

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

Date of decision:20.11.2017

1. **FAO No.1329 of 2015(O&M)**

Kala Singh @ Manminder Singh @ Doda and anotherAppellants

VERSUS

Kamaljit RamRespondent

2. **FAO No.1330 of 2015(O&M)**

Kala Singh @ Manminder Singh @ Doda and anotherAppellants

VERSUS

Balbir SinghRespondent

3. **FAO No.1331 of 2015(O&M)**

Kala Singh @ Manminder Singh @ Doda and anotherAppellants

VERSUS

Manpreet KaurRespondent

4. **FAO No.1332 of 2015(O&M)**

Kala Singh @ Manminder Singh @ Doda and anotherAppellants

VERSUS

Paramjit KaurRespondent

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

Present: Mr. Ashok Sharma Nabhwala, Advocate for the appellants.

Mr. Subhash Chander Patial, Advocate for the respondent.

REKHA MITTAL, J.

CM No.3613-CII of 2015

Prayer in this application is for condoning delay of 63 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Kala Singh @ Manminder Singh- appellant, the application is allowed. Delay of 63 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO Nos.1329 to 1332 of 2015

This order will dispose of FAO Nos.1329 to 1332 of 2015 as these have emerged out of the same accident dated 13.09.2013 and pertain to injuries sustained by Kamaljit Ram, Balbir Singh, Manpreet Kaur and Paramjit Kaur in regard whereof separate awards have been passed by the Motor Accidents Claims Tribunal, Rupnagar (in short 'the Tribunal').

Counsel for the appellants (driver and owner of offending vehicle i.e. tractor bearing No.PB-11-G-0712) would urge that the Tribunal has committed a serious error in upholding plea of the claimants that accident was the result of rash and negligent driving of tractor in question by Kala Singh @ Manminder Singh @ Doda son of Jang Singh.

To bring home his contention, it is argued that accident in question took place at the T-junction of village Sultanpur when driver of the tractor was waiting at the T-junction towards village Sultanpur for going towards eastern side to his village Daudpur. It is further argued that as five persons were travelling on motorcycle bearing No.PB-71-4234 driven by Kamaljit Ram, he could not get any space to sit properly on the motorcycle and as a result he lost control over the motorcycle and struck

against bumper of the tractor while the tractor was standing at T-point for taking turn towards eastern side. For this purpose, counsel has pointed out to cross examination of Kamaljit Ram wherein there is reference to motorcycle bearing No.PB-71-4234 but no reference to other motorcycle bearing No.PB-43B-7741. Another submission made by counsel is that the Tribunal has taken an adverse view against the appellants on the basis of assumption and presumption that the driver and owner of the vehicle did not raise any protest against implication of the tractor and its driver in the criminal proceedings when as a matter of fact it has been specifically recorded in the affidavit of Manminder Singh @ Kala Singh that he made application to the Senior Superintendent of Police, Ropar when respondents No.1 and 2 came to know about false FIR having been lodged and the second application was submitted for inquiry to the Senior Superintendent of Police, Ropar by father of respondent No.1. The last submission made by counsel is that the Tribunal has not appreciated testimony of Manminder Singh @ Kala Singh RW-1 in right perspective wherein Manminder Singh has categorically deposed that front bumper of his tractor was struck by the motorcyclist with the petrol tank of his motorcycle.

Counsel representing the claimants has supported findings of the Tribunal attributing rashness and negligence to driver of the offending vehicle. It is argued that the injured victims namely Kamaljit Ram, Balbir Singh, Manpreet Kaur and Paramjit Kaur appeared in the witness box and consistently deposed that on one motorcycle bearing No.PB-43B-7741 driven by Buta Singh, Paramjit Kaur, Manpreet Kaur and minor daughter of Paramjit Kaur namely Sehajpreet Kaur were travelling whereas on the other motorcycle bearing No.PB71-4234 (Splendor) driven by Kamaljit

Ram, Balbir Singh son of Piare Lal was a pillion rider. It is further argued that in cross examination of Kamaljit Ram, he has specifically deposed that he was driving motorcycle No.PB71-4234 but all five persons were coming on two motorcycles from village Daudpur Kalan from his house. It is further argued that if Kamaljit Ram was not asked in cross examination about registration particulars of the other motorcycle, the appellants cannot take advantage thereof. It is further argued that Kamaljit Ram in para 2 of his duly sworn affidavit Ex.PW1/A tendered into evidence by way of examination in chief has categorically deposed about both the motorcycles, drivers thereof and the persons travelling on the pillion seat of each of the motorcycle. It is further argued that testimonies of the injured victims coupled with driver of the offending vehicle having been put to trial after due investigation is more than sufficient to affirm findings recorded by the Tribunal accepting plea of the claimants that Kala Singh @ Manminder Singh is the author of accident in question. Further argued that testimony of Manminder Singh @ Kala Singh RW-1 is no rebuttal to the statements of injured victims more particularly in the circumstances that Manminder Singh @ Kala Singh has every reason to deny the accident to escape his civil as well as criminal liability. The last submission made by counsel is that had it been true as sought to be projected by the appellants that five persons namely Kamaljit Ram, Balbir Singh, Paramjit Kaur, Manpreet Kaur along with a child were travelling on one motorcycle, there could be no possibility of front bumper of the tractor being struck by motorcyclist with petrol tank of his motorcycle.

