

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
-.-

FAO 1087 of 2015 (O&M)
Date of decision: 01.02.2018

Dinesh Kumar Appellant
Versus
Babu Lal and others Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal
-.-

Present: Mr. Sandeep Verma, Advocate
for the appellant

Ms Vandana Malhotra, Advocate
for the insurance company
-.-

Rekha Mittal, J. (Oral)

Dinesh Kumar, the injured victim is in appeal who has assailed findings of the Tribunal attributing negligence to him to the extent of 50% and also sought enhancement of compensation on account of injuries sustained by him in a motor vehicular accident that took place on 30.07.2010.

The Tribunal has awarded compensation of Rs.2,17,310.00, detailed hereunder:-

Expenses of medical treatment	Rs.35,400 + Rs.43,743 + Rs.700 + Rs.44,350 + Rs.18,500 + Rs.12,000 + Rs.22,617 + Rs1800 + Rs.200 + Rs.8,000 + Rs.10,000
Expenses on special diet	Rs.8,000.00
Incidental expenses	Rs.10,000.00
Pain and sufferings	Rs.20,000.00

Counsel for the appellant has submitted that Dinesh Kumar suffered injuries when he was travelling on the pillion seat of motor cycle bearing No. HR 36H-8657, driven by Narender Pal. It is argued that negligence has been attributed to the injured primarily on the ground that Narender Pal was carrying two pillion riders on the motorcycle in violation of Section 128 of the Motor Vehicles Act, 1988. It is further argued that as Dinesh Kumar was not driver of the motor cycle in question, he cannot be attributed any negligence in causing the accident. In addition, it is argued that there is nothing on record suggestive of the fact that accident occurred because of three persons travelling on the motorcycle driven by Narender Pal when on the contrary, sufficient evidence has been adduced that accident was caused due to sole rash and negligent driving of Truck bearing No. RJ 32-GA/3501 by Babu Lal, its driver. According to Counsel, findings of the Tribunal attributing 50% negligence to the appellant cannot be allowed to sustain and liable to be set aside.

Another submission made by counsel is that compensation assessed by the Tribunal is on lower side and needs enhancement. It is argued that the injured remained hospitalized on three occasions, referred to in paras 26 and 27 of the award, therefore, compensation qua pain and sufferings, special diet, transportation and services of an attendant is liable to be enhanced.

Counsel representing the insurance company has supported findings of the Tribunal attributing 50% negligence to the injured and so also assessment of compensation by the Tribunal.

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

The Tribunal, in para 17 of the award, has held that if a vehicle

which is designed to carry two persons only is used to carry more than two, it can be assumed that driver will not be able to control the vehicle effectively and weight on account of third passenger will affect its stability. This, by itself, contributes to negligence of the driver as well as pillion riders of motor cycle bearing No. HR 36 H/8657.

The question of rash and negligent driving is to be determined on the basis of evidence adduced by the parties and not on the basis of assumptions and presumptions. Counsel for the insurance company has failed to point out any material elicited in cross examination of injured Dinesh Kumar to establish that because of three persons travelling on motor cycle driven by Narender Pal, in any manner whatever, contributed to the accident. It may be true that triple riding on a two wheeler amount to violation of Section 128 of the Act but the same itself cannot be sufficient to attribute negligence to driver of the two wheeler much less to riders on its pillion seat. In this context, reference can be made to judgments of this Court ***Banwari Lal and another v. Ran Singh and others (FAO No. 2191 of 2014, decided on 23.08.2016)*** and ***Karnail Singh v. Balwinder Singh, 2014 (7) R.C.R. (Civil) 177***. In this view of the matter, findings recorded by the Tribunal attributing 50% negligence to injured Dinesh Kumar cannot be allowed to sustain and accordingly set aside.

This brings the Court to quantum of compensation assessed by the Tribunal. Indisputably, Dinesh Kumar remained hospitalized on three occasions. He suffered fractures of supracondylar right femur and metatarsal of right foot. He was admitted in Birendra Hospital, Rewari from 30.07.2010 to 30.08.2010. He was hospitalized in Chaudhary Chhaju Ram Hospital, Uttam Nagar, New Delhi from 07.06.2011 to 11.06.2011. He was

again admitted in the said hospital on 16.06.2011 and discharged on 22.06.2011. The medical expenses of more than Rs.1,50,000.00 incurred by him were reimbursed by the Tribunal. Taking into consideration period of treatment as an indoor patient, interest of justice would be served if compensation of Rs.20,000.00 is enhanced to Rs.50,000.00 which shall include pain and sufferings, attendant charges, transportation, special diet, loss of income for the period of treatment and recovery. Total compensation comes to Rs.2,47,310.00, payable with interest at the rate of 7.5% per annum from the date of petition till realization. The amount already paid to the claimant in terms of the award passed by the Tribunal shall be liable to adjustment out of compensation allowed by this Court.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

01.02.2018
mohan bimbra

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