

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

FAO No.7712 of 2014 (O&M)

Date of Decision: 11.10.2017

Ram Mehar

. . . Appellant-claimant

Versus

Kulbir and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Siddharth Gulati, Advocate
for the appellant-claimant.

Mr. Siddharth Sanwaria, DAG, Haryana.

B.S. Walia, J. (Oral)

1. Challenge by the appellant/claimant is to award dated 06.05.2014 passed by the MACT, Kaithal (hereinafter referred to as the 'Tribunal ') holding the respondents jointly and severally liable to pay compensation of 50 % of the awarded amount i.e. Rs. 3,75,652/- along with interest @ 7.5% per annum with effect from the date of filing of the claim petition till its realization on account of the accident having been held to have occurred due to the negligence of the claimant as well as respondent No. 1 while driving motor cycle No. HR-08K-1780 and the offending vehicle respectively.

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2. Learned counsel confined his submissions to the finding with regard to contributory negligence by contending that the learned Tribunal erred in holding it to be a case of contributory negligence whereas as per evidence led by PW-2 i.e. eye witness to the accident, negligence was exclusively that of the driver of the offending vehicle. Learned counsel contended that the Tribunal held it to be a case of contributory negligence primarily on the ground that the claimant while crossing the road should have stopped, looked and then crossed without appreciating that the bus was at a distance of 1 - 1½ Killas i.e. approximately 120 metres from the crossing point and if from said distance the bus driver did not slow down despite seeing the claimant crossing it was clear that it was the bus driver who was rash and negligent as the distance was enough for a person to safely cross.

3. Learned counsel for the appellant/claimant further contended that the driver of the offending vehicle did not step into the witness box, consequently, the finding of the Tribunal w.r.t. Contributory negligence was unsustainable and liable to be reversed. Reliance was placed on the decision of the Hon'ble Gujarat High Court in 'Samat Jasa Maheshwari Vs. Bhimji Karsan Dangar etc., 2014 Law Suit (Guj) 385' to contend that in the circumstances adverse inference was to be drawn in favour of the claimant and not in favour of the insurance company. Paragraph No. 7.1 as has been relied upon is reproduced as under :-

“Now, so far as contention on behalf of the Insurance Company that as at the relevant time

the driver of the truck was not having a valid permit and the truck was a goods vehicle and without a valid permit he could not have driven the goods vehicle and when the driver did not appear before the Tribunal and did not produce the valid permit, the Tribunal ought to have drawn adverse inference against the driver and ought not to have held Insurance Company liable is concerned, the aforesaid has no substance. At the outset, it is required to be noted that as such no such contention was raised before the learned Tribunal. Even otherwise, when the driver cum owner of the offending truck did not appear before the Tribunal and did not contest the claim and did not step into the witness box and when the adverse inference is required to be drawn against him, such adverse inference is required to be drawn in favour of the claimant and not in favour of the Insurance Company. The Insurance Company cannot be permitted to get the benefit of adverse inference to be drawn against the insured. Under the circumstances, as such the learned Tribunal has not committed any error and / or illegality in holding the Insurance Company liable to pay compensation.

4. Learned counsel further contended that the finding with regard to the accident had been based by the Tribunal on the basis of site plan which was not proved nor put to the PW's, therefore, the finding that the appellant was equally responsible in the occurrence of the accident was unsustainable. Learned counsel for the respondent did not dispute the factual position as stated by learned counsel for the appellant.

5. I have considered the submissions of learned counsel for the parties. As per paragraph No.14 of the judgment, PW-2, who is eye witness to the accident, in his affidavit Ex. PW-2/A stated that he saw the accident caused by respondent No.1 by driving the offending vehicle in a rash and negligent manner and further that he took the injured to the hospital and it was on his statement that FIR, (Mark-F)

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was lodged. He further stated the the appellant was coming from Karnal Road bye-pass to Jind Road and had reached on the left side of the road near his shop when the bus in question hit its driver side near his shop. He also stated that the bus was coming from Jind side and the appellant was coming from Chowk side and he was just reaching his shop when the accident took place. PW-2 denied that the bus had been falsely involved in the accident or the claimant was driving the motor-cycle on the wrong side. The Tribunal held it to be a case of contributory negligence on the ground that the claimant while crossing the road should have stopped, looked and then crossed. As noted above, the bus was at a distance of 1 - 1½ Killas i.e. Approximately 120 metres away from the point where the claimant was crossing the road to his shop, therefore if from so much distance the bus driver did not slow down despite it being area where shops were located and despite seeing the claimant crossing, it is evident that the negligence was of the bus driver as otherwise the distance was enough for a person to cross safely.

6. A Coordinate Bench of this Court in **Ram Kumar Vs. Haryana Roadways, Chandigarh- 2005 (3) PLR 809**, taking into account that a distance of 100 yards was good enough to take evasive action, held that even if a cyclist or pedestrian was crossing a road without giving a signal, 100 yards was sufficient for the bus driver to stop the bus and or to take evasive action in case a cyclist or pedestrian was crossing the road even without giving signal. Paragraph No. 7 of the aforementioned judgment, which is relevant is reproduced here under:-

“7. Even assuming that the bus was at high speed at 80/100 K.M. per hour still 100 yards is sufficiently long distance to stop the bus and to take evasive action in case any cyclist or pedestrian is crossing the road even without giving signal. In the present case, the cyclist had given signal before turning and the headlights of the bus were on and it was 100 yards away. Therefore, in these circumstances, it is held that the accident took place because of the rash and negligent driving of Mukhtiar Singh, driver of the bus.”

7. In the instant case, as has been noted above, the bus was at a distance of 1-1/2 Kila i.e. Approximately 120 meters away from where the claimant was crossing the road to his shop. Thus, the distance was sufficient for the driver of the offending bus to have taken appropriate action to slow down or to stop the vehicle. Not having done so, goes to show that it was the driver of the offending vehicle alone who was rash and negligent and there was no contributory negligence by the claimant.

8. In the aforementioned background, failure of the driver of the offending vehicle to step into the witness box to rebut the evidence of the appellant/claimant assumes significance and cannot be brushed aside particularly when the finding of contributory negligence have been given on the basis of site plan Mark-A which was neither proved nor put to the PWs.

9. In the circumstance, the finding of contributory negligence recorded by the Tribunal can be said to be based more on conjectures and surmises rather than evidence. Accordingly, finding of the Tribunal with regard to contributory negligence of the appellant is reversed. Consequently appellant would now be entitled to the entire

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awarded amount i.e. Rs. 3,75,652/- as against the earlier 50% of the aforesaid amount along with interest @ 7.5% per annum with effect from the date of filing of the claim petition till its realization

10. No other point has been argued nor pressed. Accordingly, the appeal is allowed in the aforementioned terms and the award is modified to the extent as noted above.

B.S. WALIA
JUDGE

October 11, 2017.

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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No