

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

FAO-1913-2013 (O&M)

Date of decision:- 08.11.2017

Somkaran Singh

....Appellant

Versus

Gurmail Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. N.K. Manchanda, Advocate
for the appellant.

Mr. Ashok K. Singla, Sr. DAG, Punjab.

RITU BAHRI J. (Oral)

CM-9464-CII-2013

Heard.

For the reasons mentioned therein, the application is allowed.

Delay of 1 day in filing the present appeal is condoned.

FAO-1913-2013

Present appeal has been filed by the appellant against an Award dated 02.11.2012, passed by the Motor Accident Claims Tribunal, Moga (hereinafter referred to as 'the Tribunal'), whereby he has been awarded a compensation of ₹91,757/- on account of injuries suffered to him in a motor vehicular accident, which took place on 04.09.2009.

Brief facts of the case are that on 04.09.2009 appellant-claimant was driving motorcycle No.PB-29-J-4181 while his friend Harjinder Singh was sitting on the pillion seat and they were going to Nanaksar from their village Landheke. At about 6.00 am, when they reached near Hotel Kingdom on Moga-Ludhiana road, Bus No.PB-10-CG-7859 belonging to PUNBUS, which was driven in rash and negligent manner by respondent No.1-Gurmail Singh was seen coming from the opposite side. Thereafter, the said bus struck against the motorcycle of the appellant while overtaking one Canter. Due to which, the appellant suffered multiple injuries including fracture of right leg. His friend Harjinder Singh also sustained injuries in the said accident. Both the injured were taken to Civil Hospital, Moga and from where the appellant was referred to DMC&H, Ludhiana and he remained there for his medical treatment for eleven days. An amount of more than ₹3,50,000/- was spent by the appellant on the medical treatment. FIR No.120 dated 16.09.2009, under Sections, in respect of the accident in question, was got registered at Police Station Mehna. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

Upon notice, respondent Nos.1, 2 and 4 filed their separate written statements and denied all the allegations mentioned in the claim petition and prayer for dismissal of the claim petition.

From the pleadings of the parties, following issues were framed by the Tribunal:-

- “1. Whether claimant Somkaran Singh received injuries in the alleged minor vehicle accident due to rash and negligent driving of the driver of Bus bearing registration No.PB-10-

CG-7859?OPP

2. Whether the claimant is entitled for compensation, if so, to what amount?OPP
3. Whether the claim petition as framed is not maintainable?OPR
4. Whether the claim petition is bad for non-joinder of necessary parties?OPR
5. Relief.”

On the basis of evidence led by the parties, the Tribunal has returned a finding on issue No.1 that the accident in question took place due to contributory negligence of respondent No.1, who was driving Bus No.PB-10-CG-7859 and the claimant-appellant, who was driving the motorcycle with three persons. Consequently, the Tribunal has held that the appellant has been entitled only 50% of the amount of ₹1,83,513/-.

Learned counsel for the appellant has referred to a judgment of this Court passed in **United India Insurance Company Limited Vs. Ram Murti and others, 2014(1) PLR 485** and contends that if a person driving the motorcycle with two persons on pillion itself would not be a ground for contributory negligence of an accident. Paragraph 4 of the said judgment is as under: -

“Coming to the case of triple riding, the same by itself does not raise the presumption that a person driving a motorcycle with two persons on pillion is rash and negligent or his triple riding contributes to the cause of the accident. A person having two persons on the pillion can still drive a motorcycle in a proper way. So, unless it is proved that the person who was having two persons on the pillion of his motorcycle had contributed in any manner to the cause of the accident, it cannot be said to be a case of contributory negligence.”

Learned counsel further contends that the compensation awarded by the Tribunal is on the lower side as nothing has been awarded towards transportation, diet, attendant charges, pain and suffering.

Heard learned counsel for the parties.

Applying the ratio of above-said judgment, the finding of the Tribunal that the appellant was equally responsible for the accident in question is hereby set aside and accordingly, the appellant is entitled total compensation of ₹1,83,513/-.

Since nothing has been awarded to the appellant for the purpose of transportation, diet, attendant charges, pain and suffering, therefore, ₹50,000/- is being awarded to the appellant under the above-said heads.

Resultantly, the enhanced amount of compensation of ₹2,33,513/- (₹1,83,513/- + ₹50,000/-) shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539.

Remaining conditions of disbursal of amount shall remain unaltered.

With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

November 08, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No