

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4418 of 2002
Date of decision: 9.1.2019

Hans Raj

.. Appellant

v.

Baljinder Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. G. S. Bains, Advocate for
Mr. Vijay Sharma, Advocate for the appellant.

None appeared for the owner of the bus, i.e., Pepsu Roadways
Transport Corporation in spite of service.

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AVNEESH JHINGAN, J. (Oral)

The award dated 16.7.2002 passed by Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') has been assailed in appeal by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The facts necessary for adjudication of the present appeal are that on 29.6.1999, Hans Raj and Sher Khan were going on their separate bicycles towards Mathura Colony. When they reached near Mathura Colony

on Rajpura Patiala Road, Patiala, Hans Raj was hit by a bus bearing registration No. PB-11C-9571 (hereinafter referred to as 'the offending vehicle'). As a result of the impact, Hans Raj sustained injuries including fractures of both legs and head injury. He was taken to Rajindra Hospital, Patiala from where he was shifted to PGI, Chandigarh. He remained hospitalised for 20 days. FIR was registered.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was a result of contributory negligence to the extent of 50:50, vis-a-vis the claimant and the driver of the offending vehicle. The Tribunal calculated the compensation of ₹ 1,83,820/- and the claimant was held entitled to compensation of ₹ 91,910/- along with interest @ 9% per annum.

Heard learned counsel for the appellant and perused the relevant record produced by him at the time of hearing.

Learned counsel for the appellant argues that the Tribunal erred in holding that the accident was caused as a result of the contributory negligence. He contends that the claimant had duly proved that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The grievance raised is that the compensation awarded is on the lower side. The age of the claimant at the time of accident was taken as 50 years and a multiplier of 11 was applied instead of 13. He further contends that the claimant was hospitalised for 20 days and the amounts awarded under various heads are on the lower side.

From the perusal of the record and the award, it is evident that there was an eye-witness to the accident, i.e., Sher Khan who was following

the claimant on a separate bicycle. He deposed before the Tribunal as PW5 and gave a statement that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle. *Albeit*, Baljinder Singh (driver of the offending vehicle) in his statement had stated that the accident was caused due to the fault of the claimant. There was nothing to substantiate his statement. Reliance was placed upon the statement of PW3- Amarjit Kaur (wife of the appellant) made before the police in which it was stated that her husband was crossing the road at the time when the accident took place and there was no fault of the driver and she does not want to proceed against the bus driver. In her statement before the Tribunal, she specifically stated that her signatures were taken on blank papers by the police personnel and it was only on her complaint to the Superintendent of Police that FIR was registered.

The Tribunal has rightly ignored her statement and further opined that statement of Amarjit Kaur was never confronted to her in her deposition. In spite of ignoring the statement, the Tribunal relied upon the contents of the statement made before the police to hold that the accident took place when the claimant was crossing the road and 50% contributory negligence was attributed to him.

There is no dispute on the proposition that onus to be discharged in motor accident cases is not as heavy as in the criminal proceedings. The issue is to be decided on the theory of preponderance of probabilities. The Supreme Court in **Bimla Devi and others v. Himachal Road Transport Corporation and others**, 2009 (3) RCR (Civil) 805: 2009 (4) RAJ 408: 2009 (2) AICJ 167: (2009) 13 SCC 530 held as under:

“In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

In view of the law laid down by the Supreme Court, by the deposition of the eye-witness, namely, Sher Khan, the claimant had duly discharged the onus to show that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle. In such circumstances, the finding of the Tribunal that there was a contributory negligence to the extent of 50:50 cannot be upheld.

As far as the quantum of compensation is concerned, the age of the claimant has not been disputed in the appeal that he was 50 years old at the time of accident, in consonance with the decision of the Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another,** (2009) 6 SCC 21, multiplier of '13' is to be applied.

From a perusal of the certificate (Ex. P4), it is evident that the claimant had suffered 30% permanent disability qua the ankle movement. In the claim petition, it was pleaded that he was plying rehri for selling juice. It was not substantiated that permanent disability qua the ankle has affected his functional ability to the extent that percentage of permanent disability qua the limb should be taken for the whole body, yet the Tribunal while calculating the compensation has taken 30% disability qua the whole body.

Keeping in view the amounts awarded under other heads, the said percentage is not being reduced, rather, the compensation is being calculated by applying the multiplier of '13'.

Keeping in view the fact that the claimant had a permanent disability which would require follow up treatment; he was hospitalised for 20 days and the nature of injuries were such that he would have required transportation and attendant not only during the period of hospitalisation but thereafter also. Therefore, ₹ 10,000/- is awarded for transportation and ₹ 5,000/- awarded for service of the attendant is enhanced to ₹ 15,000/-. Keeping in view the nature of injuries, ₹ 10,000/- is being awarded for follow up treatment.

In view of above discussion, the compensation is re-calculated as under:

<i>Particulars</i>	<i>Amount (in ₹)</i>
Monthly income of the claimant as assessed by the Tribunal	3,000/-
30% disability	900/-
After applying multiplier of '13'	1,40,400/-
Medical expenses	40,020/-
Attendant charges	15,000/-
Transportation charges	10,000/-
Pain and suffering	20,000/-
Follow up treatment	10,000/-
Grand Total:	2,35,420/-

The award dated 16.7.2002 is modified to the extent that it is held that the accident was caused due to the rash and negligent driving of the offending vehicle. The amount calculated by the Tribunal as ₹ 1,83,820/- is enhanced to ₹ 2,35,420/-. The appellant has already received amount of ₹ 91,910/-. He is entitled to the balance amount i.e. ₹ 1,43,510/-

along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

9.1.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No