

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

FAO No.506 of 1998.

Date of Decision: 17.02.2016.

Jagjit Singh

....Appellant.

VERSUS

Kulwinder Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.S. Panag, Advocate for the appellant.

Mr. Sandeep Suri, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal for enhancement of compensation was filed by appellant-injured Jagjit Singh against the award dated 12.08.1997 passed by Motor Accident Claims Tribunal, Ludhiana (for short, “the Tribunal”) granting him compensation for the injuries suffered by him in a motor vehicular accident.

The facts that emerge from the record are as under:-

On 20.12.1993, the appellant-claimant alongwith one Pal Singh was going on scooter bearing registration No.PUI-474 from village Barwalipur to village Baghaur. After crossing village Sarwarpur, when they reached on the turning, a bus bearing registration No.PAB-7040 (hereinafter

referred as to “the offending bus”) being driven rashly and negligently, came from the opposite side and struck into the scooter. Because of the impact, the appellant sustained serious multiple injuries on his head and other parts of the body. Pal Singh was also injured.

A petition claiming compensation under Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by the appellant against driver, owner and insurer (respondents) of the offending vehicle was allowed by the Tribunal and an amount of Rs.2,25,000/- alongwith interest at the rate of 12% per annum from the date of filing of the petition till realization of the amount was awarded to him as compensation.

Feeling unsatisfied with the award dated 12.08.1997, the appellant preferred the instant appeal.

The submissions made by Mr. S.S. Panag, learned counsel for the appellant and Mr. Sandeep Suri, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants argued that the findings of learned Tribunal that the accident occurred due to composite negligence of the driver of the scooter and driver of the bus were erroneous. It was not in the pleadings of the respondents that the negligence on part of driver of the scooter contributed in causing the accident and therefore, the said plea was not available to them at the time of arguments.

Dealing with the issue of negligence which led to the occurrence of accident between the scooter on which the appellant was the driver and the offending bus, the findings of learned Tribunal are as under:-

“For whose negligence this accident has taken place is the next question to be decided. Admittedly, both the vehicles were coming from the opposite direction. According to the pleadings, when the petitioner reached on the turn of the village, the bus came from the opposite direction. It is common knowledge when it is the turn of the road, the vehicle drivers coming from the opposite direction owes the duty to each other to be extra cautious to avoid the accident because each of such vehicle does not know of the vehicle coming from the opposite direction and in such situation, both the vehicles are expected to be driving their vehicles in such manner that in case of emergency or need they may be able to stop the vehicle immediately without causing any hurt to the occupants of the other vehicle. Similarly, when both the vehicles are coming in case of no turning from opposite direction, it can safely presume that they had seen the other vehicle coming from the opposite direction and therefore, the drivers of such vehicles are expected to have proper control over their vehicles and avoid the accident. So in such situation when the accident taken place between two vehicles coming from opposite direction, it is the liability of both the vehicles drivers and both shall be considered liable for having caused the accident, but at the same time, this is also one of the principle of law that “heavier the vehicle more the responsibility”. So in such a situation, in the present case, the liability of the bus driver was much more than the driver of the scooter. When he reached the turn of the road, or when he found the other vehicle coming from the opposite side, it was expected of him either to stop and give way to the other vehicle or to slow down the speed to avert the accident.

Keeping in view the facts that the fact of accident is admitted, vehicles are coming from the opposite directions,

responsibility of the bus driver was more than the driver of the scooter. I, in such situation, fix the responsibility of both the drivers of the bus and scooter at the ratio of 60:40”.

Learned counsel for the appellant failed to demonstrate any misreading or mis appreciation of evidence, on part of the Tribunal while recording the above findings and the same call for no intervention.

