wagon

R Car No. HR-29-Q-1939 through by pass road and when he reached in front of CNG Pump Sector-9, Faridabad, one Scorpio bearing regd. no. HR-51-AH-7770 being driven by respondent no.1 very rashly negligently with a high speed straightly hit Wagon R Car no. HR -29-Q -1939 driven by the claimant-appellant. Due to this collision, the claimant-appellant sustained injuries and fracture on his hand, right leg and other parts of his body. Claimant-appellant was firstly taken to Sarvodya Hospital, Sector-8, Faridabad where MLR was prepared and remained under the treatment w.e.f 18.12.2011 to 23.12.2011. In this regard, on the statement of the claimant-appellant, FIR No. 619 dated 19.12.2011 was registered under Sections 279/337/427 IPC at Police Station Sector-7, Faridabad against respondent no.1.

After notice, respondent no.1 filed a written statement denying the accident with the Scorpio car in question and contested the claim petition on the grounds of maintainability and denied the allegations made in the petition. Respondent no.2- M/s Bajaj Allianz General Insurance Company Ltd. filed a separate written statement and took the plea that the insured had violated the terms and conditions of the insurance policy as respondent no.1 was not holding a valid and effective driving licence at the time of accident and as such respondent no.2 is not liable to make payment of compensation. Involvement of the vehicle in question and respondent no.1 had been denied. Rest of the allegations contained in the claim petition were also denied. However, it was admitted that

the vehicle in question was insured with it at the time of alleged accident

From the pleadings of the parties following issues were framed by the Tribunal vide order dated 3.8.2012:

1. *Whether petitioner Riyazuddin had sustained injuries in a motor vehicular accident which took place on 18.12.2011 at about 10.00 pm. In from of CNG Pump, Bye pass road, Sector 9 Faridabad within the jurisdiction of police station Section 7 Faridabad caused by the respondent No. 1 while driving scorpio Hawk no. HR 51 AH 7770 rashly and negligently? OPP.*
2. *Whether the petitioner is entitled to claim compensation as claimed in the petition and from whom? OPP.*
3. *Whether the petitioner has no cause of action to file the present petition? OPR.*
4. *Whether the petitioner has no locus standi to file the present petition? OPR.*
5. *Whether the petition is not maintainable in the present form? OPR.*
6. *Whether the petition has not come before the Court with clean hands and has*

suppressed the true and material facts?

OPR.

7. Whether the respondent No.1 was not holding a valid and effective Licence and if so, its effect ? OPR.

8. Whether the respondent No.1 has contravened, violated, infringed and breached the terms and conditions of the insurance policy and if so, its effect? OPR

3.

9. Relief.

Issue no. 1 was decided by the Tribunal in favour of the claimant. It was held that the accident had taken place due to rash and negligent driving of Scorpio bearing regd. no. HR-51-AH-7770 by respondent no.1 which resulted into fatal injuries to claimant-appellant, Riyajuddin. Issue no.2 was partly decided in favour of the claimant-appellant and against the respondent as the Tribunal came to a conclusion that it was a case of contributory negligence.

While assessing the amount of compensation payable to the claimant-appellant, his income was taken as Rs.4700/- per month and as per the disability certificate, he had received 18% disability. The compensation was assessed by the Tribunal as under:

<i>Sr. No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
(I)	Loss of income	Rs.10,000/-
(ii)	Pain and suffering	Rs.10,000/-
(iii)	Medical bill	Rs.2,60,133/-
(iv)	Special diet and transportation	Rs.10,000/-
(v)	Attendant charges	Rs.5,000/-
(vi)	On account of 18% disability	Rs.36,000/-
	TOTAL COMPENSATION AWARDED	Rs.3,31,133/-

Hence the claim petition was partly allowed. As it was held to be a case of contributory negligence hence the claimant-appellant was held entitled for an amount of **Rs.1,65,566/-**

Feeling dissatisfied with the said award, the claimant-appellant has preferred the present appeal.

The counsel for the claimant-appellant has argued that the finding recorded by the Tribunal that the accident was on account of contributory negligence is liable to be reversed as this finding has been recorded without recording any evidence to the effect that the claimant-appellant was negligent in driving Wagon R Car no. HR-29-Q-1939 In the absence of any evidence of negligence, a finding could not be recorded that it was a case of contributory negligence. The direction of the Tribunal that the claimant-appellant is entitled to 50% compensation assessed by it should be reversed.

