

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

Date of decision: 15.2.2018

1. **FAO No.4896 of 2014(O&M)**

ShubhamAppellant

VERSUS

Gurmeet SinghRespondent

2. **FAO No.5492 of 2014(O&M)**

Balwinder KaurAppellant

VERSUS

Gurmeet SinghRespondent

3. **FAO No.5295 of 2014(O&M)**

Harbhajan SinghAppellant

VERSUS

Gurmeet SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

None of the respondent.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4896, 5295 and 5492 of
2014 as these have emerged out of the same award dated 07.04.2014

passed by the Motor Accidents Claims Tribunal, Fatehabad (in short ‘the Tribunal’) whereby compensation has been awarded in respect of injuries sustained by Shubham, Balwinder Kaur and Harbhajan Singh in a motor vehicular accident that took place on 23.03.2012 due to rash and negligent driving of Maruti Gypsy bearing No.DDD-4805 when the injured victims were travelling on motorcycle bearing No.HR22-D/0569.

Counsel for the claimants/appellants would argue that the Tribunal has wrongly held that present is a case of contributory negligence of ill-fated vehicle driven by injured Harbhajan Singh and Maruti Gypsy driven by Gurmeet Singh, its owner. It is argued with vehemence that mere fact that four persons i.e. two kids and two adults were travelling on the motorcycle in violation of provisions of Section 128 of the Motor Vehicles Act, 1988 (in short ‘the Act’) is not sufficient to attribute negligence to Harbhajan Singh much less to the travellers on the pillion seat. It is argued that the question of negligence is a factual issue to be decided on the basis of evidence adduced by the parties. It is further argued that though the Tribunal has accepted plea of the claimants that accident took place due to rash and negligent driving of car i.e. Maruti Gypsy by Gurmeet Singh but still proceeded to record a finding that it was a case of contributory negligence.

The Tribunal in para 14 of the award has dealt with issue of rash and negligent driving of offending vehicle i.e. Maruti Gypsy by Gurmeet Singh. A relevant extract therefrom, reads as follows:-

“14...Then a perusal of site pan Ex. R1 depicts the place of occurrence at point B. So, in such a situation, though the occurrence is proved to have taken place but it was due to

contributory negligence. In cases Pritam Kaur & others Vs. Gopal Chand & others, 1999 ACJ 945 and Angrejo Devi and others Vs. Jai Parkash and others, 2013 (2) RCR (Civil) 161 it was held that when ill fated vehicle was having more than two occupants then the driver would have to share part of his seat. He will not be able to control the vehicle effectively. Moreover, the weight on account of third –four passengers will affect its stability. In the case in hand, it is evident that Harbhajan Singh PW7 was driving the ill-fated vehicle in violation of Section 128 of the Motor Vehicles Act, 1988 with three more passengers on pillion seat. Though he was 40 years of age at the time of occurrence but there is likelihood of his losing control over the vehicle on hearing voice of coming vehicle from the opposite direction. The accidents occur in a fraction of seconds and on slightest miscalculation of judgment. Though it is proved that the respondent was rash and negligent while driving his vehicle but it can't be lost sight that Harbhajan Singh claimant was also driving his vehicle in violation of provisions of Motor Vehicles Act. So, in such a situation, it was a case of contributory negligence of ill-fated vehicle and that of respondent in the ratio of 50% each.”

In the case at hand, two adults and two children were travelling on the motorcycle driven by Harbhajan Singh. The Tribunal by taking into consideration judgments by this Court **Pritam Kaur & others Vs. Gopal Chand & others, 1999 ACJ 945** and **Angrejo Devi and others Vs. Jai Parkash and others, 2013 (2) RCR (Civil) 161** has proceeded to record a finding that the present is a case of contributory negligence. However, there is no finding recorded by the Tribunal that travelling of four persons on the motorcycle, in any way contributed in

causing the accident. On the contrary, it has been held that it is proved that the respondent was rash and negligent while driving his vehicle. As has been rightly argued by counsel for the claimants that violation of the provisions of Section 128 of the Act *ipso facto* is not sufficient to attribute negligence to the driver of two-wheeler who, at best, can be proceeded against for an action, if the rules so permit. In this contest, reference can be made to judgments of this Court **Banwari Lal and another VS. Ran Singh and others, FAO No.2191 of 2014, decided on 23.08.2016** and **Karnail Singh Vs. Balwinder Singh, 2014 (7) RCR (Civil) 177**. Under the circumstances, findings of the Tribunal on issue No.1 attributing contributory negligence to Harbhajan Singh to the extent of 50% cannot be allowed to sustain and ordered to be set aside. Consequently, issue no.1 is answered in favour of the claimants that accident took place because of rash and negligent driving of maruti Gypsy bearing No.DDD-4805 by Gurmeet Singh, its driver.

