

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

FAO 682 of 2002

Date of decision: 10.01.2019

Banwari

....Appellant

versus

Shri Mahabir and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Manmohan, Advocate
for the appellant

Ms Vandanaa Malhotra, Advocate
for respondent No. 3

-.-

Rekha Mittal (Oral)

Banwari, the injured claimant is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident that took place on 06.12.1999 at about 10.00 a.m..

Counsel for the claimant has assailed findings of the Tribunal attributing contributory negligence to the victim while deciding issue No. 1. It is vehemently argued that on correct appreciation of testimony of Banwari, it may not be possible to affirm findings of the Tribunal, attributing negligence to the victim and that too, to the extent of 50%. It is further argued that driver of offending vehicle did not appear in the witness box without any tangible explanation, therefore, adverse inference is liable to be drawn against the respondents for non-examining the driver.

To justify his claim for enhancement of compensation, it is argued that the injured became disable to the extent of 18% and his

disability has been proved by Dr. A.L.Bajaj, Orthopedic Surgeon, General Hospital, Fatehabad. The Tribunal has awarded a meager amount of Rs.10,000.00 in respect of disability suffered by the victim, aged about 65 years. It is further argued that the appellant is entitled to compensation qua disability by applying multiplier method.

Counsel representing the insurance company has supported findings of the Tribunal on issue No. 1, attributing contributory negligence to the victim as the accident in question took place at 'T' point on Bhuna Kulan road and the injured did not bother to ensure that no vehicle was coming on main road at the time of his approaching the main road, as a result of which, truck struck against front side door of jeep driven by the victim. She has also supported findings of the Tribunal with regard to assessment of compensation.

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

Before adverting to the submissions made by counsel for the parties, it is necessary to recapitulate the facts pleaded in para 20 of claim application with regard to occurrence in question. The claimant has averred that on 06.12.1999 at about 10.00 a.m., he started from his house while driving jeep bearing No. HR 22A/2157 for going to Police Station Bhuna for some work. As soon as he crossed 'T' point Ratia on Bhuna-Kulan road, truck bearing No. HR-22/7587 which was driven rashly, negligently and at a high speed came from Bhuna side and the petitioner on seeing truck, brought his jeep on kutchra portion along side the road but driver of the truck hit the jeep due to which front portion of the jeep was totally

crushed/damaged and his right leg-thigh was broken from middle. He sustained multiple, serious injuries on various parts of his body.

Respondents No. 1 and 2 before the Tribunal filed reply and denied the averments raised in para 20 of the claim application. They raised the plea that when respondent No. 1 reached near Ratia 'T' point, the appellant, all of a sudden, came from village Nadhori, entered the main road without slowing down his jeep and without caring to see clearance of traffic on the main road. Respondent No. 1 was going from Bhuna to village Kulan on the main road. The appellant came from link road and he was under the duty to slow his vehicle and enter the main road only after traffic on the main road had passed. On seeing jeep of the appellant entering the main road at a fast speed, the respondent applied brakes and brought his truck to the extreme left side of the road and did his best to avoid the accident but the appellant could not control his jeep and struck into truck of the respondent.

The appellant appeared in the witness box. In the opening lines of his examination-in-chief, he would depose to the following effect:-

“On 06.12.1999 at about 10.00 a.m., I was going to Police Station, Bhuna on jeep bearing No. HR 22-A/2157. When I reached near Kulan road, a truck was seen coming from opposite side rashly and negligently. I took the jeep on the left side and on kutcha road. The truck struck into my jeep from front side.”

A relevant extract from his cross examination reads as follows:-

“My Dhani is situated in between Dholu and Village

Nadori. I started from my Dhani at about 9.30. a.m. I was all alone in the jeep. I reached at 'T' point of Kulan road at 10.00 a.m. The truck struck into my jeep on the turning point towards Kulan road. I saw the truck coming from opposite side from about a distance of 1 acre. My jeep was at very slow speed. The truck struck into my jeep while coming on kutchra road towards my left side.”

