

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

FAO No.2605 of 2000 (O&M)
Date of decision: 09.05.2017

Jai Kanwar

-----Appellant(s)

Vs.

Siri Ram & others

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Shilak Ram Hooda, Advocate
for the appellant.

Mr. Ashwani Kumar Saini, DAG, Haryana
for respondent nos.2 and 3.

HARI PAL VERMA, J.

Appellant-claimant has filed the present appeal seeking enhancement/modification of the award dated 14.10.1999 passed by Motor Accident Claims Tribunal, Sonapat, whereby the claim petition filed by him under Section 166 of the Motor Vehicles Act, 1988 was allowed and an amount of Rs.1,00,000/- was awarded as compensation to the appellant for the injuries suffered by him in the vehicular accident which took place on 28.2.1979.

As per the claim petition, on 28.2.1979 at about 1-00 P.M., the petitioner was on his way to Village Teha and was pillion rider of motorcycle bearing registration No.HRD-6809 which was being driven by Ashok Kumar Mahajan i.e. respondent no.5. While the motorcycle

was in the process of negotiating a turn towards Village Teha of Tehsil Ganaur, a bus bearing registration No.HYA-919 came from the side of Delhi and rammed into the motorcycle. On account of this rash and negligent driving of Siri Ram i.e. respondent no.1, who was the driver of the offending vehicle, appellant-claimant suffered multiple injuries of serious nature. He suffered fracture of right leg and clavicle and was taken to Civil Hospital, Ganaur for medical aid, where considering the serious nature of injuries suffered by him, he was referred to Civil Hospital, Sonapat. He was further referred to Medical College and Hospital, Rohtak, where he spent almost two months, as an indoor patient.

Respondent no.1 contested the claim petition, contending therein that the claim petition was filed after an inordinate delay of 19 years and is, thus, hopelessly time barred. The accident was a direct result of rash and negligent driving on the part of motorcyclist namely Ashok Kumar Mahajan, for which, First Information Report was also registered against him, though he was acquitted of the charges framed against him the Criminal Court.

Respondents no.2 and 3 also filed their written statements to the effect that the bus in question is not to be blamed for the accident in any manner. Respondent no.1 was indeed on the steering wheel of bus bearing registration No.HYA-919 which was on route to Ropar from Delhi when it met with an accident with a motorcycle. But it was the motorcyclist who joined the G.T. road without caring for the traffic running on it and thus, caused the mishap. Thus, the accident was caused by the motorcyclist.

The Tribunal has held that the accident was a direct result of composite negligence on the part of Ashok Kumar Mahajan, respondent no.5, who was driving the motorcycle No.HRD-6809 and Siri Ram, respondent no.1, who was on the steering of bus No.HYA-919. Accordingly, the Tribunal awarded compensation of Rs.1 lakh to the appellant, as the driver of the bus namely Siri Ram and the driver of the motorcycle namely Ashok Kumar contributed to the accident. The General Manager, Haryana Roadways, Ambala and the State of Haryana were jointly and severally held liable to pay one half of the compensation amount to the appellant-claimant, whereas, respondent no.5-Ashok Kumar Mahajan and respondent no.6-Sohan Lal were jointly and severally held liable to pay remaining half of the compensation amount to the appellant-claimant along with interest @ 12% per annum from the date of filing the claim petition.

Still not satisfied with the award passed by the Tribunal, the appellant-claimant filed the instant appeal.

Learned counsel for the appellant has argued that the Tribunal has grossly erred in bifurcating the total amount of compensation awarded to the appellant by two sets of respondents i.e. respondents no.2 and 3 to pay jointly and severally half of the compensation amount and respondents no.5 and 6 to pay the remaining half of the compensation jointly and severally. It is the driver of the offending bus who was liable for causing the accident in question, as he was convicted in the criminal case for the same accident. Thus, he himself alone was responsible for causing the accident in question.

Learned counsel has further argued that the Tribunal has awarded a very

meagre amount of compensation on account of the treatment expenses incurred by the appellant-claimant, despite the fact that the appellant had suffered fracture of clavicle and right thigh, for which, a rod had to be inserted in his right thigh. The appellant had undergone a major orthopaedic operation for which sufficient expenses were incurred. However, the Tribunal has not given due weightage while awarding compensation on account of loss of pain and the sufferings of the appellant during hospitalization and awarded a meagre sum of Rs.1 lakh towards the expenses which the appellant was required to incur for surgical operation for removing K-nail, which was quite painful and infectious. Such like major operation would not have cost less than Rs.80,000/-. Therefore, the compensation awarded by the Tribunal is required to be enhanced.

On the other hand, learned counsel for respondents no.2 and 3 has argued that in fact, the claim petition filed by the appellant was not maintainable, as the driver of the alleged offending vehicle had been acquitted by the trial Court. Moreover, the alleged accident had taken place on 28.2.1979 whereas the claim petition was filed in the year 1998. Thus, there is an inordinate delay of 19 years in filing the claim petition, which disentitles the appellant for filing the present appeal for enhancement of compensation. He further submitted that the driver of the bus is not to be blamed for the accident whatsoever, as although he was indeed on the steering wheel of the bus bearing registration No.HYA-919 which was on route to Ropar from Delhi, but when it met with an accident with a motorcycle, it was the motorcyclist who joined the G.T. road without caring for the traffic running on it and thus, caused

the mishap. The motorcyclist had endangered the lives of other passengers travelling in the bus.

I have heard learned counsel for the parties and perused the impugned award.

The accident in question has not been disputed. However, learned State counsel has disputed the allegation of rash and negligent driving on the part of the bus driver, particularly when the bus was plying on the G.T. road on its route to Ropar to Delhi. It was the motorcyclist who was required to take all possible precautions, more particularly when he was about to join the main G.T. road. The mishap occurred when the motorcyclist was trying to cross the road and the claimant was sitting pillion to it. In the accident, the injured got fracture in his leg, for which the Tribunal has already awarded compensation of Rs.1 lakh. The driver of the bus has testified that the motorcyclist had crossed the bus from wrong direction and thereby, hit the bumper of the bus and then fell in the nearby pits. The Tribunal has held that the accident had occurred due to the composite negligence of the driver of motorcycle namely Ashok Kumar Mahajan, who was riding the motorcycle bearing No.HRD-6809 and driver of the bus namely Siri Ram, who was on the steering wheel of the bus bearing No.HYA-919. Considering the nature of injuries and the medical evidence brought on record by the claimant and the fact that K-nailing was done on the right thigh of the appellant-claimant, the Tribunal has rightly awarded a total sum of Rs.1 lakh to the claimant which was to be paid by two sets of respondents i.e. respondents no.2 and 3 to pay jointly and severally half of the compensation amount and respondents no.5 and 6 to jointly and

severally pay the remaining half of the compensation. Filing of claim petition after a delay of 19 years from the date of accident is sufficient to dismiss the present appeal. The injury met to the complainant is not of such a nature, which may have prevented the claimant to prefer claim petition within a reasonable time.

Therefore, this Court finds that there is no illegality in the impugned award passed by the Tribunal, more particularly when the claim petition was filed after a long delay of 19 years. Considering the fact that the respondents have not disputed that very accident in question, this Court is not inclined to interfere in the award passed by the Tribunal.

Accordingly, the present appeal is dismissed.

May 09, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No