

206

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

FAO No. 332 of 2009

Decided on: 04.09.2017

Sukhwinder Singh**.....Appellant**

versus

Anil Kumar and others**.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. I. S. Saggu, Advocate,
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for respondent No. 3-Insurance Company.

Rajbir Sehrawat, J. (Oral)

1. This is an appeal filed by the injured claimant against the award passed by the Motor Accident Claims Tribunal, Ambala wherein the Tribunal had calculated the amount on account of compensation to be ₹ 1,90,000/- and then reduced the same to the extent of 50% on account of contributory negligence. The claim of the appellant is that the amount awarded on various heads is insufficient and the same deserves to be enhanced. It is further argument of the appellant that there was no contributory negligence on his part and therefore, the amount has been wrongly reduced on account of contributory negligence.

2. Brief facts of the case are that on 01.12.2006 at about 1.00 PM, the claimant was sitting on his shop. He came out of the shop to purchase some guava fruit from the *rehri* across the road.

For that purpose, he was going to the *rehri* for purchasing the fruit.

When crossing the divider on the road he was proceeding towards *rehri*, then the offending bus bearing registration No. HR-37A-1104 of Haryana Roadways came from the side of Kalka Chowk and was going towards Baldev Nagar, Ambala. This was being driven in a rash and negligent manner. The bus hit the appellant and crushed the right foot of the claimant as a result of which the claimant suffered injuries. The claimant was shifted to Civil Hospital, Ambala and thereafter, he was referred to P.G.I., Chandigarh. Even after discharge from the P.G.I., he had to take treatment from Dr. Mehendiratta and remained admitted in the hospital as indoor patient in that hospital for 40 days.

3. A notice being issued, respondent No. 1, the driver filed a written statement and admitted that he was the driver on the said bus on the given date and time and he was driving the bus from Ambala City to Naraingarh. It was pleaded by him that he was driving the bus at a speed of 15-20 Kms per hour. However, he totally denied any accident having taken place with his bus. Respondent No. 2 i.e. Haryana Roadways filed separate written statement in which respondent No. 2 admitted the accident but pleaded that the claimant came from the wrong side without seeing the traffic and was in hurry to cross the road, though, the bus was at a slow speed of 15-20 Kms per hour. Therefore, respondent No. 2 claimed that the accident took place due to negligence of the claimant himself. The Insurance Company-respondent No. 3 filed separate written statement and in that the Insurance Company pleaded that the driver was not having valid and effective driving license and further that as per the Special

Contingency Contract the maximum liability of the Insurance Company was upto ₹ 5,00,000/- in one accident. It further denied the particulars of the claim petition regarding the age, income, injuries, treatment and business etc. as claimed by the claimant.

4. To prove his case, the appellant had examined himself as PW-5. He examined Dr. Mehandiratta, PW-1 to prove his treatment and his stay in hospital and also examined PW-3, Ashok Kumar who was his neighbour at the business premises. On the other hand, respondent No. 1-Anil Kumar appeared as RW-1. No further witness was examined by respondents No. 2 and 3. No documents were produced on record.

5. After appreciating the evidence and pleadings of the parties, the learned Motor Accident Claims Tribunal granted compensation as mentioned below:-

1	Compensation on account of expenditure on his treatment	₹ 60,000/-
2	Compensation on account of loss of income	₹ 25,000/-
3	Compensation on account of permanent disability (2000 x 20)	₹ 40,000/-
4	Compensation on account of attendant charges	₹ 10,000/-
5	Compensation on account of Transportation	₹ 5,000/-
6	Compensation on account of pain and suffering	₹ 50,000/-
7	Compensation on account of special diet. (Dr. Mehandiratta stated that special diet was not advised because patient was diabetic)	Nil

Total:- ₹ 1,90,000/-

6. However, in view of the findings recorded by the Tribunal that the claimant himself was also negligent, therefore, on the ground of contributory negligence; the amount of compensation was reduced to 50% and, therefore, he was awarded an amount of ₹ 95,000/- as compensation.

7. Aggrieved of the award, the claimant has filed the present appeal. While arguing the appeal, the counsel for the appellant has submitted that there is no proof of any negligence on the part of the claimant in the accident in question. Therefore, the finding recorded by the Tribunal qua the contributory negligence is based on no evidence and therefore, has to be set aside being without any basis. He further argued that the amount awarded to him on all the counts is insufficient and the same deserves to be enhanced. It is his submission that the appellant has remained admitted in hospitals, first time for 5 days and later on for 40 days and has incurred about ₹2.00 lacs on his treatment, whereas he has been awarded only ₹60,000/- for expenditure on his treatment. He further submitted that due to the treatment, his shop had remain closed for about six months. Therefore, he has not been sufficiently compensated for loss of income. Likewise, he has challenged the compensation awarded on account of attendant charges and transportation and pain and sufferings. He has further stated that he has not been granted any compensation on account of special diet.

8. Learned counsel for the Insurance Company reiterates the findings of the Tribunal regarding the contributory negligence and also justifies the denial of the compensation on account of special

diet. It is his submission that the claimant has sufficiently been compensated by the Tribunal.

