

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.1344 of 2005

Date of Decision.29.08.2017

Raj Kumar

.....Appellant

Vs

Dharam Pal and another

.....Respondents

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Mr. R.C. Gupta, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been filed for enhancement of compensation at the instance of one Raj Kumar, who sustained injuries in a motor accident that took place on 10.09.2002, involving a three wheeler bearing registration No.HR-37A-9242 and an untraced tractor.

Mr. Inderjit Sharma, learned counsel appearing on behalf of the appellant submits that the Tribunal has committed illegality and perversity in fastening the liability to the extent of 50% upon the unknown tractor while awarding a compensation of ₹94,195/- . He submits that the unclinched evidence brought on record, particularly, the tenor and mode of the cross-examination done by the insurance company has proved the negligence of the three wheeler. Therefore, it was a case of composite negligence and not of contributory negligence. In order to lend support to his contention, he has drawn attention of this Court to cross-examination of the claimant-Raj Kumar. He also referred to Ex.P2, certificate issued by the Board of Doctors whereby he sustained 40% disability in relation to lower

enhanced.

Mr. R.C. Gupta, learned counsel appearing on behalf of the insurance company submits that finding rendered by the Tribunal does not call for interference as it is based upon preponderance of evidence. The claimant has failed to implead the owner, driver and insurance company of the tractor and in the absence of the same, apportionment of contributory negligence to the extent of 50% is correct view. The disability certificate reveals that the disability is qua lower limb only and therefore, there is no scope for enhancement.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sharma, for, Ex.P2 has proved the disability in respect of lower limb to the extent of 40%. Admittedly, the claimant was working as Mason and in the absence of any direct and cogent evidence qua his income, I will take the income of the injured as per the minimum wages for a skilled labourer in the in the year 2002. The claimant remained hospitalized from 10.09.2002 to 22.10.2002. He suffered fracture in the right leg, as a result thereof, has sustained 40% permanent disability.

In my view, the amount of ₹6000/- awarded towards transportation, special diet, costs of attendant and loss of income is on lower side, much less, the amount of ₹5000/- towards pain and suffering is also meager. However, the Tribunal has provided ₹80,000/- for 40% disability and ₹3,195/- for medicines to assess total compensation as ₹94,195/-. The Tribunal has applied a straightjacket formula in providing ₹2000/- for every percentage of disability which is not a correct approach. The permanent disability has to be seen in the prism of functional disability as to what

extent it will affect the earning capacity. Therefore, I will take the income of the claimant as ₹2310/- per month and assess 40% permanent disability in respect of lower limb as 40% loss of earning capacity. I will adopt a multiplier of 16 to assess the loss of future income as ₹1,77,408/-. If I provide ₹50,000/- towards pain and suffering, ₹25,000/- for loss of amenities of life, ₹3,195 for medical expenses, ₹5,000/- for special diet, ₹5,000/- towards attendant charges and ₹5000/- for transportation, the amount will come almost to the figure as has been provided by the Tribunal i.e. ₹94,195/-. Therefore, the appellant shall be entitled to enhanced amount of ₹1,77,408/- only under the head of future loss of earning capacity. This amount shall also attract interest @6% per annum from the date of filing of the appeal till its realization.

In order to appreciate the issue of liability, it would be apt to reproduce the cross-examination of the claimant, which reads as under:-

“xxxxxx by Sh. R.K. Gupta, Adv. for respondent No.1 and Sh. O.P. Saini, Adv. for respondent No.2.

One tractor was also involved in this accident. I do not know whether the tractor was driven in high speed and in a rash negligent manner but three wheeler was being driven in a negligent manner. I do not know whether the tractor was without number and ran away from spot. The tractor did not stop there and same was ran away and we did not stop the tractor. Police recorded my statement in the hospital. I am under Matric. After accident, I was immediately brought to Civil Hospital, Raipur Rani, from where I was referred to Govt. Hospital, Panchkula. I remained admitted in Govt. Hospital

Panchkula from 10.09.2002 to 22.10.2002. I spent ₹27-28,000/- on my medicines. I did not obtain all medicines bills. The doctor did not advise me to come for further treatment voluteered said I used to visit the doctor after one ore two months. If doctor had advised me that had been mentioned on my treatment cards/slips. After discharge from the hospital, I visited the doctor five or six times but I cannot tell the exact date of my visit. I did not obtain any treatment except General Hospital, Sector 6, Panchkula. It is wrong to suggest that this accident was caused due to negligence of the tractor and I have not impleaded the owner and driver of the tractor as party as the same had ran away from the spot. It is correct that the three wheeler was also overcrowded. It is wrong to suggest that if the three wheeler had not been overcrowded, this accident might had not been caused. No other passenger received injuries in this accident. I reached in Civil Hospital, R/pur Rani after 15-20 minutes of the accident. It is wrong to suggest that I never spent ₹50,000/- on my treatment, special diet etc. It is wrong to suggest that I am not mason and earning more than ₹5000/- per month. It is wrong to suggest that I have filed false petition in order to grab compensation from insurance co.

RO&AC Raj Kumar

*-sd-
MACT Pkl.”*

From the tenor and mode of cross-examination, the negligence of the driver of three wheeler has been proved to the hilt. In my view, the

apportion 50% negligence on the part of the untraced tractor, thus, the finding rendered by the Tribunal on this issue is hereby reversed, in essence, the insurance company of the three wheeler is liable to indemnify the third party *viz-a-viz* the appellant, being passenger in the three wheeler. The insurance company of the three wheeler shall be liable to pay the enhanced amount of ₹1,77,408/- with interest as aforementioned to the appellant and the amount of ₹94,195/- with interest as assessed by the Tribunal, if not already paid.

Resultantly, the award stands modified and the appeal filed by claimant is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 29, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No