

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

FAO-1316-2004 (O&M)

Date of Decision : 04.12.2018

Haroon

..... Appellant

Versus

Roz Khan and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Ms. Nisha, Advocate
for Mr. Adarsh Jain, Advocate
for the appellant.

Ms. Suman Bishnoi, Advocate
for Mr. B.S. Tewatia, Advocate
for respondents No.1 and 2.

Mr. Gopal Mittal, Advocate
for respondent No.3.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the award dated 05.02.2004 awarding compensation of Rs.2,88,240/- alongwith interest @ 9% p.a. on account of injuries suffered by the appellant in a motor accident which took place on 03.06.2000.

Since only limited points have been urged further detailed reference to the facts is not required.

Counsel for the appellant has firstly argued that the Tribunal has wrongly held it to be a case of contributory negligence of 50%. As per

and in a rash and negligent manner, the Tribunal should have returned the finding that it was the fault of the jeep driver.

Counsel for the respondent No.3 on the other hand has argued that once it was a head-on collision then it was inescapable that there was a negligence on the part of both the parties.

In my opinion, the arguments of both the counsel are too extreme. No doubt, where there is a head-on collision normally there would be negligence of both the parties. However, in the present case, one of the vehicles is a fast moving vehicle (jeep) while the other is a slow moving vehicle (tractor-trolley). In the circumstances, it was for the jeep to have maneuvered quickly; but this does not mean that there was no fault on the part of the tractor-trolley. Resultantly, I apportion the negligence to the ratio of 30:70 i.e. 30% negligence on the part of the driver of tractor trolley and 70% on the part of the driver of the jeep.

Counsel for the appellant has further argued that the appellant was admitted in hospital for two months and underwent amputation. Even after discharge he had to go for further follow up treatment. As per the counsel, the Tribunal has erred in giving him loss of earning only for one year whereas in view of the permanent disability due to amputation of right lower limb above right knee, his earning has been permanently reduced. Counsel for the appellant has further argued that this would be even more stark since the appellant has been treated to be a casual labourer.

Counsel for the respondent No.3 has fairly accepted that the loss of earning had to be computed by the multiplier method but points out that the earning of Rs.1800/- p.m. is on higher side. Counsel for the

appellant has countered this argument by stating that as per Minimum

Wages Act at the relevant time the earning of Rs.1800/- p.m. is not on the higher side. I find myself in agreement with the argument of counsel for the appellant and uphold the income. Counsel for the appellant has further argued that in view of the judgment of the Supreme Court in the matter of *National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*, future prospects of 25% had to be awarded. I find this to be indeed so. Consequently, I award 25% future prospects. Thus, loss of earning would be computed at 80% i.e. Rs.2250/- p.m. and, since the appellant was 45 years old, multiplier of 14 would be applied. However, the sum of Rs.21,600/- already awarded by the Tribunal towards loss of earning would be deducted.

Counsel for the appellant has further argued that the amount of Rs.1,20,000/- as compensation for permanent disability of 80% is also inadequate and it should be Rs.1,60,000/-. I accept this argument and award an amount of Rs.40,000/- more to the appellant under this head.

Counsel for the appellant has further argued that for pain and suffering only an amount of Rs.20,000/- has been awarded which is very less. I find this to be indeed so. Consequently, I award an amount of Rs.1,30,000/- more under this head.

Counsel for the appellant has further argued that nothing has been awarded on account of special diet and attendant. Considering the fact that the appellant was in hospital for two months, I award an amount of Rs.60,000/- for special diet and attendant.

Counsel for the appellant has further argued that nothing has been awarded for prosthetic. I find weight in this argument. Consequently,

I award an amount of Rs.1 lakh towards prosthetic.

As mentioned above, the contribution has been apportioned at 70:30 and therefore the respondent No.3 would be liable to pay 70% of the compensation. Of course, the respondent No.3 would be entitled to recover the same from respondents No.2 as held by the Tribunal.

Counsel for the appellant has further argued that the interest of 9% p.a. which has been awarded by the Tribunal is very low. I find favour in this argument. Consequently, in view of the judgment of the Supreme Court in *Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018, decided on 18.09.2018*, I award interest @ 12% p.a. on the enhanced amount from the date of filing of the claim petition till the date of payment.

Appeal stands allowed in the above terms.

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

December 04, 2018

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**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No