

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

490

Date of Decision : 7.9.2018

FAO-823-2003 (O&M)

Bhoop Singh

....Appellant

vs.

Surinder Kumar and others

....Respondents

FAO-824-2003 (O&M)

Bhoop Singh

....Appellant

vs.

Surinder Kumar and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Ashok Verma, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for the respondent No.3-insurance company.

AJAY TEWARI, J. (Oral)

This common order shall dispose of above said two appeals as both are arisen out of the same accident and common facts are involved therein.

The appeal bearing FAO No. 823-2003 has been filed against the Award dated 26.11.2002 passed by the Motor Accident Claims Tribunal, Sirsa awarding compensation of Rs.4,832/- alongwith interest at the rate of 9% per annum on account of damages to his tractor in an accident.

Learned counsel for the appellant has argued that the Tribunal

erred in holding that there was contributory negligence of 50% by the driver of the tractor. He has argued that case of the appellant was that when he turned left on the main road and had proceeded about two Killas, the Tata Sumo came and hit the tractor from behind. He has further relied upon the site plan. A perusal of the site plan shows that the accident has not taken place on the turn but after the turn. Moreover, the version that tractor had already moved about two Killas has not been challenged and no evidence has come contrary to it. Counsel for the insurance company is not in a position to justify the finding that the accident had taken place because the tractor suddenly appeared on the road without caring for the oncoming traffic on the main road. Resultantly, the finding of contributory negligence has to be set aside.

Another contention raised by the counsel for the appellant is that three bills bear the dates 19.7.1999, 20.7.1999, 21.7.1999 have been discarded only by holding that the appellant had stated that the tractor had been brought for repair on 17.8.1999. As per the learned counsel, it is inadvertent statement because actually the tractor had brought for repair on 17.7.1999.

I find that not only PW-5 but even PW-6 had specified that the tractor had come for repair in the month of August. Consequently, assertion that tractor had actually come for repair in July cannot be accepted.

The appeal bearing FAO No. 823-2003 stands disposed of.

The second appeal bearing FAO No. 824-2003 has been filed against the Award dated 26.11.2002 passed by the Motor Accident Claims Tribunal, Sirsa awarding compensation of Rs.2,500/- alongwith interest at

the rate of 9% per annum on account of injuries sustained by the appellant in the same accident.

The contention of the learned counsel is that the Tribunal quantified the pain and suffering as Rs. 5,000/- but did not grant anything on account of fact that the appellant was admitted in the hospital for four days and even though the appellant was not able to produce any bill for that period, some amount could have been awarded for the hospitalization of four days. I find some merit in this argument and award Rs. 2,000/- more.

Counsel for the insurance company however has pointed out that interest at the rate of 9% awarded by the Tribunal is highly excessive in today's regime. I find this to be correct. Therefore, I award 7.5% rate of interest on the enhanced amount from the date of filing of the claim petition till the date of realization.

The appeal bearing FAO No. 824-2003 stands disposed of.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**7.9.2018
anuradha**

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No