I have heard counsel for the parties, perused the paper-books and the records.

Kamaljit Ram and other injured namely Balbir Singh, Manpreet Kaur and Paramjit Kaur have been examined to support their cause. I have gone through cross examination of all the injured victims but failed to notice if any such plea was raised by the appellants that Kala Singh @ Manminder Singh had stopped his vehicle towards Sultanpur on the T-point with a view to take a turn towards eastern side to go to his village Daudpur. No such fact has been elicited in cross examination of the injured to record a finding in favour of the appellants by way of reversal of findings of the Tribunal holding that accident was the result of rash and negligent driving of the motorcyclist much less that five persons were travelling on motorcycle bearing No.PB71-4234, admittedly driven by Kamaljit Ram. This apart, it is undisputed position of the case that on the basis of FIR lodged by one of the injured victims, the police conducted investigation and presented report under Section 173 Cr.P.C. for trial of Kala Singh @ Manminder Singh qua offences punishable under Sections 279, 337 and 338 IPC. The appellants did not produce on record copy of an application allegedly submitted to the Senior Superintendent of Police, Ropar or any other authority of the police. Assuming that an application was submitted by the driver or owner of the vehicle in question, the very fact that on completion of investigation, challan was presented against Kala Singh @ Manminder Singh is more than sufficient to conclude that the investigating agency did not find any substance in the grievance expressed by the appellants. Examined from any angle, there is no merit in contention of the appellants that accident was the result of rash and negligent driving of the motorcyclist(s) or the Tribunal has wrongly attributed rashness and negligence to Kala Singh @ Manminder Singh, driver of the tractor. There is no material on record to uphold plea of the

appellants that the tractor was standing at the T-point when the occurrence in question took place. The two judgments referred to by counsel for the appellants **United India Insurance Co. Ltd. Vs. Sidharat Raju and others, 2014(2) RCR (Civil) 676 (P&H), Kashmiri Devi, widow of Shri Mohan Lal Vs. Vikram Singh son of Sh. Prithi Singh, 2008(2) RCR (Civil) 37** has no bearing on the facts of the case in hand and were rendered in peculiar facts and circumstances. As a consequence, findings recorded by the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

FAO No.1329 of 2015

The Tribunal has awarded compensation to the tune of Rs.1,14,000/- detailed hereunder:-

Medical expenses	Rs.42,042/-
Loss of income for the period of treatment and recovery	Rs.12,000/-
Pain and sufferings	Rs.30,000/-
Special diet and attendant charges	Rs.30,000/-

Kamaljit Ram was admitted in PGI, Chandigarh on 14.09.2013 and discharged on 16.09.2013. Dr. Parteek Behera, Senior Resident Department of Orthopaedic, PGI, Chandigarh has deposed that Kamaljit Ram was admitted due to injuries namely fracture of right side supra condylar femur grade-II and fracture of right side patella (undisplaced). He proved document Ex.PW3/A. The Tribunal has allowed reimbursement of an amount of Rs.42,042/- based upon original documents i.e. bills/medical records. The findings of the Tribunal allowing reimbursement of medical expenses are affirmed.

The Tribunal has allowed compensation of Rs.12,000/- qua loss of income for a period of two months. The occurrence in question took place in September 2013. The minimum wage of an unskilled worker in State of Punjab was approximately Rs.6200/-. That being so, compensation awarded under this head is kept intact.

The Tribunal has awarded an amount of Rs.30,000/- for mental shock and pain and another Rs.30,000/- for special diet and attendant. The injured remained admitted in the hospital for a period of two days. As per statement of Dr. Parteek Behera, he was operated upon on 14.09.2013. Under the circumstances, it can be safely held that compensation awarded by the Tribunal under the aforesaid two heads is on higher side. The claimant shall be entitled to an amount of Rs.40,000/- in all qua pain and sufferings, special diet, attendant and transportation etc. That being so, compensation awarded by the Tribunal is reduced to the extent of Rs.20,000/-.

Disposed of accordingly.

FAO No.1330 of 2015

The Tribunal has awarded compensation to the tune of Rs.3,02,000/- detailed hereunder:-

Loss of future income qua disability	Rs.1,72,800/- (Rs.10,800/- x 16)
Medical expenses	Rs.57,269/-
Pain and sufferings	Rs.30,000/-
Special diet and attendant charges	Rs.30,000/-
Loss of income for the period of treatment and recovery	Rs.12,000/-

Counsel for the appellants has submitted that the compensation awarded by the Tribunal under various heads is excessive and liable to be reduced. It is argued that the claimant did not examine any witness to prove the disability certificate Ex.P50. There is no medical opinion if disability to the extent of 15% to a particular limb can be treated as functional disability to the same extent. Another submission made by counsel is that the injured remained hospitalized for a period of 14/15 days, therefore, compensation qua pain and sufferings, special diet and services of an attendant to the tune of Rs.60,000/- is on higher side.

