

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

FAO No.7082 of 2011

Date of decision : 19.08.2016

Pawan Kumar

.....Appellant

Versus

Karam Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. R.S. Malik, Advocate for appellant.

Mr. M.B. Jain, Advocate for
respondent No.3-Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant Pawan Kumar against the award dated 28.07.2011 passed by learned Motor Accidents Claims Tribunal, Sonipat (hereinafter Called the “Tribunal”), vide which he has been awarded compensation to the tune of ₹55,650/- on account of the injuries suffered by him in the motor vehicular accident which took place on 14.04.2009.

2. The present appeal has been preferred by the appellant-claimant for enhancement of amount of compensation.

3. I have heard learned counsel for the parties and gone through the paper-book meticulously.

4. Learned counsel for the appellant contended that appellant was only a pillion rider but even then the learned Tribunal has deducted

50% of the amount of compensation on account of the contributory negligence. He contended that the pillion rider cannot be held contributory negligent. He further contended that the compensation awarded by the learned Tribunal under the other heads is also highly inadequate.

5. On the other hand, Mr. M.B. Jain, Advocate, learned counsel for the respondent-Insurance Company contended that the claimant should have impleaded Vinod Kumar the motorcyclist also as a respondent in the case who was contributory negligent for causing this accident but the appellant has not impleaded him as a party to the claim petition.

6. He further contended that the amount of compensation awarded by the learned Tribunal is just and appropriate.

7. He further contended that the Insurance Company is entitled for the recovery rights. In the present case respondent No.1 Karam Singh, the driver of the car, who is a resident of village Bhanwar, Tehsil Ganaur, Distt. Sonipat, was having the driving licence issued by the Licensing Authority, Mathura, which prima facie shows that the licence was fake. To support his contentions, he relied upon case ***Kuljeet Singh Vs. Surinder Kaur and others 2015(8) RCR (Civil) 350.***

8. He further contended that even though the respondent-Insurance Company has not filed any appeal, still this Court while hearing the first appeal, can grant this relief under Order 41 Rule 33 of the Code of Civil Procedure, 1908 (hereafter called the "CPC"). To support his contentions, he relied upon cases ***U.P.S.R.T.C. Vs. Km. Mamta and others 2016(2) RCR (Civil) 98*** and ***Ranjana Prakash and others Vs. Divisional***

Manager and another 2011(4) RCR (Civil) 218.

9. I have duly considered the aforesaid contentions.

10. As per the facts of the case, on the date of accident i.e. 14.04.2009 appellant Pawan Kumar was the pillion rider of motorcycle bearing registration No.DL-8S-AK-3931 being driven by Vinod Kumar. So, appellant-claimant Pawan Kumar was just a pillion rider of the motorcycle. He was not himself driving the motorcycle and the motorcycle was being driven by Vinod Kumar. The learned Tribunal has held said Vinod Kumar and respondent No.1, the driver of the car, contributory negligent for causing this accident. It is the settled principle of law that a person who is pillion rider of the motorcycle or a passenger in a vehicle can never be held contributory negligent. If the accident has taken place due to negligence of both the drivers of the vehicles, the case qua him will be of composite negligence and not that of contributory negligence.

11. In the instant case also it will be the case of composite negligence and appellant Pawan Kumar cannot be held to be contributory negligent. The Division Bench of this Court in case ***Oriental Insurance Company Ltd. Vs. Smt. Parveen Juneja 2002(1) RCR (Civil) 18*** has laid down that where the victims were admittedly not driving the car even if there was negligence of the driver of the vehicle, it will be a case of composite negligence and not the contributory negligence and claimant can choose to sue any of the tort-feasors. Again in case ***Oriental Insurance Company Ltd. Vs. Monika Verma and others 2008(3) RCR (Civil) 693***, the accident has occurred due to negligence of both the truck driver and the car

driver. This Court held that it is a case of composite negligence and not of the contributory negligence. There was no illegality in the claimant's claim of compensation from the owner, driver of the truck and the Insurance Company of the truck without impleading the driver, owner or Insurance Company of the second vehicle. The same principle of law has been laid down in case *A.P.S.R.T.C. & Anr. Vs. K. Hemalatha & Ors. 2008(3) RCR (Civil) 589*.

12. Again in a recent judgment delivered by three Judges Bench of Hon'ble Apex Court in case *Khenyei Vs. New India Assurance Company Ltd. 2015(2) RCR (Civil) 1019*, it has been laid down that in case of composite negligence the claimant is entitled to sue both or any of the joint tort-feasors to recover the entire compensation as the liability of joint tort-feasors is joint and several.

13. In view of the aforesaid legal position, the learned Tribunal was not justified to deduct 50% of the amount of compensation on account of contributory negligence of Vinod Kumar who was driving the motorcycle on which appellant was pillion rider.

14. The learned Tribunal has assessed the compensation to the tune of ₹1,11,300/-. After deducting 50% towards contributory negligence, he has been awarded ₹55,650/-. So, claimant Pawan Kumar shall be entitled to whole of the amount of compensation assessed by the learned Tribunal i.e. ₹1,11,300/-.

15. I do not find any substance in the plea raised by learned counsel for the appellant for further enhancement of the amount of

compensation. The claimant has suffered only 15% disability which was also not of permanent nature and was likely to be reduced with the passage of time. So, no fault can be found with the amount of compensation awarded by the learned Tribunal on account of disability. Sufficient amount of compensation has been awarded by the learned Tribunal under all other heads. So, the claimant shall be entitled to a sum of ₹1,11,300/- on account of the injuries suffered by him in the accident in question.

16. I do not find any substance in the contentions raised by learned counsel for the respondent-Insurance Company that the Insurance Company should be awarded the recovery rights against the insured on the ground that the driving licence of respondent No.1 was fake. The learned Tribunal has given a finding that the verification report produced by the Insurance Company did not relate to the licence issued in favour of respondent No.1. Moreover, the respondent-Insurance Company has not filed any cross objection/cross appeal. No doubt Order 41 Rule 33 CPC enables the appellate Court to pass any order which ought to have been passed by the trial Court even if no appeal or cross objection have been preferred by the respondent, but at the same time this rule cannot be invoked to enlarge or to give the higher relief. The Hon'ble Supreme Court in case ***Ranjana Prakash and others Vs. Divisional Manager and another*** (supra) has laid down as under:-

“7. ** ** ** Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be

invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.”

17. In view of the aforesaid ratio of law laid down by the Hon’ble Apex Court in the appeal filed by the claimant the recovery rights cannot be granted in favour of the Insurance Company.

18. The controversy involved in case ***U.P.S.R.T.C. Vs. Km. Mamta and others*** (supra) was entirely different as in that case the High Court neither set out the facts of the case of the parties, nor dealt with any of the submissions urged, nor took note of the grounds raised by the appellant

and nor made any attempt to appreciate the evidence in the light of the settled legal principles applicable to the issues arising in the case to find out as to whether the award of the Tribunal is legally sustainable or not and if so, how, and if not, why? Even in this case the Hon'ble Apex Court has nowhere held that by exercising the powers under Order 41 Rule 31 CPC the Court can enlarge the relief without any cross appeal/cross objections.

19. Thus, keeping in view my aforesaid discussion, the present appeal is partly allowed. Claimant Pawan Kumar shall be entitled to whole of the amount of compensation assessed by the learned Tribunal i.e. ₹1,11,300/-. The appellant-claimant shall also be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount of compensation shall remain as determined by the learned Tribunal in the main award.

19.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No