The second argument of learned counsel for the appellant raised with vehemence is that the appellant had undergone grave physical and mental pain because of multiple serious injuries suffered by him including compound fracture of both bones in the right leg. He remained under treatment for two years during which successive operations were performed in which bone grafting and plating etc. was done. In view of said facts, the amount of Rs.15,000/- awarded towards pain and suffering is on the lower side. The appellant had also not been fully compensated for the expenses incurred by him on treatment, transportation and special diet. From the medical bills etc. produced by him, it is proved that he spent around Rs.90,000/- on treatment, medicines etc. Apart from that PW5, the doctor who treated the appellant, proved the disability certificate Ex.P319 according to which the disability suffered by the appellant due to the injuries was assessed as 52 per cent which means that he had become totally disabled. Nothing was awarded by learned Tribunal on that count. To support his arguments, learned counsel relied upon **Jakir Hussein vs. Sabir and others, 2015(2) R.C.R. (Civil) 141** and **M.Mani vs. Divisional Manager, New Delhi Assurance Co. Ltd. and another, 2013(11) SCC 444.**

The facts in hand are distinguishable from the facts of Jakir Hussein's and M.Mani's cases (supra) relied upon by learned counsel for the appellant. The disability certificate Ex.P319 proved in evidence by the appellant was issued by Dr. R.R. Saggar, Junior Consultant (Ortho) of Mohan Das Oswal Cancer Treatment and Research Foundation which admittedly is a private hospital. For the reasons best known to the appellant, he did not apply to the Chief Medical Officer of a Government hospital for assessment of his disability by Board of Doctors. It is not even mentioned in the certificate that the doctor who issued the same had treated the appellant. Moreover, the signatory of the certificate specifically mentioned that at present his (appellant's) transported bone has consolidated, but yet did not mention even one reason for assessing permanent disability of the appellant at 52%. As such, the certificate at the face of it cannot be relied upon.

In any case, there cannot be two thoughts on the matter that because of the grievous injuries suffered by the appellant, his physical condition cannot come back to normal even though he has taken the required treatment. Physical frame once shattered cannot be put back to the normal position. Applying the yardstick laid down by Hon'ble Apex Court in **Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101** the functional disability of the appellant can be taken as 20%.

From the medical documents produced by the appellant, it stands proved that he remained hospitalized for various durations and at different hospitals during the period 20.12.1993 to 02.08.1995. His period of treatment stretched to almost 20 months. Considering the nature of

injuries suffered by the appellant and the period of his hospitalization, the amount of Rs.15,000/- awarded as compensation by learned Tribunal for the pain and suffering undergone, is enhanced to Rs.30,000/-. As far as the expenses incurred on treatment, transportation and special diet etc. are concerned, learned Tribunal allowed Rs.1,20,000/- which from the documents available on file appear to be adequate.

As far as the disability suffered by the appellant is concerned, it cannot be said that learned Tribunal awarded no amount on this count. An amount of Rs.65,000/- bifurcated under three heads (i) loss of future prospects; (ii) loss of immunity and; (iii) other miscellaneous expenses was allowed as compensation. Learned Tribunal on the basis of the evidence led by the appellant held him to be a daily wage. Having become disabled to the extent of 20%, it is for sure that the income of the appellant would be adversely effected. As observed above, the treatment of the appellant continued for more than one year. His income was assessed as Rs.1500/- per month. He was 23 years aged at the time of accident. Accordingly, Rs.2,76,000/- (1500 x 12 x 18) is allowed as compensation to the appellant for loss of future prospects and future immunity etc. The amount allowed as Rs.25,000/- on account of loss in income during the period he remained under treatment calls for no intervention.

It is obvious that during the period the appellant was under treatment he must have spent on his transportation and also required an attendant. Even if his family members were attending on him, they must have spent good amount on their transportation and boarding-lodging and

on that count, a further amount of Rs.20,000/- is allowed.

In view of the above, the claimant-appellant is held entitled to enhanced compensation of Rs.3,11,000/- (Rs.5,36,000/- minus Rs.2,25,000/- awarded by learned Tribunal) as indicated above. The amount shall be paid within a period of 45 days from the date of receipt of certified copy of this judgment, failing which, the appellant shall be entitled to interest at the rate of 7.5% per annum from the date of filing of the appeal till its realization.

Accordingly, the award dated 12.08.1997 passed by the Tribunal is modified and the appeal is partly allowed.

(SNEH PRASHAR)
JUDGE

17.02.2016.
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