Perusal of the averments made in para 20 of claim application along with the facts stated in examination-in-chief and cross examination of Banwari would certainly reveal that occurrence in question took place at 'T' point and the truck struck into the jeep on turning towards Kulan road. The parties have not produced any site plan either got prepared by them or the police during investigation of FIR. However, it remains a fact that driver of offending vehicle did not appear in the witness box to counter testimony of Banwari or establish plea of respondents No. 1 and 2 raised in the written statement.

Taking into consideration the facts elicited in cross examination of Banwari, it can safely be held that the accident took place at 'T' point of Kulan road while the jeep was turning towards Kulan. That being so, as has been rightly held by the Tribunal, the claimant had an obligation to ensure that no vehicle is coming on the main road while he was entering the main road while on his way from Nadori to Kulan. In the given scenario, the claimant cannot all together escape his liability for the occurrence. Nevertheless, there is no challenge to testimony of the claimant that he had taken his jeep on kutchra road and the truck struck against the

jeep by coming on the kutchra road. Taking a cumulative view of the circumstances discussed herein before, findings of the Tribunal holding the case to be of contributory negligence of both the drivers cannot be faulted with but negligence to the extent of 50% attributed to the claimant is reduced to 25%. Findings of the Tribunal on issue No. 1 are modified accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded compensation of Rs.50,000.00, detailed hereunder:-

Compensation on account of treatment	Rs.20,000.00
Compensation on account of pain and suffering	Rs.10,000.00
Compensation on account of disability though it cannot be determined. However, even if undetermined as he had suffered some disability, lump sum is awarded under disability head	Rs.10,000.00
Compensation on account of special diet, transportation etc.	Rs.10,000.00

The claimant remained admitted in the hospital for fifteen days. Medical expenses reimbursed by the Tribunal are ordered to be affirmed. Dr. Suraj Kamboj (PW1) was examined to prove the nature of injury sustained by the victim. He has deposed that there was swelling and deformity of right thigh in middle part. The patient was unable to walk. There was abrasion on right leg upper 1/3 on anterior aspect which was superficial, area was red and tender. There was a lacerated wound on right pinna involving almost whole thickness, fresh bleeding was present. Multiple abrasion present on the right side of upper neck, oozing present, area red and tender. Abrasion present on right outer canthus, superficial but

area red and tender. The patient was referred to Civil Hospital, Fatehabad for x-ray and further treatment. The claimant did not examine doctor from Civil Hospital, Fatehabad to prove x-ray report and treatment given to him. Keeping in view the nature of injuries sustained coupled with the period of treatment as an indoor patient, claimant shall be entitle to compensation for pain and suffering to the tune of Rs.15,000.00 (additional amount of Rs.5,000.00). The Tribunal has awarded a sum of Rs.10,000.00 for special diet, transportation etc. and the same is ordered to be affirmed.

The Tribunal has not awarded any compensation for loss of income during the period of treatment and recovery. The claimant shall be entitle to loss of income during period of treatment and recovery at the rate of Rs.1,900.00 per month for a period of two months and the same comes to Rs.3,800.00.

Dr. A.L Bajaj, Orthopedic Surgeon, General Hospital, Fatehabad was examined to prove disability suffered by the victim. He would depose that the patient was operated case of fracture shaft femur right and fracture patella right with weakness of right thigh, hip and knee. Right hip power grade IV= $20 \times 3 = 6\%$. The right knee stiffness with power grade III= $40 \times 3 = 12\%$. Total is $6 + 12 = 18\%$. He would further depose that weakness of muscle improves with physiotherapy. In view of nature and extent of disability suffered by the victim when examined in the light of age of the claimant, interest of justice would be served, if the claimant is awarded compensation qua disability at the rate of Rs.2,000.00 per percent that comes to Rs.36,000.00. Total compensation is Rs.84,800.00 (20,000 + 15,000.00 + 10,000.00 + 3,800 + 36,000) and claimant shall be entitle to

75% of the total compensation assessed by this Court as 25% negligence has been attributed to him. The claimant shall be entitle to the aforesaid amount along with interest @ 7.5% per annum from the date of petition till realization minus the amount already paid in view of the award passed by the Tribunal.

In view of the discussion made herein-above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

10.01.2019
mohan bimbura