9. After hearing the learned counsel for the parties and perusing the record the case, this Court finds that the accident has taken place at a place where there is market on the side of the road. One side of the road was closed for traffic, as has been admitted even by the driver of the offending bus. Therefore, the driver of the bus was required to exercise extra care while driving the bus at such a place which was so narrow and where the traffic of both the sides moved only on one side, the other side of the road being closed. Despite that, as has been admitted by the driver himself he was driving the bus at a speed of about 15-20 Kms per hour. In such a situation, it cannot be said that he exercised due care while driving at the given place. Although the claimant-appellant was crossing the road at that point of time, however, mere fact that he was crossing the road; cannot be taken as a ground for holding that he has contributed to the accident being negligent. It has been duly proved by the claimant as well as by PW-3, the eyewitness of the accident that the bus was being driven in a rash and negligent manner. This proves the stand of the claimant that, in fact, it was the driver of the bus who was negligent in driving the bus.

10. Although the driver of the offending bus while appearing as a witness before the Court has made a bald statement that the claimant was also negligent while crossing the road, however, there is no such averment in the written statement filed by him. On the contrary, in the written statement filed by him he is trying to deny the

accident altogether. This fact also shows his attempt to avoid liability on account of his negligence resulting into the accident. Not only this, when the claimant appeared as witness before the Tribunal not even the suggestion has been put by the respondents to him that he was also negligent in crossing the road. In such a situation, it has to be presumed that the respondents admitted in the evidence that the claimant was not negligent when the accident happened.

11. While deciding issue No. 1, learned Tribunal has wrongly assumed that since the total distance to be covered between the two points, near the place of the accident was about 60-80 feet only, therefore, the bus could not have been at a high speed. This observation is not justified by either the evidence or by the rationale. The witnesses examined by the claimant had proved that the bus was in fact, at a high speed. Even the driver of the bus had admitted that he was driving the bus at the speed of about 20 Kms per hour. If the distance between the two points which was required to be covered by the bus was only 50-60 feet then the bus could not have been driven even at the speed of 20 Kms per hour without being negligent. It was required to be much slow. Therefore, even as per the logic supplied by the Tribunal, the findings recorded in this regard is not supported by either the evidence or by the logic. Hence, the findings recorded on issue No.1 qua the contributory negligence deserves to be set aside.

12. So far as the amount of compensation is concerned, there is nothing wrong in the award of ₹60,000/- on account of expenditure on treatment. The claimant was able to prove only

₹30,900/- as expenses paid to Dr. Mehndiratta. Besides this the bills for ₹ 7,337/- have also been produced, though the same has not been proved as per the requirement of law. Therefore, the Tribunal has rightly awarded the compensation on account of expenditure on treatment. The same is the situation for compensation awarded on account of loss of income and permanent disability. This Court finds no illegality or perversity in award of compensation on these two counts as well. So far as the attendant charges are concerned, the Tribunal has granted ₹ 10,000/- only. However, it is admitted case on all sides and also proved on the record that the appellant had to remain in hospital for 40 days at one point of time and 5 days at another point of time. Therefore, he was requiring the assistance of an attendant during that period, as well as during the follow up period, which according to the claimant spread over about six months. Even if the claim of the claimant-appellant is taken to be exaggeration, still the compensation on account of attendant charges is insufficient in view of the injury and the normal duration of treatment for such injury. The compensation on account of attendant charges is increased to be ₹20,000/-. The compensation of ₹40,000/- on account of permanent disability of 20% and also compensation on account of pain and suffering at ₹ 50,000/- have also rightly been assessed by the Tribunal. Finding no illegality or perversity qua these amounts the compensation on these accounts is upheld. So far as the compensation on account of special diet is concerned; it has rightly been declined by the Tribunal because the treating doctor had deposed that special diet was not advised to the patient since he

was diabetic. However, the compensation of ₹ 5,000/- awarded on account of transportation charges is insufficient, in view of the fact that the claimant remain admitted in hospital for 40 days at one time and 5 days at another time. The appellant was transported to and from the hospital twice. Besides this, he remained admitted in hospital for 40 days, therefore, his attendant also had to incur expenses for travelling to the hospital for such a long duration. Therefore, the amount on account of transportation charges is enhanced to ₹ 10,000/-.

13. In view of the above findings, the appellant-claimant is awarded the compensation as below:-

1	Compensation on account of expenditure on his treatment	₹ 60,000/-
2	Compensation on account of loss of income	₹ 25,000/-
3	Compensation on account of permanent disability (2000 x 20)	₹ 40,000/-
4	Compensation on account of attendant charges	₹ 20,000/-
5	Compensation on account of Transportation	₹ 10,000/-
6	Compensation on account of pain and suffering	₹ 50,000/-
7	Compensation on account of special diet. (Dr. Mehandiratta stated that special diet was not advised because patient was diabetic	Nil
Total:-		₹ 2,05,000/-

14. Since the finding of the Tribunal regarding the contributory negligence has been set aside, therefore, there shall be no deduction in the amount of compensation on account of contributory negligence. The award of interest at the rate of 7.5% as

awarded by the Tribunal is retained as it is. Further the liability of the respondents being joint and several as ordered by the Tribunal is also retained as such.

15. In view of the above, the present appeal is allowed and the award passed by the Motor Accidents Claim Tribunal, Ambala is modified to the extent mentioned above.

4th September, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes