

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

FAO No.4737 of 2007.

Date of Decision: 11.03.2016.

Gurjant Singh

....Appellant.

VERSUS

Avtar Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Bhavyadeep Walia, Advocate for the appellant.

Mr. B.S. Aulakh, Advocate for respondents No.1 and 2.

Mr. R.C. Kapoor, Advocate for respondents No.3 and 4.

SNEH PRASHAR, J.

This appeal has arisen from an award dated 23.04.2007 passed by learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as, “the Tribunal”) in MACT Case No.15 of 08.02.2006 titled “Gurjant Singh vs. Avtar Singh and others” filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) awarding compensation to the appellant for the injuries suffered by him during a vehicular accident.

The appellant-claimant was driver on truck bearing registration No.HR-37A-7153 (for short, “truck No.7153”). On 18.09.2005, he was coming from Rajasthan to Punjab with his truck loaded with Gypsum. One

Balbir Singh was travelling with him in the truck as cleaner. His truck was being followed by another truck bearing registration No.PB-108C-6647 (for short, "truck No.6647") being driven by Mohinder Singh son of Phagan Singh of District Ludhiana. At around 9:30 p.m. after the claimant crossed Rang Mahal Railway Crossing on the Suratgarh, Pilli Banga Road, a truck bearing registration NoRJ-13G-7350 (hereinafter referred to as, "truck No.7350") came from the opposite direction and rammed into his truck on the right front side. The cabin of the truck was totally smashed because of which he suffered multiple grievous injuries all over the body including the head and right knee. From the site of accident he was taken to Civil Hospital Suratgarh but his condition being serious he was referred to Satluj Hospital, Ludhiana on 09.09.2005 and he remained hospitalized there till 30.10.2005.

Alleging that the accident occurred solely due to rash and negligent driving of the truck No.7350 and that he had spent approximately Rs.5 lacs on his treatment and Rs.1 lac on special diet and transportation, the appellant filed a petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation to the tune of Rs.15 lacs against driver, owner and insurer of truck No.7350. The insurer of the truck being driven by him (truck No.7153) was impleaded as respondent No.4.

The petition was contested by the respondents. Avtar Singh (respondent No.1) alleged that the accident was caused by the appellant himself as he was driving his truck No.7153 rashly and negligently. Sukhdev Singh (respondent No.2) also pleaded that the accident was result

of rash and negligent driving on part of the appellant. The insurers (respondents No.3 and 4) pleaded that the offending vehicles were being driven in violation of the terms and conditions of the insurance policy.

On the basis of the rival pleadings of the parties, following issues were framed:-

- (1) Whether the claimant received injuries in the accident caused by the respondent no.1 while driving the truck no.RJ-13G-7350 in a rash and negligent manner? OPP.
- (2) Whether the accident was result of rash and negligent driving of the truck no.HR-37A-7153 by the claimant? OPR.
- (3) Whether the respondent no.1 was not holding valid driving licence at the time of accident? OPP.
- (4) Whether the claimant is entitled for compensation? If so, to what extent and from whom? OPP.
- (5) Relief.

Both the parties adduced evidence to discharge the onus of issues on each of them. Considering the evidence on record and the submissions made on behalf of both the parties, learned Tribunal taking up Issues No.1 and 2 together held that the accident was result of rash and negligent driving of truck No.7153 driven by the appellant and truck no.7350 driven by Avtar Singh (respondent No.1). The ratio of their liability was determined as 50:50. Deliberating on other issues, learned Tribunal awarded compensation to the tune of Rs.4,50,000/- to the appellant but simultaneously held that the appellant will be entitled to half of the

amount of compensation i.e. Rs.2,25,000/- in view of his liability in causing the accident determined under Issues No.1 and 2.

Feeling aggrieved by the award dated 23.04.2007 passed by learned Tribunal, the claimant-appellant filed the instant appeal.

The submissions made by Mr. Bhavyadeep Walia, learned counsel for the appellant, Mr. B.S. Aulakh, learned counsel for respondents No.1 and 2 and Mr. R.C. Kapoor, learned counsel for respondents No.3 and 4-insurance company have been heard and record perused.

At the very outset, learned counsel for the appellant argued that the finding of learned Tribunal that the accident had taken place due to contributory negligence on part of the appellant was totally misplaced. Apart from the ocular evidence led by the appellant, learned Tribunal failed to appreciate the mechanical report Ex.P143 of Truck No.7153 being driven by the appellant. As mentioned in the report Ex.P143 the complete right side of truck No.7153 including the cabin of the driver was totally damaged. PW7 Jaspal Singh, who witnessed the accident, testified that the speed of truck No.7350 at the time of accident was 70 kmph. Avtar Singh, driver of truck No.7350 stepped into the witness box as RW2 and admitted that truck No.7153 of the appellant was being driven at the speed of 20/25 kmph. As such, from the ocular testimony of the witnesses coupled with the mechanical examination report of the truck No.7153 of the appellant, it was proved that Avtar Singh (respondent No.1) was driving truck No.7350 rashly, negligently and in a high speed because of which his truck dashed into the truck of the appellant and caused complete damage to the right

portion of the truck. Learned counsel asserted that for the mere reason that the First Information Report in respect of the accident was registered against drivers of both the trucks, it was inappropriate for learned Tribunal to conclude that the appellant was guilty of contributory negligence. To support his argument, learned counsel relied upon **Ranjit Kaur vs. Chhinderpal Singh & others, 2006(4) R.C.R. (Civil) 702.**

