

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

FAO No.1405 of 2013 (O&M)

Date of decision: 25.05.2018

Baljeet Singh

... Appellant

Versus

Mukesh Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Atul Yadav, Advocate for the appellant.

Mr. R.K. Dhiman, Advocate for respondents No.1 and 2.

Mr. Aseem Aggarwal, Advocate for respondent No.3.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 24.12.2012 passed by the Motor Accidents Claims Tribunal, Gurgaon whereby compensation has been assessed in respect of injuries sustained by the claimant but he has been paid 50% of the assessed amount as 50% negligence in the occurrence has been attributed to the claimant.

The Tribunal has awarded compensation of Rs.6,74,300/-, detailed in para 52 of the award, extracted thus:-

1. Medical expenses	Rs.4,96,900/-
2. Pain and sufferings	Rs.40,000/-
3. Loss of income	Rs.89,400/-
4. Transportation	Rs.36,000/-
5. Nutritious diet	Rs.6000/-

6. Attendant charges

Rs.6000/-

Counsel for the appellant has challenged correctness of findings recorded on issue No.1 with the submission that claimant Baljeet Singh appeared in the witness box and reiterated his version that accident took place due to rash and negligent driving of offending vehicle, bus bearing No.HR-55-8939 by Mukesh Kumar, its driver. It is further argued that nothing tangible and material has been elicited in cross examination of Baljeet Singh to shatter evidential value of his statement much less that he was at fault or can be attributed negligence for the occurrence. In addition, it is argued that Mukesh Kumar, driver of the offending vehicle did not appear in the witness box to counter testimony of Baljeet Singh or to say something as to how the occurrence in question took place. It is argued with vehemence that failure of Mukesh Kumar to appear in the witness box without any tangible explanation leads to an adverse inference against the respondents more particularly in the circumstances that it is none of the plea of driver and owner of the offending vehicle that present is a case of contributory negligence who on the contrary altogether denied involvement of their vehicle in the occurrence.

Counsel representing the insurance company has supported findings of the Tribunal recorded in para 17 of the award by accepting contention of the insurance company raised in para 16 thereof and relied upon judgment of Hon'ble the Supreme Court **Bijoy Kumar Dugar Vs. Bidyadhar Dutta and others, (2006-2) The Punjab Law Reporter 329**

(S.C.) and judgment of this Court Smt. Mahendri and others Vs. Tanjit Singh and another, (2006-2) The Punjab Law Reporter 621 (P&H).

Counsel for respondents No.1 and 2 has echoed argument advanced by counsel for the insurance company and supported findings of the Tribunal based upon the principle of res ipsa loquitor.

Another submission made by counsel for the appellant is that compensation awarded by the Tribunal is on lower side and needs enhancement.

Counsel for the respondents would urge that the Tribunal has shown magnanimity in awarding compensation and there is no justification for enhancement of the same.

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

The injured claimant set up his plea with regard to the accident being result of rash and negligent driving of aforesaid bus in para 24 of the claim application. Respondents No.1 and 2 before the Tribunal controverted the allegations raised in para 24 in totality. They have denied the date, time, place of accident as well as the accident being result of rash and negligent driving of the bus in question by Mukesh Kumar, its driver. Baljeet Singh, the injured appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW3/A and reiterated his version that accident took place due to fast speed, rash and negligent driving of bus bearing No.HR-55-8939 when he was travelling on his motorcycle bearing

No.HR-26AC-4757 towards his own side. The witness was cross examined at length by counsel for the respondents before the Tribunal. He had denied the suggestion that he was driving the motorcycle at a speed of 90 to 100 kmph. He also denied that he was driving rashly and negligently. He further denied that his motorcycle turned turtle in the bushes without any external impact when he applied emergency brake. He has empathetically denied that accident is solely caused due to his negligence. However, as has been noticed by the Tribunal, he has admitted that he saw the bus from a distance of 500-600 ft. Indisputably, Mukesh Kumar, driver of the offending vehicle did not appear in the witness box without any tangible explanation. The mere fact that the injured had sighted the bus from a distance of 500-600 ft. or the accident was head on collision between the vehicles involved in the occurrence is not sufficient to attribute contributory negligence to the victim particularly in the circumstances that there is nothing on record suggestive of the fact that accident took place in the middle of the road much less towards side for the bus to travel coming from the opposite direction. In the given scenario, findings of the Tribunal attributing contributory negligence to the victim by applying the principle of *res ipsa loquitor* cannot be allowed to sustain and accordingly set aside. As has been rightly argued by the counsel for the claimant, it is none of the plea of driver and owner of the offending vehicle that negligence in causing the occurrence is attributable to the injured and they have altogether denied any such occurrence having taken place. Analyzed from any angle, findings

recorded by the Tribunal on issue No.1 are liable to be modified to the effect that accident took place due to exclusive rashness and negligence attributable to driver of the offending vehicle. As a consequence, findings of the Tribunal holding the claimant entitled to 50% of assessed compensation are liable to be modified with the observation that claimant shall be entitled to entire compensation assessed by the Tribunal.

This brings the Court to the question of quantum of compensation assessed by the Tribunal. As has been noticed hereinbefore, the Tribunal has assessed compensation to the tune of Rs.6,74,300/- under various heads discussed in detail under issue No.2 though issue Nos.2 and 3 were taken up together for discussion. Perusal of findings recorded by the Tribunal when examined in the light of materials on record, there is no justification for enhancement of compensation under any of the heads in regard whereof compensation has been allowed by the Tribunal. No ground for award of compensation under any additional head is also made out. As such, compensation awarded by the Tribunal is ordered to be affirmed but subject to modification made hereinbefore.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. Claimant shall be entitled to entire compensation assessed by the Tribunal with interest at the rate allowed and in terms of award by the Tribunal.

No order as to costs.

25.05.2018

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No