

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

FAO No. 4960 of 2015(O&M)

Date of Decision: August 19 , 2015.

Hardeep Singh and another

..... APPELLANT (s)

Versus

Gurdish Kaur

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajbir Singh, Advocate
for the appellants.

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?

LISA GILL, J.

This appeal has been filed by the driver and owner of the offending motorcycle challenging the liability imposed upon them by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as, the 'Tribunal') vide award dated 05.03.2015.

Respondent – complainant Gurdish Kaur suffered injuries in an accident on 06.12.2012 on account of rash and negligent driving of motorcycle bearing registration No. PB-13Y-2681 by appellant No.1 – Hardeep Singh. She filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') claiming that she was coming home on 06.12.2012 at about 6.00 p.m. from Nabha Gate, Sangrur on her Scooty make

Bajaj Spirit, bearing registration No. PB13M-0547. She turned her Scooty from main road towards right side and was near the street where she was to enter. The offending motorcycle driven by respondent No.1 in a rash and negligent manner at a high speed struck against the Scooty of claimant from the left side. As a result, she fell down and suffered fractures on her left femur, tibia and left leg and other multiple injuries on her body. She was admitted in the Lifeline Multispecialty Hospital, Sangrur till 13.12.2012 and was operated upon for the femur and tibia. Subsequently, she remained admitted in Balaji Hospital, Ludhiana from 25.04.2013 to 07.05.2013 for the treatment of non-union tibia and from 01.04.2014 to 17.04.2014 for the treatment of non-union of femur and removal of rod/plate from upper and lower left leg and treatment of infected tibia.

She raised a claim of ₹15,00,000/- on account of injuries suffered by her in the accident as well as the compensation on account of loss of amenities, pain and suffering as well as other heads. She was a Clerk in the Government Senior Secondary School, Sangrur.

Learned Tribunal on consideration of the facts and circumstances of the case, awarded a total compensation of ₹4,31,932/- while holding that the accident in question took place due to the rash and negligent driving of the offending motorcycle by appellant No.1 – Hardeep Singh. As the motorcycle was not insured, liability was fixed upon the respondents i.e., the driver and owner of the motorcycle. Aggrieved therefrom, present appeal has been preferred.

Learned counsel for the appellant vehemently argues that no

liability can be fixed upon the appellants for the reason that it was the claimant herself who was negligent while driving her vehicle which led to the said accident. He submits that it was a head-on collision therefore, the claimant is in any case guilty of contributory negligence. Quantum of compensation awarded is averred to be unjust and therefore, unsustainable.

Having heard learned counsel for the appellants and going through the file, it is apparent that it has never been the case of the appellants that the claimant was guilty of any negligence. Their case is of complete denial of the accident. It has been pleaded that a false FIR has been registered against appellant No.1 – Hardeep Singh. Learned Tribunal while considering the issue has specifically concluded that the accident has occurred on account of rash and negligent driving of motorcycle by appellant No.1 while observing as under:-

“11. As per case of the applicant and as stated by her while appearing as AW3, that on 06.12.2012 at about 06.00 p.m. the applicant was coming from Nabha Gate, Sangrur to her home on her scooty, make Bajaj Spirit, bearing registration no. PB 13 M 0547; that she turned her scooty from main road towards right side and was near the street where she was to enter, when from the side of residence of Madanjit on the main road, motorcycle, make Bajaj Discover, bearing registration no. PB 13 Y 2681 belonging to respondent no.2 and being driven by its driver i.e. respondent no.1 in a rash and negligent manner and at a high speed came and struck against scooty of the applicant from left side; that in the accident, the applicant fell down and suffered fractures on left femur, tibia, left leg besides other multiple injuries on her body; that in respect of the aforesaid motor vehicular accident, First Information Report no. 369 dated 08.12.2012, under Sections 279,337,338 and 427 of the Indian Penal Code was registered against respondent no.1 at Police Station, City, Sangrur. AW3 Gurdish Kaur, the applicant, on

the basis of whose statement, First Information Report qua the accident in question was lodged, was able to withstand the test of cross-examination successfully as regards the factum and manner of the accident. The applicant had sustained injuries in the accident and thus, she was not expected to involve respondent no.1 falsely and to allow the real culprit to go scot free especially, when on behalf of the respondents, no hostility of the applicant against either of the respondents has been alleged or proved. **Otherwise also, it is not the case of either of the respondents that in fact, the accident took place, on account of rash and negligent driving of scooty by the applicant (*emphasis added*).** Thus, in the evidence of the applicant it is proved that respondent no.1 was responsible for the accident in question on account of which the applicant suffered injuries on the fateful day. Contents of First Information Report, Exhibit-A48, also support plea of the applicant as regards the factum and manner of the accident. It has not been disputed on behalf of the respondents that the motorcycle in question belonged to respondent no.2.

12. Further, respondent no.1 Hardeep Singh himself stepped into the witness box as RW1 and in cross-examination, he admitted that criminal case was registered against him regarding the accident in question and he was facing trial of the said case. Though respondent no.1 in the written reply claimed that he was falsely implicated in the criminal case but there is nothing on record that he ever made any representation before any higher authority complaining his false implication in the criminal case registered against him with respect to the accident in question. This situation makes necessary a reference to Girdhari Lal versus Radhey Shyam & others, Volume CIV (1993-2) The Punjab Law Reporter 109 wherein Hon'ble High Court of Punjab & Haryana ruled as under:

“In view of the fact that driver was being tried on account of rash and negligent driving it was prima facie safe to conclude that the accident had occurred on account of his rash and negligent driving.”

13. Even otherwise, the Tribunal, in terms of Section 166 of the Act, is not required to hold a regular trial but, according to scheme of Act, it holds an enquiry for adjudication of claims for award of compensation in respect of accidents involving the death or bodily injury to persons, arising out of use of motor vehicles. The adjudication of claim in these proceedings has to be made on the preponderance of probabilities. The quality of evidence and not the quantity thereof, in totality of circumstances, clearly proves the involvement of the respondent no.1 and the motorcycle in question belonging to respondent no.2 for the accident in question.”

Learned counsel for the appellants is unable to point out any infirmity or illegality in the said finding. It is not open to the appellants, at this stage, to plead contributory negligence on the part of claimant once they have chosen to adopt complete denial of the accident at the first instance. Even otherwise, there is no evidence on record pointing to any negligence on the part of the claimant.

Insofar as the quantum of compensation is concerned, learned Tribunal awarded compensation as under:-

Sr.No.	Particulars	Amount (in rupees)
1.	Special Diet	19,000/-
2.	Pain and suffering	50,000/-
3.	Medical Expenses	49,664/-
4.	Loss of income	2,31,768/-
5.	Loss of amenities	50,000/-
6.	Transportation charges	7,500/-
7.	Attendant charges	24,000/-
	Total Amount	4,31,932/-

Amount of medical reimbursement (₹58,495/-) received by her has been deducted from the compensation awarded on account of medical expenses.

Similarly, while assessing loss of income, the amount received by the claimant being on half pay leave has been taken into account. There is no scope for reduction in the amount of compensation awarded.

There is no illegality, infirmity or perversity in the impugned award which warrants interference by this Court.

Consequently, this appeal is dismissed.

Amount of ₹25,000/- deposited by the appellants be sent to the Tribunal.

August 19 , 2015.
'om'

(LISA GILL)
JUDGE