Learned counsel for the claimant-appellant referred to a judgment passed by Hon'ble the Supreme Court in the case of **Meera Devi and another vs. H.R.T.C. And others 2014(2) RCR (Civil) 235**, wherein a bus and a scooter coming from opposite

direction collided at a site of curve. The Tribunal came to a conclusion that the accident took place due to rash and negligent driving of the bus as it did not blow horn when there was a curve. Thus, Tribunal awarded compensation along with interest to the claimant. On appeal, the High Court held that since the deceased was below 18 years of age and was not authorized to drive a scooter, the accident occurred on account of contributory negligence on the part of the scooters and 50% compensation was reduced. On appeal, Hon'ble the Supreme Court held that to prove contributory negligence there must be some cogent evidence. In paragraph 10, it was observed as under:-

10.To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

Reference was also made by the counsel for the claimant-appellant to a judgment passed by Hon'ble the Supreme Court of India in the case of **Yerramma and others vs. G. Krishnamurthy and another, 2014(4) RCR (Civil) 266**. In this case deceased was driving a motor cycle. A bus which was going ahead

of him took a right turn without giving a right turn indication. Motor cycle collided with the bus. Deceased died of injuries. The Tribunal and the High Court held that there was contributory negligence to the extent of 25% on the part of the deceased and after assessing the compensation, deducted 25% from the total compensation payable to the claimants. While reversing the above said findings of the High Court, Hon'ble the Supreme Court observed in paragraph 9 as under:

9. After thorough consideration of the facts and legal evidence on record in the present case, we are of the view that the collision between the motor vehicles occurred when the respondent-Corporation bus was turning to its right side without showing the turn indicator to enter the bus depot. The driver of the offending vehicle of the respondent-Corporation bus was negligent by not giving the right turn indicator and causing the accident. The driver of the respondent-Corporation bus should have been aware of the fact that he was driving the heavy passenger motor vehicle, and that it was necessary for him to take extra care & caution of the other vehicles on the road while taking the turn to enter the depot. Had the driver of the offending vehicle taken sufficient caution and care, slowed down and allowed reasonable provision for other vehicles on the left side of the road to pass smoothly, the accident could have been averted.

Judgments referred to by the Tribunal are titled “**New India Assurance Co. Ltd. vs. Daljit Kaur and others, 1996 ACJ 756**”, “**Bijoy Kumar Dugar vs. Bidyadhar Dutta and others 2006 ACJ 1058**”, “**Gurmeet Kuar and another vs. Mohinder Singh and**

others 2006(1) RCR Civil” and “***Dr. B.D Bagri vs. Daulat Ram and others 1998 ACJ 1303***”. In all these cases it was held that the accidents took place due to contributory negligence of both the drivers of the vehicles involved in the accident and both the drivers were held equally responsible for causing the accidents.

After going through the case, it has been observed that as per the site plan of the present case, the car of the deceased was coming from Delhi and was on the left side. The offending vehicle was coming from the opposite side and hit his car by coming on the wrong side. After going through the site plan, no negligence can be attributed to the car driver of Car no. HR -29Q-1939 as he was driving on the correct side of the road. It was the bus driver who had to be vigilant enough not to go on the wrong side and avoid head on collision. Moreover, as per the site plan, there was some repair work going on which is marked on the site plan. Hence there is no evidence to show that the driver of Car no. HR -29Q-1939 was, in any way, negligent in driving.

Facts and circumstances of the cases referred by the Tribunal are not applicable to the facts and circumstances of the present case. Applying the ratio of the judgment passed by Hon'ble the Supreme Court in ***Meera Devi's case (supra)*** and ***Yerramma's case (supra)***, the finding of the Tribunal that the accident had taken place as a result of the contributory negligence of the car driver is hereby reversed and the Insurance Company is held liable to make the payment of the compensation. The compensation payable to the

claimant-appellant is liable to be reassessed.

A perusal of the award shows that the claimant had remained in hospital on 18.12.2011 with fractures of right femur, bilateral humerus, fracture right ulna and operation for them and discharged on 24.12.2011. He was again admitted on 19.4.2012 because of broken implant right thigh and operated for it and discharged on 19.4.2012. He also proved disability certificate Ex. P-55 showing that he suffered 18% disability. His income has been taken to be Rs.4700/- per month. The compensation payable to the claimants is hereby reassessed as under:

<i>Sr. No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
(I)	Loss of income	Rs.4700/-x 6=Rs.28,200/-
(ii)	Pain and suffering	Rs.50,000/-
(iii)	Medical bill	Rs.2,60,133/-
(iv)	Special diet and transportation	Rs.20,000/-
(v)	Attendant charges	Rs.10,000/-
(vi)	On account of 18% disability	Rs.36,000/-
	TOTAL COMPENSATION AWARDED	Rs.4,04,333/-
	Enhanced amount of compensation	(Rs.4,04,333/-)- (Rs.1,65,566/-)= Rs.2,38,767-

The enhanced amount of compensation of **Rs.Rs.2,38,767/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the

judgment of Hon'ble the Supreme Court in the case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

04-11-2015

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(RITU BAHRI)
JUDGE