

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

Date of decision: 17.4.2018

1.

FAO No.3774 of 2002(O&M)

Ganga Devi

....Appellant

VERSUS

Jagjiwan and others

.....Respondents

2.

FAO No.3775 of 2002(O&M)

Rameshwar Dass

....Appellant

VERSUS

Jagjiwan and others

.....Respondents

3.

FAO No.3778 of 2002(O&M)

Hemant Kalsan

....Appellant

VERSUS

Jagjiwan and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Kanwal, Advocate for
Mr. Ashit Malik, Advocate for the appellant.

Mr. B.S. Taunque, Advocate for respondent No.4.

REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.3774, 3775 and 3778 of 2002 as these have emerged out of the same award dated 07.11.2001 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been awarded on account of injuries

sustained by Hemant Kalsan, Rameshwar Dass and damage to car bearing No.HR05-B/0620 owned by claimant Ganga Devi.

FAO No.3774 of 2002 has been filed by Smt. Ganga Devi, FAO No.3775 of 2002 by Rameshwar Dass and FAO No.3778 of 2002 by Hemant Kalsan for enhancement of compensation.

FAO No.3774 of 2002

The Tribunal has awarded compensation of Rs.20,000/- qua damage to Maruti Car in regard whereof claim was raised by Ganga Devi, its registered owner but the claimant has been held entitled to Rs.13,333.33/- or to say Rs.13,350/- as 33% negligence has been attributed to driver of Maruti Car namely Hemant Kalsan (husband of Ganga Devi). The Tribunal has assessed compensation on the basis of testimony of Rajesh Chhabra PW-10, Surveyor examined by the claimant and the reports Ex.P37 and P38 submitted by him. As the Tribunal has accepted the reports prepared by Surveyor, engaged by the claimant, there is no justification for enhancement of compensation qua damage to the Maruti Car.

The car in question was admittedly driven by Hemant Kalsan, husband of the registered owner. As per the settled position in law, a tortfeasor cannot be allowed to take advantage of his/her own wrong. while dealing with claim filed under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act'). Applying the principle of *res ipsa loquitur*, claimant has rightly been held entitled to recover the amount to the extent of 67% qua which negligence in causing the occurrence has been attributed to driver of tractor namely Jagjiwan. In this view of the matter, findings recorded by the Tribunal in regard to award of compensation qua damage to Maruti Car are liable to be affirmed and ordered accordingly.

For the foregoing reasons, the appeal stands disposed of. No order as to costs.

FAO No.3775 of 2002

The Tribunal has awarded compensation of Rs.6,000/- and the insurer of tractor Swaraj-735 bearing No.HR07-B/7398 has been held liable to pay compensation to the tune of Rs.4,000/- as 33% negligence has been attributed to driver of Maruti Car bearing No. HR05-B/0620 involved in the occurrence.

The first submission made by counsel for the appellant is that as no negligence in causing the accident has been attributed to the claimant and the present, at best, can be said to be a case of composite negligence of two vehicles involved in the occurrence, one driven by Jagjiwan and the other by Hemant Kalsan, the injured is at liberty in law to sue either of the joint tortfeasors for grant of compensation. It is argued that as the injured claimed compensation against the driver, owner and insurer of tractor aforesaid, he is entitled to recover the entire compensation from the driver, owner and insurer of the tractor in question. Another submission made by counsel is that compensation awarded by the Tribunal is on lower side and needs enhancement.

Counsel representing the insurance company has supported findings of the Tribunal recorded in paras 29 and 30 of the award whereby the claimant has been held entitled to compensation to the tune of Rs.6,000/- and liability of driver, owner and insurer of the vehicle (tractor) to the extent of Rs.4,000/- as 33% negligence in causing the accident has been attributed to driver of the Maruti Car in which the injured was travelling.

