

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

FAO No. 306 of 1996(O&M)

Reserved on :14.11.2018

Date of decision: 28.01.2019

Sunita Rani

...Appellant

Versus

Dina Nath (deceased) through legal heirs and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Swaran Sandhir, Advocate,
for the appellant.

Ms. Vandana Malhotra, Advocate,
for respondent No.3-Insurance Company.

Respondents No.1 and 2 ex parte.

ARUN MONGA, J.

1. "A man's mother is his other God" so goes an African proverb. Only a mother can do this, give birth to a child and also give her own life for the same child. The appellant, a mother, trying to save her child playing in a residential street, from being hit by a moving vehicle, in turn, got hit by it. The appellant, though survived, but with a fractured leg, which later led to its shortening by 5 cm, along with an insertion of metallic rod in her femur, called "Kuntscher's cloverleaf I M Nail" (K-nail) in medical terms. She now has to live with a permanent limp for rest of her

life, apart from not being able to brisk walk or run. The appellant, however, was held guilty of contributory negligence and her claim petition was dismissed by the Motor Accident Claims Tribunal.

2. The appellant-claimant feeling dissatisfied with dismissal of claim petition by the Learned Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as "MACT"), has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 for setting aside of award dated 09.09.1995.

3. Before the MACT, notice of the claim petition was given to the respondents. Respondent No.1/owner caused appearance on three dates and thereafter remained absent and was proceeded ex parte. He did not file any written statement.

4. The brief relevant facts for disposal of this appeal are that the appellant-claimant was sitting outside her house in Lajpat Nagar, Delhi Camp, Sonipat, on 22.05.1993. At about 7.00 PM, a four wheeler bearing registration No. HYM 4828 rashly and negligently driven by Respondent No.2 Pawan Kumar hit the appellant resulting into fracture of her right leg and injuries on the left leg.

5. She was taken to General Hospital, Sonipat and later on admitted to Dr. Ram Manohar Lohia Hospital, New Delhi, where she was operated on 07.06.1993. She spent more than R15,000/- on her treatment. It is averred by the appellant/claimant that as result of influence of the respondent/driver of the erring fourwheeler, the claimant was made to sign blank

paper which was converted into an alleged compromise and filed with the police. The claimant is a poor lady and she had suffered 20% permanent disability owing to the accident.

6. Respondent No.2-Pawan Kumar, Driver, filed written statement admitting the accident and entry of DDR No. 19 dated 22.05.1993 at Police Station. It was further pleaded by him that accident occurred due to the fault of the claimant as she ran after her son abruptly. The expenses on the treatment of the claimant were borne by the respondent No. 2.

7. Respondent No.3-National Insurance Company Limited filed separate written statement, admitting the insurance of fourwheeler but denied its liability for paying compensation, interalia, pleading that respondent No. 2-driver was not having a valid driving license at the time of accident and insurance company is not liable to pay compensation. The compensation claimed by the petitioner/claimant was on excessive side.

8. The petitioner/claimant also filed replication to the written statement of respondent No. 2 reaffirming the averments in the claim petition and controverting the averments in written statement. In the replication she took a specific stand that she was forced to sign and put thumb marks on some blank papers brought by respondent No.2 in connivance with police authorities. In fact, there was no compromise and she apprehended that on those blank papers the alleged compromise had been written.

9. The MACT after appreciating the evidence, relying, inter-alia, on the alleged compromise between the claimant and respondent No. 2 and also the statement of respondent No.2, dismissed the claim petition. It was also held, inter-alia, by the MACT that since the claimant had herself contributed to the accident, she was, therefore, entitled only to 50% of compensation which was computed as R40,000/-. In the same breath, claimant was held disentitled to even the reduced compensation as her treatment expenses in hospital were borne by respondent No.2 i.e Pawan Kumar. The Tribunal held that the appellant was, therefore, not even entitled to the balance of R20,000/-. Hence this appeal impugning the dismissal of claim petition by the MACT.

10. Learned counsel for the appellant urged that the claimant/appellant had suffered 20% permanent disability on account of fracture in her right leg. The accident is admitted and is proved from daily diary entry. This is further proved from the fact that allegedly some compromise was effected but the same was under mental and physical stress. The appellant is a poor helpless lady and needed her medical treatment on urgent basis and was confined to hospital. In any case, he contends that the alleged compromise, if at all, is to be given cognizance, was only meant for immunity in criminal proceedings and did not exempt the respondents from the civil consequences. He contended that insurance company cannot take advantage of the same. It has

been proved that petitioner/claimant initially remained admitted at Government Hospital, Sonipat for treatment. Thereafter, she was shifted to Dr Ram Manohar Lohia Hospital, New Delhi. She had suffered injuries resulting into pain and suffering and loss of enjoyment in life, besides decreased efficiency to work throughout her life.

11. The stand taken by the driver/respondent No.2 herein, as reflected from the Award passed by the MACT, is that compromise was effected between the parties. The driver had borne the medical treatment expenses.

