

206.

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

FAO No.2597 of 2007 (O&M)

Date of decision:18.02.2016

Jarnail Singh

... Appellant

versus

Karnail Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Arora, Advocate,
for the appellant.

Mr. Vishwajit Bedi, Advocate,
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The appeal is against the dismissal of the petition for claiming compensation against the respondents for injuries sustained in a motor accident. The claimant was a pillion rider in a scooter owned by the second respondent Jaspal Singh. One Karnail Singh, who was the first respondent, was driving the scooter and the claimant, who was seated behind, came by grievous injuries when yet another scooter dashed against him. A DDR entry was that the other scooter was attempting to avoid hitting a cyclist and dashed against the scooter driven by the first respondent. He did not

escalate to lodging a criminal complaint against the first respondent.

2. The claim was filed against the owner and driver of other scooter but chose only the owner and driver of the scooter in which he was himself travelling and made the insurer also as a party. The court found that only the other vehicle must be taken as responsible for the accident and if he had not been impleaded, the claim cannot be favourably considered.

3. I find the decision to be erroneous and I set it aside on the ground that as far as the pillion rider is concerned, it was a case of composite negligence of two vehicles which were involved. The Insurance Company cannot have even that plea was not taken, for, it was a matter of inference. The Tribunal could not have dismissed the petition but must have allowed the petition by determining compensation and left it to the owner a right of contribution by filing an independent case against yet another vehicle which was admittedly involved in the accident. I, therefore, set aside the dismissal and will proceed to determine the quantum of compensation.

4. In the accident both the bones of lower limb had been fractured, requiring him to be hospitalized for 5 days and had to be nursing for convalescing for a period of 6 months. He was said to be a driver in a school bus and, according to him, he earned about ₹4,000/-. The counsel argues that though no documentary proof was

given, at the relevant time, the minimum wages was between ₹3,000 to ₹4,000/- for a driver. I will take the income at ₹3,000/-, provide for loss of income for a period of 6 months and assess the several heads of claims, duly factoring the medical expenses brought through bills and making approximations for attendant charges for 6 months, special diet and transportation at modest sums and provide for pain and suffering for the two fractures at ₹7,500/- each and for surgical intervention at another ₹5,000/- and also provide for loss of amenities for the fractures, assessed to have caused 10% disability.

The tabulation of various heads is as under:-

Date of accident: 25.03.2004			
Age:32			
Period of hospitalization: 5 days/6 months			
Occupation & income : Driver ₹4,000/-			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount₹
1.	Loss of income from to		18,000
2.	Medical expenses:		
i)	Medicines		12,164
ii)	Future treatment		
iii)	Attendant charges		6,000
iv	Special diet		2,500
v	Transportation		2,500
3.	Pain & suffering		20,000
4.	Disability (10%) & Compensation		20,000
5.	Income as assessed by the Tribunal (a)		
6.	% loss of earning capacity (b)		
7.	Multiplier (c)		
8.	Loss of earning capacity (axbxc)		
9.	Reduction in life expectancy		
10.	Loss of prospect of marriage		
8.	Loss of prospect of marriage		
	Total		81,164

The claim shall be allowed for ₹ 81,164/- with interest at 7.5% from the date of petition till date of payment. The liability shall be on the Insurance Company. The award of dismissal is set aside and the appeal is allowed to the above extent giving the liberty to the insurer to proceed against yet another vehicle if so advised for seeking contribution.

(K.KANNAN)
JUDGE

18.02.2016
sanjeev