

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

FAO No. 6187 of 2013 (O&M)

Date of decision:- 21.02.2018

Manish Kumar

...Appellant

Versus

Pb. State thr. Secy Transport Chd & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ankur Soni, Advocate
for the appellant.

Ms. Devika Anand Sullar, AAG, Punjab

Mr. Amit Arora, Advocate
for respondent No. 3

RITU BAHRI J. (Oral)

The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 01.08.2013 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur (for short, 'the Tribunal') to the tune of Rs.2,25,000/-.

FACTS NOT IN DISPUTE

On 06.06.2010, claimant-appellant was going in car bearing registration No. PB-07-X-2300 with Baldev Singh, Bhupinder Kaur, Randeep Singh and Jaslin Kaur. The appellant was driving the car. When they reached near Khalchian, then it was found as if one way of the four land road was closed but the other was frequent by traffic approaching to and fro from Amritsar to Jalandhar and back. A bus bearing registration No. PB-46-11-9822 being driven by respondent No. 3 came from opposite side in a rash and negligent manner and struck on the side of the car of the appellant, due to which car turned turtle . All the occupants of car sustained

injuries but the appellant sustained grievous and multiple injuries

The Tribunal awarded the compensation to the claimant as mentioned below:-

On account of medical bills	Rs.1,86,646/-
Loss of income	Rs.70,000/-
Transportation	Rs.5000/-
Special Diet	Rs.3000/-
Attendant Charges	Rs.5000/-
Pain and sufferings	Rs.25000/-
Total	Rs.2,94,646/-

(rounded of to Rs.2,98,000/-)

However, the Tribunal awarded compensation of Rs.2,25,000/- to the appellant as it was held that it was a case of contributory negligence of both the drivers and respondent No. 3 was attributed contributory negligence of 75% and the appellant was attributed contributory negligence of 25%.

The learned counsel for the claimant-appellant is challenging award on two grounds i.e the learned Tribunal has wrongly attributed contributory negligence of 25% to the appellant and the compensation awarded by the learned Tribunal to the present appellant is on the lower side and deserves to be enhanced, as the appellant received grievous injuries which includes 150 stitches on the face and head. Further a rod of 86 cm long was inserted and an eye surgery was done at DMC.

The argument of learned counsel for the appellant that it was not a case of contributory negligence is liable to be allowed. Reference at this stage can be made to Mark-A i.e site plan from where it can be seen that

the appellant was driving his vehicle on his side and the driver of the offending bus overtake the car which was in front of the appellant and struck his bus against the car of the appellant. The appellant would have hardly any time to bring his car to a total halt, as one side of the road was blocked. The appellant was having no time to take his car on the left side, as there is a divider on his left side. Thus, it was the duty of the driver of the offending vehicle to drive his vehicle carefully and he was totally negligent in causing the accident and whole liability has to be fastened upon the Insurance company of the offending vehicle.

The compensation awarded by the Tribunal is also liable to be re-assessed, as the appellant suffered many injuries which required future treatment as well and thus, the compensation is re-assessed as under:-

On account of medical bills	Rs.1,86,646/-
Loss of income	Rs.70,000/-
Transportation	Rs.10000/-
Special Diet	Rs.15000/-
Attendant Charges	Rs.10000/-
Pain and sufferings	Rs.50000/-
Future treatment	Rs.20000/-
Total	Rs.3,61,646/-

Enhanced compensation 3,61,646-2,25,000=Rs.1,36,646/-

The enhanced amount of compensation of Rs.1,36,646/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of

Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018. Further the appellant is also entitled to get full amount of the compensation and Insurance Company is liable to pay the compensation, as the driver of the offending vehicle was 100% negligent in causing the accident.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

21.02.2018
G Arora

(***RITU BAHRI***)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>