

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

Date of Decision: January 11, 2018

1. **F.A.O.No.1620 of 2016 (O&M)**

Shri Krishan

...Appellant

Versus

Sanjeev Kumar & others

...Respondents

2. **F.A.O.No.723 of 2017 (O&M)**

Rajbir Singh

...Appellant

Versus

Shri Krishan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Naveen Singh Panwar, Advocate
for the appellant in FAO No.1620 of 2016 &
for respondent No.1 in FAO No.723 of 2017.**

**Mr.Munish Kumar Garg, Advocate,
for the appellant in FAO No.723 of 2017 &
for respondent No.2 in FAO No.1620 of 2016.**

**Mr.Vipul Sharma, Advocate for
Mr.Paul S.Saini, Advocate,
for respondent No.3.**

AMIT RAWAL, J. (Oral)

CM No.6012-CII of 2016 in FAO No.1620 of 2016

**For the reasons stated in the application, which is supported by
an affidavit, delay of 32 days in filing the appeal is condoned.**

CM stands disposed of.

CM No.2305-CII of 2017 in FAO No.723 of 2017

For the reasons stated in the application, which is supported by an affidavit, delay of 426 days in filing the appeal is condoned.

CM stands disposed of.

FAO Nos.1620 of 2016 & 723 of 2017

This order of mine shall dispose of two F.A.Os bearing No.1620 of 2016 and 723 of 2017 as the common questions of law and facts are involved.

FAO No.1620 of 2016 has been filed by the claimant-injured seeking enhancement of compensation on the following grounds:-

- a) Suffered a locomotive disability to the extent of 64% and, therefore, the compensation of ₹8,60,160/- on this account is lesser and liable to be enhanced. By taking into consideration the other expenses, total compensation of ₹12,29,778/- has been awarded.
- b) The Tribunal has committed illegality and perversity in fastening the liability on the appellant-driver, who was driving the Canter bearing registration No.HR-67/4604, which struck against the truck bearing registration No.HR 55G-8834 from behind as he had suddenly applied brakes, but to prove the contributory negligence, no witness has come forward.
- c) The report under Section 173 Cr.P.C. (Ex.P79) was filed against the driver of the truck and, therefore, the observations of the Tribunal limiting the compensation to the extent of 50% are liable to be set-aside.

FAO No.723 of 2017 has been preferred by the owner on the

ground that the recovery rights given to the Insurance Company ought not to have been granted, for, the driving licence of the truck driver was found to be not issued by the RTO Dharamshala. Reference has been made to the application bearing No.2308-CII of 2017 in FAO No.723 of 2017 seeking liberty of this Court to bring on record the driving licence Annexure A-1 issued on 17.11.2009 valid upto 16.11.2029 for non-transport and 16.3.2019 for transport vehicles issued by the Licensing Authority, Maharashtra and, therefore, liability could not be fastened. Learned counsel submits that while engaging the driver, the owner had verified the driving licence and found it to be genuine and valid.

I have heard the learned counsel for the parties and appraised the paper book.

It has surfaced that the owner did not appear in the witness box. Learned counsel submits that in this regard, an application under Order 41 Rule 27 CPC for placing on record the driving licence issued by the Maharashtra and as well as for examining the owner has been moved in support of the grounds of appeal vis-a-vis granting of the recovery rights. I am of the view that the aforementioned plea is not tenable, for, the Motor Vehicles Act prohibits a person to hold two driving licence at the same time, i.e., when the accident had occurred on 31.5.2013 at 4.45 AM. In case the additional evidence is allowed, it would tantamount to filling up the lacunae. No explanation as to how the owner did not appear in the witness box is not backed by any reasons and, therefore, is liable to be rejected.

I am of the view that the findings given by the Tribunal vis-a-vis the driving licence not to be issued by the concerned authority is the correct appreciation of evidence brought on record and no fault can be

found. Resultantly, the appeal of the owner giving recovery rights to the Insurance Company is hereby dismissed.

Now coming to the appeal of the injured for claiming enhancement of compensation, his counsel submitted that the finding of 50% contributory negligence upon the driver-appellant of not maintaining the distance is required to be modified to some extent as the truck driver was driving the truck at a fast speed. The chances of driving the vehicle are not even remote, but plausible owing to the disability of 64%, i.e., locomotive disability. The compensation under the head of the disability is also liable to be increased considerably.

The factum of the accident between both the vehicles on the GT road has not been controverted. It is the duty of the vehicle following the vehicle going ahead to maintain a proper distance in order to avoid any mishap. It is a case of such kind where the appellant-driver had not maintained the proper distance. Even no witness has been examined on behalf of the owner and the driver to prove the negligence of the appellant, but for taking the cognizance of the averments made in the pleadings with regard to the manner, mode and nature of the accident, the negligence of the accident is explained in the correct perspective, therefore, while rejecting the argument of the counsel on this point, the finding of the Tribunal apportioning the liability upto 50% is hereby upheld

The argument of the learned counsel for the appellant for increasing the compensation on account of 64% disability is not able to cut ice, for, the appellant was earning a sum of ₹8,000/- per month and by taking the disability of 64%, the loss of income comes to ₹8,60,100/-, whereas the Tribunal has also awarded ₹8,60,160/-. There is hardly any

scope for enhancement of the compensation. Rest of the award on various heads awarding compensation is upheld.

The appeals stand dismissed.

January 11, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No