

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

FAO No.3158 of 2013(O&M)

Date of decision: 3.11.2017

Sanjay

.....Appellant

VERSUS

Ranjeet Mehta and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Rajesh Lamba, Advocate for the appellant.

 Mr. Rajbir Singh, Advocate for respondent No.3.

REKHA MITTAL, J.

The injured is in appeal against award dated 11.02.2013 passed by the Motor Accidents Claims Tribunal, Gurgaon (in short 'the Tribunal').

Counsel for the appellant, at the outset, would inform that the appeal has been preferred to assail findings of the Tribunal attributing 50% negligence to the victim and resultantly compensation only to the extent of 50% i.e. Rs.80,100/- out of Rs.1,60,200/- has been awarded.

The sole submission made by counsel for the appellant is that the present being a case of composite negligence, the injured victim cannot be denied recovery of entire compensation of Rs.1,60,200/- assessed by the Tribunal. For this purpose, he has relied upon judgment of this Court in **FAO No.6319 of 2012 titled Hari Ram Vs. Ankit Rustogi and others, decided on 13.08.2015.**

I have heard counsel for the appellant, perused the paper-book and the records.

The contention raised by counsel for the appellant by relying upon judgment of this Court in **Hari Ram's case** (supra) that the present is the case of composite negligence is mis-conceived and liable to be rejected. It appears that counsel for the appellant failed to appreciate the difference between contributory negligence and composite negligence. In the case of composite negligence, the negligence is attributed to two or more than two drivers/vehicles but without any negligence being attributed to the victim/deceased. On the contrary, in a case of contributory negligence, negligence to a particular extent is attributed to the injured/deceased. In this view of the matter, the appellant cannot derive any advantage to his contention from the referred authority.

I have gone through findings of the Tribunal on issue No.1. The injured/ victim appeared in the witness-box to substantiate his plea set up in the application for compensation. He tendered into evidence his affidavit Ex.PW5/A and a relevant extract therefrom reads as follows:-

“That on the fateful day on 27.02.2012 the deponent along with his brother Mohinder Singh were going on their M/Cycle Splender No.HR-26-BH-3368 towards Sikanderpur. The motor cycle was being driven by deponent and his brother was pillion rider. When the deponent reached just ahead to Naharpur Road cut when an Eicher Bus bearing Regn. No.DL1PC-4116 coming from opposite direction being driven by respondent No.1 in a zig zag manner hit the motor cycle of the deponent from front with the result the deponent along with his brother Mohinder Singh fell on the road side and received multiple injuries all over his body including serious injuries on his head and right foot.”

Perusal of the aforesaid extract would reveal that nothing has been stated by the victim about distance between him and the offending

vehicle when he noticed that the bus was driven by its driver in a zig-zag manner. He is silent as to what care and precaution was taken by him in order to ensure that the bus does not hit his motorcycle. It is not plea of the claimant that there was no time/opportunity with him to take a reasonable care expected from a prudent person to avoid collision. As per the settled position in law, a litigant who knocks at the door of the Court for claiming relief cannot take advantage of weakness of defence. Equally true is that a claimant has to stand on his legs to be successful in his claim for getting compensation. From perusal of testimony of Sanjay PW-5, it is difficult to accept that negligence in causing the accident can exclusively be attributed to driver of the alleged offending bus. The Tribunal, on correct appreciation of evidence on record, has rightly held the present to be a case of contributory negligence, attributing 50% negligence to the victim.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

NOVEMBER 3, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no