

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

FAO No.5771 of 2011 (O&M)

Date of decision: 25.07.2018

Nirmal Singh

... Appellant

Versus

Vishavjeet Desai and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Ms. Anju Arora, Advocate
for the respondent-Union of India.

REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 25.01.2007.

The Tribunal has awarded compensation of Rs.1,56,700/-, detailed hereunder:-

1. Permanent disability	Rs.60,000/-
2. Reimbursement of medical expenses	Rs.67,000/-
3. Pain and sufferings	Rs.15,000/-
4. Special diet	Rs.8200/-
5. Transportation expenses	Rs.6500/-

However, the claimant is held entitled to compensation to the extent of 50% i.e. Rs.78,350/- as 50% negligence in the occurrence has

been attributed to injured claimant Nirmal Singh.

Counsel for the appellant has assailed findings of the Tribunal attributing 50% negligence to the injured primarily by raising two contentions. The first submission made by counsel is that as the offending vehicle is Swaraj Mazda of Air Force Station, High Ground, Chandigarh driven by Vishavjeet Desai at the relevant time, being a heavy motor vehicle, the driver is responsible to ensure that no harm is caused to a smaller vehicle especially a two wheeler while turning the vehicle towards right side while it was on its way from Chandigarh to Kalka. Another submission made by counsel is that even if there was some negligence on the part of injured, he cannot be attributed negligence to the extent of 50%.

Claimant has prayed for enhancement of compensation with the submission that on account of multiple fractures on his right leg, he has been rendered disable to the extent of 30%, proved by Dr. Umesh Modi PW2 and disability certificate Ex.P210. It is further argued that compensation awarded by the Tribunal under various heads i.e. pain and sufferings, special diet, transportation expenses is on lower side and needs enhancement.

Counsel for respondent No.2 has supported findings of the Tribunal both in regard to contributory negligence of the injured as well as quantum of compensation assessed qua injuries sustained by the victim. It is argued that as the motorcycle driven by Nirmal Singh hit on the rear left side mudguard of alleged offending vehicle when it had already taken turn

towards its right side, the Tribunal has rightly attributed 50% negligence to Nirmal Singh.

I have heard counsel for the parties, perused the paper book and records.

The Tribunal in para 12 of the award has dealt with the issue of negligence on the basis whereof, it has been concluded that the circumstances clearly suggest that it was a case of contributory negligence. Further held that Nirmal Singh who was driving the motorcycle and Vishavjeet Desai who was driving Air Force vehicle were equally at fault and negligence is apportioned at 50:50. The Court has taken into consideration proceedings of the Court of inquiry conducted by the Air Force authorities wherein Vishavjeet Desai, driver of the alleged offending vehicle was exonerated.

Indisputably, Nirmal Singh was travelling on the motorcycle on his way from Kalka towards Panchkula whereas Swaraj Mazda driven by Vishavjeet Desai was coming from the opposite direction i.e. Panchkula towards Kalka. When Swaraj Mazda reached near ASC Supply Depot Butchery, it turned towards right side for going to ASC, Butchery. As per the mechanical report Ex.R3, rear left side mudguard of Swaraj Mazda bent from front side and on the left side of the body, there was mark of strike. Counsel for the appellant has not disputed factual findings recorded by the Tribunal as to the manner in which the accident in question occurred when the motorcycle driven by Nirmal Singh struck against rear left side

mudguard of Swaraj Mazda when the vehicle had already turned towards its right side. In the given circumstances, I find it difficult to accept contention of the appellant that either no negligence can be attributed to him or negligence to the extent of 50% attributed to Nirmal Singh is on higher side. That being so, findings of the Tribunal attributing 50% negligence to Nirmal Singh are liable to be affirmed and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal in para 22 of the award has noticed that Nirmal Singh was getting salary of Rs.12,000/- per month at the time of accident but when he appeared in the witness box, he was getting salary of Rs.28,000/- per month. Nirmal Singh did not examine a witness of his employer in order to substantiate his plea that on account of sustaining injuries resulting in disability of 30%, either there would be loss of income or adverse affect on his promotion avenues etc. In this view of the matter, he would not be entitled to any compensation qua loss of future income on account of disability. The Tribunal has rightly awarded a sum of Rs.60,000/- @ Rs.2000/- per percent qua disability to the extent of 30% by relying upon judgments, referred to in para 22 of the award.

The Tribunal has allowed reimbursement of medical expenses of Rs.67,000/- based upon bills/documents and the same is affirmed. The claimant remained admitted in PGI from 25.01.2007 to 07.02.2007. Nirmal Singh in his affidavit Ex.PW3/A has testified that he suffered multiple

injuries and his right leg was fractured at four places. Dr. Umesh Modi PW2 deposed the the claimant suffered from operated case of fracture femur lower and right side with fracture dislocation right ankle and complaint of pain resulting in stiff knee, ankle and inability to squat and sit cross legs. Taking into consideration the nature of injuries sustained that left him disable to the extent of 30%, he is allowed compensation of Rs.20,000/- (additional sum of Rs.5000) for pain and sufferings. The claimant shall be entitled to additional sum of Rs.3000/- for special diet, transportation expenses and services of an attendant. With regard to disability to the extent of 30%, he is allowed loss of amenities of life to the tune of Rs.30,000/-. In this manner, additional compensation of Rs.38,000/- to the extent of 50% i.e. Rs.19,000/- shall be payable with interest @ 7.5% per annum from the date of petition till realization.

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

25.07.2018
ashok

(REKHA MITTAL)
JUDGE

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