FAO No.4896 of 2014

With regard to injuries sustained by minor Shubham, the Tribunal has awarded compensation of Rs.10,077/- on the basis of documents Ex.P8 to P14, P99, P101 to P106 and Mark B to D. Counsel for the appellant has submitted that compensation awarded by the Tribunal is on lower side and needs enhancement. It is argued that the Tribunal has not allowed any compensation for pain and suffering, special diet, attendant charges and transportation charges etc. Perusal of the follow-up and discharge card of Maharaja Agrasen Medical College and Hospital, Agroha (Hisar) makes it evident that Shubham was admitted on

24.03.2012 and discharged on 04.05.2012. He suffered fracture shaft femur, left and tibia upper end right. Taking a clue from the documents Ex. P5 to P14, it can be safely held that the injured victim is entitled to compensation for pain and suffering, special diet, attendant charges etc. He is awarded an amount of Rs.15,000/- under these heads. The additional amount of Rs.15,000/- shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.5492 of 2014

The Tribunal has awarded compensation of Rs.10,675/- on account of injuries sustained by Balwinder Kaur, detailed hereunder:-

Pain and sufferings plus special diet	Rs.5000/-
Loss of services of the victim	Rs.5000/-
Medical expenses	Rs.675/-

The injured remained hospitalised for a period of 12 days w.e.f 23.03.2012 to 09.04.2012. Fortunately, she did not suffer any fracture much less impairment on account of receipt of injuries. Under the circumstances, compensation allowed by the Tribunal does not warrant enhancement on any count whatever. Accordingly, compensation awarded by the Tribunal is affirmed.

The appeal stands disposed of.

FAO No.5295 of 2014

Harbhajan Singh has been awarded compensation of Rs.47,856/-, detailed hereunder:-

Pain and sufferings plus special diet	Rs.5000/-
Loss of income for the period of treatment and recovery	Rs.10,000/-
Medical expenses	Rs.32,856/-

Counsel for the appellant has submitted that injuries sustained by the victim were recorded in Medico Legal Report Ex.P2 proved by Dr. Vivek Sahu PW2 and reproduced in para 25 of the award. Dr. Anurag Chhabra PW5 was examined to prove injuries sustained by the victim and Dr. H.L. Gupta PW1 has proved disability caused to the victim on account of injuries sustained by him. It is argued with vehemence that in view of nature of injuries sustained resulting in disability to the extent of 39%, claimant is entitled to adequate compensation for loss of earning due to disability, expenses on special diet, transportation and services of an attendant etc.

Dr. Anurag Chhabra, Senior Professor, Orthopaedic, Maharaja Aggarsen Medical College, Agroha has deposed in para 3 of his testimony to the following effect:-

“Patient Harbhajan Singh, aged 40 years male son of Niranjana Singh, resident of village Kattakheri, District Fatehabad was admitted in our hospital through accident and emergency department vide CR No.83863 dated 24.03.2012. He had

allegedly sustained injuries in a road traffic accident on Ratia road, near Fatehabad on 23.03.2012 for which he was initially admitted in General Hospital, Fatehabad where he received his initial treatment and his legal medical formalities were completed. He was referred from G.H. Fatehabad to higher centre. In our hospital, he was diagnosed as a case of poly trauma with multiple fractures and injuries (fracture interprotretic right, fracture shaft of femur right, fracture both bone legs both sides, fracture patella left, pubic symphysis disruption, SI joint sublocation.). Patient was also known case of diabetic mellitus with history of old case of operation of lower end of femur left side (2007, plating, at PGI Rohtak). Patient was operated on 02.05.2012 for his right femoral fractures. Patient was discharged on 19.05.2012 in better condition.”

Dr. H.L. Gupta PW1 has deposed that Harbhajan Singh son of Niranjjan Singh had fracture of right intra trochanteric hip liver right leg with patella. X-ray done on 20.03.2013 showed mal united bilateral leg, non-union left patella with 50% loss of left knee movement. Pubic was disrupted. The disability was assessed on this account to the extent of 39% which is permanent in nature and non-progressive.

The accident took place on 23.03.2012 and the injured was initially admitted in General Hospital, Fatehabad and was referred to higher hospital. He was admitted in the hospital at Agroha on 24.03.2012 and discharged on 19.05.2012. He was operated on 02.05.2012 for right femoral fractures. Taking into consideration nature of injuries sustained coupled with the period of treatment as an indoor patient, claimant is awarded an amount of Rs.30,000/- for pain and sufferings. He is awarded

an amount of Rs.15000/- for special diet, services of an attendant and transportation etc.

The Tribunal has not awarded any compensation qua disability to the extent of 39% with the observation that Dr. Anurag Chhabra has deposed that he was a known case of diabetic mellitus with history of old case of operation of lower end of femur left side (2007, plating, at PGI Rohtak). Then it cannot be said that he suffered any disability due to receipt of injuries as alleged by him.

Perusal of testimony of Dr. H.L. Gupta PW1 would indicate that nothing has been clarified by the doctor in his examination-in-chief if the earlier injury would cause such a disability nor any such clarification was sought from him during the course of cross-examination. Under the circumstances, it can be safely held that testimony of Dr. H.L. Gupta does not make the picture clear, if earlier injury sustained by the victim is the reason for disability or has attributed to the disability to any extent whatever. However, the earlier injury was sustained by the victim on left femur. As per the disability certificate Ex.P1, X-ray was done on 20.03.2013 showed mal united bilateral leg, non-union left patella with 50% loss of left knee movement. The provisions of the Motor Vehicles Act, 1988 providing for compensation is a beneficial legislation enacted with a clear intent to make good the loss suffered by the injured victim. Taking a cumulative view of the facts on record, it can be safely concluded that claimant can be allowed compensation qua disability by taking it to the extent of 20%. Accordingly, the claimant is awarded an amount of

Rs.40,000/- @ Rs.2000/- per percent for the disability suffered by him.

The compensation awarded by the Tribunal for medical expenses and loss of income is affirmed. In this manner, total compensation is Rs.1,27,856/- and the additional amount is Rs.80,000/- (1,27,856 – 47,856) payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FEBRUARY 15, 2018

‘D. Gulati’/ashok

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no