The view taken in Ranjit Kaur's case (supra) was on the facts of the said case. The case in hand is on a different footing. The accident took place on 18.09.2005. A First Information Report Ex.P135 was registered in respect of the accident in question on the statement of Jaspal Singh who admittedly was working as conductor on truck No.6647 being driven by Mohinder Singh. He stated that his truck and the truck being driven by the appellant were both loaded with Gypsum and were together coming from Rajasthan to Punjab. The truck of the appellant was ahead of his truck and for that reason he was able to witness the accident. It is worthwhile to note that the statement of Jaspal Singh in respect of the accident was recorded by the police without any loss of time after the accident. Jaspal Singh was a companion of the appellant as his truck and the truck of the appellant were said to be coming together loaded with identical goods. In his statement, which formed the basis of First Information Report, Jaspal Singh stated that the accident was result of rash and negligent driving on part of drivers of both the trucks. In other words, the composite negligence on part of the appellant and Avtar Singh (respondent No.1) in driving their respective trucks was stated to have led to the accident.

During his statement before the Tribunal, PW7 Jaspal Singh stated that his signatures on the statement which formed the basis of First Information Report, were obtained by the police without reading over the contents of the statement to him. At the same time, in his cross-examination he admitted that there was a head of collision between both the trucks. Neither he nor appellant Gurjant Singh, who appeared as PW8, spell out a word to say that they had complained to any higher authority of the police at any point of time to express that the version regarding the cause of accident in the First Information Report was wrong or that the signatures of Jaspal Singh had been obtained by the police forcibly and further that appellant had been falsely implicated. No doubt, in his statement RW2 Avtar Singh stated the speed of the truck being driven by the appellant was 20/25 kmph but no query was put to him about the speed of his own truck. The statement of PW7 Jaspal Singh regarding speed of the truck being driven by respondent Avtar Singh could not be accepted as he himself stated at the first instance that the accident had taken place due to composite negligence of drivers of both the trucks.

Contrary to his own earlier version, in his deposition before the Tribunal he took a U-turn and stated that respondent Avtar Singh was solely responsible for causing the accident due to his rash and negligent driving, but there also he admitted that there was head of collision between the two trucks. It was neither stated nor proved by the appellant or Jaspal Singh that on which portion of the road the accident had taken place. Since the right side of both the vehicles collided it can be assumed that the accident

occurred in the middle of the road. It being so the finding of learned Tribunal that the appellant and respondent Avtar Singh were equally responsible for causing the accident due to their rash and negligent driving, calls for no intervention.

Since it is proved that the appellant was driving the truck at the time of accident for transporting goods, it can be accepted without hesitation that he was a driver by profession. His income is assessed as Rs.5,000/- per month. According to the disability certificate Ex.P142 proved by PW9 Dr. Ajay Bansal, the appellant was having shortening of right lower limb by 1 inch leading to difficulty in squatting and cross leg sitting with mild stiffness in right elbow joint. The permanent disability of the appellant was assessed as 35%. Since the appellant was a driver by profession, there remains no doubt that the disability suffered by him would adversely effect his earning capacity. In view of the law laid down in **Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101** the functional disability qua whole body of the appellant is taken as 20% which will amount to loss of earning capacity to the tune of Rs.1,000/- per month i.e. Rs.12,000/- per annum. The appellant was 40 years old when he met with the accident. Applying the multiplier of '15' the amount comes to Rs.1,80,000/-. Accordingly, the amount of Rs.70,000/- awarded by learned Tribunal for the disability suffered by the appellant is enhanced to Rs.1,80,000/-.

The appellant-claimant remained hospitalized in Satluj Hospital from 19.09.2005 to 30.10.2005 and for the second time for

operation from 30.12.2005 to 01.01.2006. His hospitalization at the first instance was of 41 days and at the second time for 2 days when he was admitted for rehabilitation. The total expenditure of treatment medicines etc. proved through bills by the appellant was allowed by learned Tribunal, therefore, no modification on that count is required. However, the amount of Rs.25,000/- allowed by learned Tribunal for pain and suffering is enhanced to Rs.40,000/-. The gravity of injuries indicates that the appellant may not have been able to resume his daily routine for at least six months. As such, the amount of Rs.20,000/- awarded by learned Tribunal on account of loss of income is enhanced to Rs.30,000/-. Needless to say that during the period of hospitalization the appellant required a full time attendant. Even if his family members were attending on him, it is obvious that he must have spent a good amount on their transportation and boarding-lodging. He also must have spent on his own transportation and special diet etc. On all these counts, the amount of Rs.10,500/- allowed towards transportation by learned Tribunal is enhanced to Rs.15,000/- whereas the amount of Rs.5,000/- allowed on account of special diet and Rs.3,000/- for expenses on attendant allowed by learned Tribunal shall remain the same. The rate of interest allowed by learned Tribunal shall also be the same.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 23.04.2007 passed by learned Tribunal is modified. The total enhanced compensation comes to Rs.1,39,500/-. Since it is a case of contributory negligence, the appellant will be entitled to half of the enhanced amount of compensation i.e. Rs.69,750/-. The

enhanced amount of compensation shall be deposited by insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

11.03.2016.
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