

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

FAO No.59 of 2012

Date of Decision.24.11.2017

Balwan son of Ram Chander

.....Appellant

Vs

Santosh and others

.....Respondents

Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

Mr. Vishal Aggarwal, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The claimant is in appeal against the award passed by the Tribunal on the ground of quantum of compensation as well as contributory negligence. On 11.10.2008, the claimant started from his village Khandawa to Indore in truck bearing registration No.HR-67-5554 along with cleaner Satish and when they reached near Sanawad Polytechnic College, the offending truck bearing registration No.MP-09GE-3466 driven by respondent No.1 rashly and negligently coming from the opposite side hit against the truck of the claimant, resulting into multiple and grievous injuries to the claimant as well as the cleaner. The claimant was taken to Civil Hospital, Sanawad where he remained admitted from 11.10.2008 to 14.10.2008 and thereafter, referred to PGIMS, Rohtak where he remained admitted upto 18.10.2008. The claimant suffered amputation of his right leg. His disability was assessed as 80% permanent in nature on account of amputation of the right thigh in the lower third region.

following heads:-

1. Medical expenses	-	₹29,000/-
2. Pain and Suffering	-	₹40,000/-
3. Permanent disability	-	₹80,000/-
4. Loss of income	-	₹10,800/-
5. Transportation	-	₹5000/-
6. Nutritious diet	-	₹6000/-
7. Attendant charges	-	₹6000/-
Total		₹1,76,800/-

However, the Tribunal found the claimant equally negligent and attributed contributory negligence to the extent of 50%, thus, sliced down the amount of compensation to the tune of ₹88,400/-. Hence, the appeal.

Learned counsel appearing on behalf of the appellant-claimant submits that the Tribunal grossly erred in assessing the compensation as it provided ₹80,000/- only for permanent disability of 80%. The claimant was a driver by profession and amputation of leg has made him permanently disabled. He was stated to be earning ₹5000/- per month and was aged 28 years at the time of accident, therefore, his future loss of income was required to be assessed by applying the multiplier of 17. Moreover, the amounts provided under the heads of pain and suffering, special diet, attendant charges and transportation are also on lower side, thus, there is scope for enhancement.

As regards the issue of contributory negligence, the counsel for the appellant argued that the Tribunal has wrongly attributed negligence to the extent of 50% to the claimant on the premise of head on collision. The

Tribunal has totally misread the statement suffered by PW5, who was an eye witness and author of the FIR to the effect that it was the driver of the offending truck i.e. Respondent No.1, who was wholly responsible for the accident on account of his rash and negligent driving. He was subjected to extensive cross-examination but he remained consistent and coherent in his statement, thus, the finding of the Tribunal on the issue of contributory negligence is liable to be set aside.

On the other hand, learned counsel appearing on behalf of the insurance company argued that the Tribunal has rightly applied the principle of *res ipsa loquitur* and determined the negligence in the ratio of 50:50 as it was a head on collision. On the issue of quantum as well, the Tribunal has taken care of all the heads of claim, thus, there is no scope for further enhancement and the award passed by the Tribunal is liable to be upheld in toto.

I have heard learned counsel for the parties and appraised the paper book. Before appreciating the issue of contributory negligence, it would be apt to reproduce the statement of PW5, who was an eye witness of the accident:-

“I was employed as Cleaner on truck No.HR-67-5554 on 18.10.2008 and Balwant claimant was driver of the said truck and when the said truck was in the area of Sanawat Polytechnic College in the area of Khandwa to Indore, another truck with registration No.MP-09-GE-3466 came from opposite side and the respondent No.1 was driving the said truck rashly and negligently and dashed his truck in our truck and due to

that the driver Balwan and myself received injuries. I had lodged the FIR to the police, copy of which is Ex.P63 and the accident was caused due to the sole rash and negligent driving of respondent No.1. Claimant Balwan was first taken to Sanawat Hospital. MLC was conducted in that hospital after that he was referred to bigger hospital in Indore and after that he was referred to PGIMS Rohtak. The claimant Balwan was getting Rs.5000/ as salary and Rs.150/- per day as diet money. xxxxm by Sh. S.C. Jain, counsel for respondent No.4.

It is correct that I do not possess any document to prove that Balwan was appointed as driver on the alleged truck by the owner. It is incorrect to suggest that Balwan was not driver on the alleged truck. It is incorrect to suggest that Balwan was not employed nor he was getting the alleged amount as my income.

It is correct that the accident was a head on collision but the truck No.MP-09GE-3466 came on the wrong side and hit our truck. It is incorrect to suggest that no accident had taken place due to rash and negligent driving of respondent No.1 or that the accident if any was the sole cause of the rash and negligent driving on the part of the driver of truck No.HR-67/5554 or that there was no negligence on the part of the driver respondent No.1 or that if the driver of truck No.HR-67/5554 would not have been rash and negligent in driving, the accident could have been avoided. It is incorrect to suggest that I had falsely recorded the FIR against respondent No.1. I

do not possess any document to prove that I was the cleaner on the alleged truck on the date of the alleged accident. It is wrong to suggest that I have deposed falsely.

RO&AC
sd/- Satish

sd/-
MACT, Sonipat
27.1.2011”

From the statement of PW5, eye witness, it is very much clear that the offending truck came from the wrong side of the road and hit against the truck driven by the claimant, thus, an inference is liable to be drawn that it was the driver of the offending truck, who was wholly rash and negligent in his driving. In fact, FIR was also registered against respondent No.1, who was the driver of the offending truck. Moreover, the statement suffered by PW5 gone un rebutted. In fact, the cross-examination of PW5 conducted by the counsel of the insurance company spilled the beans wherein it was stated that the accident was a head on collision but the Truck No.MP-09GE-3466 came on the wrong side and hit our truck. In every case of head on collision, principle of *res ipsa loquitor* cannot be applied as the issue of negligence is required to be adjudicated on the facts and circumstances of each case, thus, in my view, the finding rendered by the Tribunal attributing negligence to the extent of 50% upon the claimant is wholly erroneous and hereby set aside.

On the issue of quantum, I will take the income of the injured as ₹3600/- per month and apply a multiplier of 17 to assess the future loss of income for 80% disability as ₹5,87,520/-. I will retain all other heads of claim as assessed by the Tribunal. Therefore, the total compensation payable shall be ₹6,84,320/-. The amount in excess over what has already been

provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The liability to satisfy the claim shall be upon respondent No.3 i.e. the insurer of the offending truck bearing registration No.MP-09GE-3466.

The award passed by the Tribunal is modified to the above extent and the appeal is allowed.

(AMIT RAWAL)
JUDGE

November 24, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No