The Tribunal in para 29 of the award has noticed that the claimant neither examined any doctor nor placed on record any medical bills. He only brought on record copy of Medico Legal Report (in short 'MLR') Ex.P46 wherein it is mentioned that the injured received five injuries (simple in nature) being lacerated wound and abrasions. Counsel for the appellant has failed to point out any materials on record to dispute factual findings recorded by the Tribunal in para 29 of the award. Taking a view from the nature of injuries depicted in the MLR Ex.P46, there is no justification for enhancement of compensation assessed by the Tribunal.

This brings the Court to the question whether Rameshwar Dass is entitled to recover the entire compensation from driver, owner and insurer of aforesaid tractor as 33% negligence in causing the accident has been attributed to driver of Maruti Car in which the injured was travelling. As has been rightly argued by counsel for the claimant, in a case of composite negligence of vehicles involved in the occurrence, victim is at liberty to seek compensation from either of the joint tortfeasors. As the claimant sought to recover compensation from driver, owner and insurance company of tractor in question, the Tribunal has seriously erred in allowing the claimant to recover only Rs.4,000/- from the driver, owner and insurer of the offending tractor. As a matter of fact, claimant shall be entitled to recover the entire compensation from the driver, owner and insurer of the tractor in question but without prejudice to right of the driver, owner and insurer of tractor to take recourse to appropriate proceedings in law to recover the amount of Rs.2,000/- from the driver, owner and insurer of the Maruti Car, in accordance with law.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.3778 of 2002

The Tribunal has awarded compensation of Rs.1,63,000/- detailed in para 21 of the award, reads thus:-

For medicines	Rs.60,000/-
For pain and suffering, amenities of life	Rs.30,000/-
For loss of salary on account of without pay for 60 days and Half pay leave for 120 days	Rs.42,000/-
For special diet	Rs.15,000/-
For transportation charges	Rs.10,000/-
For attendant charges	Rs.6,000/-

However, the claimant has been held entitled to get an amount of Rs.1,08,666/- or to say Rs.1,09,000/- as 33% negligence in causing the accident has been attributed to the injured.

The sole submission made by counsel for the appellant is that the injured was working as Deputy Superintendent of Police with State of Haryana at the relevant time. Pawan Kumar, Head Constable PW-2 has proved that basic pay of the injured was Rs.10,325/- per month. The injured remained on earned leave from 03.06.1997 to 20.06.1997, half pay leave for 120 days from 21.06.1997 to 18.10.1997 and extra-ordinary leave for 60 days from 19.10.1997 to 17.12.1997. It is further argued that the Tribunal has allowed reimbursement of Rs.42,000/- on account of leave without pay for 60 days and half pay leave for 120 days but has not allowed reimbursement in respect of earned leave from 03.06.1997 to 20.06.1997, for a period of 18 days. It is argued that had the injured not sustained injuries in the occurrence, earned leave would have been to his credit which could either be availed of by him in future or got encashed at

the time of his retirement, as per the rules. It is further submitted that the claimant is entitled to an amount of Rs.6,000/- towards salary of aforesaid period of earned leave.

Counsel representing the insurance company has supported assessment made by the Tribunal with the submission that injured has been adequately compensated.

There is no dispute about factual observations recorded by the Tribunal in para 20 of the award with regard to the period of leave availed by victim on account of sustaining injuries in the occurrence. As has been rightly argued by counsel for the claimant, had the injured not sustained injuries, he would not have exhausted his earned leave of 18 days and the same would be availed by him in future or for the purpose of leave encashment at the time of retirement. Accordingly, the injured shall be entitled to additional compensation of Rs.6,000/- with regard to loss of earned leave for the aforesaid period as his basic pay was Rs.10,325/- per month. Out of the additional amount, claimant shall be entitled to recover an amount of Rs.4,000/- from the driver, owner and insurer of the aforesaid tractor as 33% negligence has been attributed to the injured.

The appeal is partly allowed in the aforesaid terms.

APRIL 17, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no