

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

**FAO No.438 of 1996
Date of Decision: 29.05.2018**

**Ashok Kumar
Vs**

.....Appellant

Kamaljit Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Shifali Goyal, Advocate for
Mr. Varun Issar, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Repeated efforts to summon the Lower Court record has not yielded any positive result because record is not traceable being an old one. Taking into consideration the factual position on record, I deem it appropriate to consider the controversy as per pleadings and impugned award passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal').

[2]. The accident took place on 12.07.1989 when the injured appellant was going on a scooter from Sector 20,

Chandigarh towards Sector 22 Chandigarh. When he reached near Nehru Yuvak Kendra in Sector 21, Chandigarh the offending vehicle came from the opposite direction and struck against the scooter of the claimant/appellant. Appellant fell down and his right ankle was fractured. He also received injuries on his left leg and was removed to General Hospital, Sector-16, Chandigarh.

[3]. The claim petition was filed by the claimant/appellant, claiming a sum of Rs.3 lacs as compensation on account of injuries suffered by him in the vehicular accident. Vide order dated 21.01.1995, the claim petition was dismissed by the Tribunal in toto.

[4]. Learned counsel for the appellant vehemently submitted that issue No.1 has gone against the appellant, otherwise under issues No.2 and 3, entitlement of the appellant was assessed. Under issue No.1, Tribunal has come to the conclusion that the matter was not reported to the police and the claim petition was filed in collusion with owner and driver of the offending vehicle.

[5]. Respondent No.1 has admitted the factum of accident while appearing as RW 1, however, he attributed the accident to the circumstance in which a cow suddenly came in front of his motorcycle, due to which he had to turn towards right side and

in that process, his motorcycle hit the scooter of the claimant coming from the opposite side. Respondent No.1 did not intimate the Insurance Company in respect of the accident. Motorcycle was duly insured in the name of father of respondent No.1.

[6]. Taking into consideration the plea taken by respondent No.1, the Tribunal came to the conclusion that respondent No.1 was not rash and negligent in driving the motorcycle as a cow suddenly came in front of his motorcycle, due to which he had to turn the motorcycle towards right side and in that process, the motorcycle hit the scooter of the claimant. He was not driving the motorcycle at a high speed and had not lost his control.

[7]. I have considered the controversy with the help of pleadings on record.

[8]. Rash and negligent driving has to be examined in the light of facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in the light of attending circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a

vehicle at a slow speed but recklessly and negligently, it would amount to rash and negligent driving within the meaning of the language of Section 279 IPC. That is why, the legislature in its wisdom has used the words “manner so rash or negligent as to endanger human life”. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life.

[9]. In view of aforesaid consideration, it is not necessary that the driver of the offending vehicle must drive the vehicle with a great speed. Negligence means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. It has to be appreciated from attending and surrounding facts and circumstances of each case.

[10]. Rule of '*res ipsa loquitur*' though belongs to law of torts, but the same can be applied in the given situation, particularly

when negligence is in issue. Hon'ble Apex Court in **Syad Akbar Vs. State of Karnataka, AIR 1979 SC 1848** held that where negligence is in issue, the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. Para No.19 of **Syad Akbar's case (supra)** reads as under:-

"19. ...The peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of event or accident. It is to such cases that the maxim res ipsa loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred. ..."

[11]. Similar proposition arose in **Oriental Insurance company Ltd. Vs. Sanjay Rathi and others, 2013(8) RCR (Civil) 236**, wherein it was held that 'res Ipsa Loquitur' is an

exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of the driver. This maxim means the mere proof of accident raises the presumption of negligence unless rebutted by the wrongdoer.

[12]. In the instant case, respondent No.1 has admitted the factum of accident, but has pleaded the same to have happened when a cow suddenly came in front of his motorcycle, due to which he had to turn the motorcycle towards right side and in that process, the motorcycle hit the scooter of the claimant.

[13]. in the light of aforesaid position, in my considered opinion, the findings recorded by the Tribunal under issue No.1 are liable to be reversed and it is held that the accident in question was occurred due to negligence of respondent No.1.

[14]. As per medical record, the appellant had suffered injuries on his left leg and his right ankle was fractured. He was operated on 13.07.1989 at General Hospital and was discharged from there on 29.07.1989. Dr. P.P. Singh (AW 2) has proved the disability certificate Ex.PA, showing that the claimant/appellant has suffered 8% permanent physical disability of the right lower limb because of shortening of that limb by 2 cm and restriction of movement of right ankle.

[15]. The Tribunal has assessed an amount of Rs.10,000/-

towards pain and suffering, amount of Rs.20,000/- towards permanent partial disability, an amount of Rs.5000/- towards medical expenses and an amount of Rs.5000/- towards loss of earning for a period of four months. In this way, a sum of Rs.40,000/- was computed, but the same could not be awarded as issue No.1 was decided against the claimant. With the reversal of findings under issue No.1, this Court proceeded to decide the entitlement of the claimant/appellant irrespective of the claim made under different heads.

[16]. In **Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817**, the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[17]. In **K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312**, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective

standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[18]. In **S. Manickam s. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696**, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[19] In **G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934**, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and

loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[20]. In case of **Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996**, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[21]. In case of **Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422**, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[22]. In case of **Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[23]. Loss of future income on account of permanent disability has to be separately assessed from the permanent disability as per formula @ Rs.2000/- per percent. As per medical opinion on record, permanent disability of 8% was in respect of right lower limb because of shortening of that limb by 2 cm and restriction of movement of right ankle. In respect of permanent disability qua whole body, I deem it appropriate to reduce the permanent disability by 50% in order to calculate future loss of income on account of permanent disability of the claimant. The claimant was 40 years of age at the time of accident. He was running a chemist shop. His income can be assessed to be Rs.3000/- per month. He remained confined to

bed for about 3 months and during this period, even a surgery was done qua his right limb. Loss of income @ 4 % would come out to be Rs.120/- per month i.e. Rs.1440/- per year. The age of the claimant/appellant was 40 years at the time of accident, therefore, in view of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77,** multiplier of 15 has to be applied. After applying multiplier of 15, the amount of compensation would come out to be Rs.21,600/-. Compensation on account of permanent disability has to be assessed @ Rs.2000/- per percent. While calculating the aforesaid amount, 8% permanent disability has to be taken into consideration. In this way, compensation under this head would come out to be Rs.16,000/- ($2000 \times 8 = 16,000$). Therefore, the cumulative amount under head of permanent disability and loss of future income on account of permanent disability would come out to be Rs.37,600/- ($16,000 + 21,600 = 37,600/-$). In view of medical record and confinement of the claimant on bed for about 3 months, I deem it appropriate to enhance the amount under pain and suffering to Rs.20,000/-. Instead of Rs.5000/-, amount towards treatment can be assessed to the tune of Rs.15,000/- on some guess work. On computation, the aforesaid tally would come out to be Rs.72,600/- ($37,600 + 20,000/- + 15,000 = 72,600$). Since nothing was paid to the claimant/appellant and claim petition was dismissed in toto,

therefore, I award the aforesaid amount of Rs.72,600/- as compensation to the claimant/appellant. The amount of Rs.72,600/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

[24]. For the reasons recorded hereinabove, the present appeal stands allowed. The impugned award dated 21.01.1995 passed by the Motor Accident Claims Tribunal, Chandigarh is hereby set aside.

May 29, 2018.
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No