

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

FAO No.6994 of 2010.

Date of Decision: 03.03.2016.

Rajbir Singh

....Appellant.

VERSUS

Rakesh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vikas Lochab, Advocate for the appellant.

Service of respondent No.1 was dispensed with vide order dated 27.04.2012.

Respondent No.2 exparte vide order dated 24.02.2012.

Mr. Subhash Goyal, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellant Rajbir Singh seeks enhancement of compensation awarded to him by learned Motor Accident Claims Tribunal, Faridabad (for short, "the Tribunal") vide the award dated 06.04.2010 passed in MVA Petition No.235 of 2008 on account of injuries sustained by him in a vehicular accident.

The relevant facts are as under:-

On 09.03.2008, appellant-claimant Rajbir Singh alongwith Monu Sharma, Narender son of Lal Chand, Hukam Chand son of Roop

Ram and Girdhari son of Ram Chand was coming to Ballabgarh from Rohtak via Jhajjar by means of Maruti car No.HR-29R-8561 (for short, “the car”). At about 5:30 p.m., when they reached at Birdhana turning on Jhajjar-Rohtak road, near Radha Rani Petrol Pump, a truck bearing registration No.HR-46B-1365 (hereinafter referred as to “the offending truck”) being driven rashly and negligently, came from opposite direction without blowing horn and struck against the car. As a result of the accident, all the occupants including appellant Rajbir Singh sustained multiple grievous injuries. He was first taken to Civil Hospital, Jhajjar and was later shifted to Surya Ortho and Trauma Centre, Faridabad. Thereafter, he took treatment from Indraprastha Apollo Hospital, Delhi.

A First Information Report No.88 dated 09.03.2008 under Sections 279, 337 and 338 of the Indian Penal Code in respect of the accident was registered against respondent No.1 at Police Station Jhajjar on the statement of Monu Sharma.

The claimant-appellant filed a claim petition invoking the provisions of Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) alleging that the accident occurred entirely due to rash and negligent driving of the offending truck by respondent No.1 Rakesh.

The claim petition was contested by respondents No.1 and 3. Respondent No.2-owner did not appear to contest the petition and was proceeded against exparte.

On the basis of the pleadings of the parties, issues were settled.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal held that it is a case of contributory negligence of driver of car and driver of truck in ratio of 30:70. The claim petition was partly allowed and the appellant was held entitled to compensation to the tune of Rs.30,772/- alongwith interest at the rate of 6% per annum from the date of filing the petition till realization. The respondents were held jointly and severally liable to pay 70% of the amount of compensation to the appellant.

Feeling unsatisfied with the award dated 06.04.2010, the claimant-appellant has preferred the instant appeal.

The submissions made by Mr. Vikas Lochab, learned counsel for the appellant and Mr. Subhash Goyal, learned counsel for respondent No.3-insurance company have been heard and record perused.

Learned counsel for the appellant-claimant argued that the learned Tribunal has erred in holding composite negligence on part of driver of the car and driver of the offending truck in the ratio of 30:70 in causing the accident. The compensation awarded under the heads of pain and suffering; loss in come; special diet, attendant and transportation are on very low note.

Dealing with the issue of negligence in driving the car by its driver and the offending truck by respondent No.1 which resulted in causing of the accident in question, the findings of learned Tribunal are as under:-

“The admission of PW1 Girdhar that it was a head on collision shows that the Maruti car in which the petitioners were travelling was not driving with due care and caution. The driver of Maruti Car has not stepped into witness box to depose that on seeing the offending vehicle from front side he took his car to left side to avert the accident. PW1 Girdhar and PW2 Rajbir have nowhere deposed in their affidavits Ex.PW1/A and Ex.PW2/A that the driver brought his truck on wrong side and hit it into the Maruti car from front side. So until and unless the petitioners have stated that Monu Sharma driver of the Martui car in which they were traveling used reasonable care for their safety the sole blame cannot be attributed to the driver of the offending vehicle. So, this Tribunal is of the opinion that it is a case of contributory negligence of driver of car and driver of truck in the ratio of 30:70.”

Learned counsel for the appellant-claimant failed to demonstrate misreading or misappreciation of evidence by learned Tribunal and hence, the said findings call for no intervention.

From the discharge summery Ex.PW9/B of the claimant proved by PW9 Dr. Sachhidnand Purkait, it becomes clear that he suffered fracture of neck of right femur with dislocation of right hip joint. Needless to say that the injury must have caused huge pain and suffering and would have created problem to the claimant in sitting and walking. Considering the nature of injuries the amount of Rs.30,000/- allowed under the head of pain and suffering is enhanced to Rs.40,000/-. PW9 Dr. Sachhidanand Purkait stated that he charged Rs.2960/- from the claimant vide receipt Ex.PW9/3.

The said amount had been allowed by learned Tribunal and calls for no

intervention. Since the claimant suffered serious injuries of right hip joint, it can be said without hesitation that he must have remained confined to bed for atleast six months. The claimant being an agriculturist by occupation his income was assessed as Rs.8,000/- by learned Tribunal. The amount of Rs.5,000/- awarded on account of loss of income is apparently very low. The said amount is enhanced to Rs.48,000/-. The amount of Rs.6,000/- allowed on account of special diet, services of attendant and transportation is enhanced to Rs.15,000/-. The rate of interest allowed by learned Tribunal shall remain the same. Since, it is a case of contributory negligence of driver of car and driver of the offending truck in the ratio of 30:70, therefore, appellant is entitled to 70% of Rs.62,000/- i.e. enhanced amount.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 06.04.2010 passed by the Tribunal is modified. The appellant-claimant is held entitled to enhanced compensation of Rs.43,400/- in addition to the amount of Rs.30,772/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- 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

03.03.2016.
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