

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

FAO No.5770 of 2011 (O&M)
Date of decision: 09.11.2017

Harvinder Kaur

...Appellant

Versus

Vishavjeet Desai and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep Verma, Advocate for
Mr. Vinod Mehendru, Advocate
for the appellant.

Ms. Anju Arora, Advocate
for the respondent-Union of India.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 16.11.2010 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed in respect of injuries sustained by the appellant and Nirmal Singh, her brother.

The sole submission made by counsel for the appellant is that the Tribunal has assessed compensation to the tune of Rs.1,26,000/-, detailed in para 19 of the award but the claimant has been held entitled to an amount of Rs.63,000/- as contributory negligence to the extent of 50% has been attributed to Nirmal Singh, driver of the motorcycle on which the appellant was travelling as a pillion rider. It is argued with vehemence that

since contributory negligence has been attributed to Nirmal Singh and not to the appellant, she cannot be denied compensation even qua the extent of negligence attributed to Nirmal Singh.

Counsel representing Union of India, on the contrary, has supported the award.

Nirmal Singh, the injured victim and driver of the motor cycle involved in the occurrence has been awarded compensation to the tune of Rs.1,56,700/- and has been held entitled to an amount of Rs.78,350/- as 50% negligence has been attributed to him. He has filed FAO No.5771 of 2011 for enhancement of compensation. The question of contributory negligence of Nirmal Singh would be decided in the appeal preferred by him. However, it is undisputed position of the case that no negligence in causing the accident has been attributed to Harvinder Kaur who was travelling on the pillion seat of motorcycle driven by Nirmal Singh. Under the circumstances, the appellant cannot be denied compensation qua the negligence attributed to Nirmal Singh because for the purpose of claim of the appellant, it would be treated as a case of composite negligence of two vehicles and she has the liberty in law to seek compensation from either of the tortfeasers. In this view of the matter, findings of the Tribunal allowing only 50% of compensation to the appellant cannot be allowed to sustain and liable to be set aside. The appellant shall be entitled to entire compensation assessed by the Tribunal to be paid by the respondents being jointly and severally liable to pay the same.

No other point has been raised.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

09.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No