Counsel representing the claimant has supported the assessment made by Tribunal. Balbir Singh remained admitted in PGI Chandigarh from 14.09.2013 to 28.09.2013, proved by Dr. Parteek Behera, Senior Resident, Department of Orthopaedic. He suffered fracture of right side shaft of femur grade-II. The claimant has tendered into evidence disability certificate Ex.P50 showing 15% permanent disability to right lower limb. As the claimant did not examine the Medical Officer, Civil Hospital, Rupnagar who issued the disability certificate and the remarks recorded in the document Ex.P50 are not clearly legible, it is difficult to record a clear finding with regard to the nature of disability to the particular limb much less resultant functional disability qua the whole body. However, it appears that the injured has slight limp and some other difficulty. The certificate has not been issued by a Medical Board. Functional disability, qua the whole body, in my considered opinion, can be taken at 5%. The Tribunal has assessed income of the victim at Rs.6000/- per month and the same is affirmed. The multiplier allowed by the Tribunal i.e. 16 is correct. As such, loss of future income qua disability comes to Rs.57,600/- (Rs.6,000/- x 12 x 16 x 5%).

The Tribunal has allowed medical expenses of Rs.57,269/- based on original bills. There is no denial that the injured remained admitted in PGI, Chandigarh for 15 days and he was operated upon twice i.e. on 14.09.2013 and 26.09.2013. Medical expenses allowed by the Tribunal are affirmed. Compensation awarded by the Tribunal for pain and sufferings, special diet and attendant to the extent of Rs.60,000/- would also include loss of amenities of life caused due to disability suffered by the victim. The Tribunal has allowed loss of income of Rs.12,000/- for the period of treatment and recovery i.e. two months. Taking into consideration the period of hospitalization coupled with nature of injury rendering the victim disable, loss of income to the tune of Rs.12,000/- is ordered to be affirmed. In this manner, compensation comes to Rs.1,86,869/- and is reduced to the extent of Rs.1,15,131/-.

Disposed of accordingly.

FAO No.1331 of 2015

With regard to injuries sustained by Manpreet Kaur, the Tribunal has awarded compensation of Rs.72,000/- detailed hereunder:-

Loss of income for the period of treatment and recovery	Rs.12,000/-
Pain and sufferings	Rs.30,000/-
Special diet and attendant charges	Rs.30,000/-

Manpreet Kaur tendered into evidence her duly sworn affidavit Ex.PW1/A. She has not produced any medical records nor examined a doctor to prove nature of injury or treatment. Her testimony is conspicuously silent if she was admitted in the hospital or the number of days she remained under treatment. There is no reference to nature of injury sustained by her, in affidavit Ex.PW-1/A. The Tribunal has

assessed income of the victim at Rs.6,000/- per month and allowed compensation for loss of income for a period of two months. She was further awarded a sum of Rs.30,000/- for pain and sufferings and another Rs.30,000/- for special diet and attendant charges. It appears that while assessing compensation in favour of Manpreet Kaur, the Tribunal has totally ignored its obligation to assess just compensation that cannot be a bonanza, a source of profit or largesse.

As the claimant failed to adduce any evidence whatever with regard to nature of injuries sustained by her much less her admission in the hospital, compensation allowed by the Tribunal to Manpreet Kaur is based on no materials and totally unjustified. Under the circumstances, compensation awarded by the Tribunal in favour of Manpreet Kaur under various heads is liable to be set aside. However, she is allowed token compensation of Rs.5,000/- for whatever she had undergone because of the accident.

Disposed of accordingly.

FAO No.1332 of 2015

The Tribunal has awarded an amount of Rs.90,864/- on account of injuries sustained by Paramjit Kaur, extracted in detail hereunder:-

Medical expenses	Rs.18,864/-
Loss of income for the period of treatment and recovery	Rs.12,000/-
Pain and sufferings	Rs.30,000/-
Special diet and attendant charges	Rs.30,000/-

Paramjit Kaur remained admitted in PGI, Chandigarh from 14.09.2013 to 16.09.2013. She suffered fracture of right side ulna grade-II, proved by Dr. Parteek Behera. She was operated upon on 14.09.2013. The Tribunal has assessed income of the victim at Rs.6,000/- per month. Taking into consideration value of services of a house-maker at the relevant time coupled with nature of injury sustained by the victim, compensation for loss of income for a period of two months i.e. Rs.12,000/- allowed by the Tribunal is affirmed. Similarly, medical expenses to the tune of Rs.18,864/- based upon original documents are affirmed.

The Tribunal has awarded compensation of Rs.30,000/- each under two heads i.e. pain and sufferings, special diet and attendant charges. The injured has not suffered any disability on account of injury on her right arm. Taking into view the period of hospitalization and nature of injury sustained, interest of justice would be served if the claimant is allowed an amount of Rs.30,000/- in all for pain and sufferings, special diet and services of an attendant. That being so, compensation awarded by the Tribunal is reduced to the extent of Rs.30,000/-.

Disposed of accordingly.

NOVEMBER 20, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no