12. Learned Counsel for respondent No.3/insurance company vehemently contended that in view of compromise Exhibit R-2, nothing survives. Otherwise also, driver of the vehicle was not having valid driving license. Insurance company is not liable to make the payment. Besides, the compensation has been claimed on higher side.

13. I have gone through available record of the case and after giving thoughtful consideration to the rival contentions of both the sides, I am of the opinion that award rendered by MACT does not stand the judicial scrutiny.

14. In the present case accident is admitted by the driver and had also been proved by the witnesses on record. It is also not in dispute that the claimant had undergone treatment at General Hospital, Sonipat and Dr Ram Manohar Lohia Hospital, New Delhi. PW-3 Dr Rakesh Girdhar had categorically stated that

he along with two other doctors of civil hospital had examined the claimant and had come to a conclusion that she had suffered 20% permanent disability due to fracture of right femur resulting into shortening by 5 cm of right lower limb (right leg). Dr Labh Singh of Civil Hospital proved medico-legal report Exhibit P-2 dated 22.05.1993 which showed diffused swelling and a lacerated wound on the posterior lateral aspect of left leg. PW-5 Jai Chand, Record Clerk of Dr. Ram Manohar Lohia Hospital, New Delhi had proved that petitioner remained admitted in the hospital from 24.05.1993 to 24.06.1993 and K-nail was inserted in her leg. The stand of the respondents is that the matter had been compromised.

15. The learned Tribunal observed in the impugned order that Sunita Rani appellant (PW-1) and Dharam Chand (PW-2) eye witness both had deposed that on the relevant date and time, while Sunita Rani was standing outside her house, Pawan Kumar driving his four wheeler in rash and negligent manner, had struck the same against Sunita Rani. The Tribunal further noted that as against this, Pawan Kumar RW-1 had deposed that he was driving the four wheeler at a moderate speed, on the left side of the road in the gali, which was totally uneven and that he even saved the life of a child who had suddenly come there, but the petitioner (Sunita Rani) received injuries from the back side of the four wheeler as she appeared on the scene all of a sudden.

16. The learned Tribunal rejected the appellant's aforesaid version and placed reliance on the version of respondent Pawan Kumar saying that it found support from rapat in the roznmacha of police station entered on that date, according to which Sunita Rani had admitted that her three year old child was playing in the gali and she had received injuries in her attempt to save her son who had run towards the four wheeler all of a sudden.

17. In my opinion, the conclusion drawn by the learned Tribunal is fallacious, besides being unjust and unfair in the given facts and circumstances.

18. It is the own case of Pawan Kumar driver that Sunita Rani had received injuries from the back side of the four wheeler. Obviously, at that time he had his four wheeler in back/reverse gear and that is how he ended up hitting the victim while his vehicle was in motion. To my mind, it was incumbent upon Pawan Kumar, while driving the vehicle in reverse gear, particularly in a residential street to take extra care, double check and to ensure that nobody was behind or close to the vehicle and also to minimize its speed to save anyone from being harmed.

19. The very fact that Sunita Rani was hit by the backside of the four wheeler shows that at the relevant time, she was behind the four wheeler. Pawan Kumar driver, had put his four wheeler in back/reverse gear and it was in motion. It is obvious that while doing so, in a residential street, he failed to take the required extra care, double check and ensure that no body was

behind or close to the vehicle: He ought to have reduced the speed to the minimum to save anyone from being harmed. Merely because Sunita Rani, in her natural concern and anxiety for her child in the street, went behind the four wheeler, that would not relieve the driver of the four wheeler of his obligation to take necessary care and caution for the safety of others in the residential street. The obvious conclusion is that Pawan Kumar failed to take the required care and caution. He, thus, was rash and negligent in driving his four wheeler. He ignored the presence of said Sunita Rani and hit her with the back of his four wheeler and caused injuries to her. For this, Sunita Rani cannot be held guilty of contributory negligence.

20. It would be appropriate to refer to the relevant judgements of Supreme Court for determining compensation in injury cases. In the case of ***Jai Bhagwan v. Laxman Singh and Others [(1994) 5 SCC 5***, the Supreme Court made reference to *In Clerk and Lindsell on Torts (16th Edn.)*, wherein while referring to damages for personal injuries, it was stated that:

"In all but a few exceptional cases the victim of personal injury suffers two distinct kinds of damage which may be classed respectively as pecuniary and non-pecuniary. By pecuniary damage is meant that which is susceptible of direct translation into money terms and includes such matters as loss of earnings, actual and prospective, and out-of-pocket expenses, while non-pecuniary damage includes such immeasurable elements as pain and suffering and loss

of amenity or enjoyment of life. In respect of the former, it is submitted, the court should and usually does seek to achieve restitution in integrum in the sense described above, while for the latter it seeks to award 'fair compensation'. This distinction between pecuniary and non-pecuniary between 'special' and 'general' damages, for while the former is necessarily concerned solely with pecuniary losses – notably accrued loss of earnings and out-of-pocket expenses – the latter comprises not only non-pecuniary losses but also prospective loss of earnings and other future pecuniary damage."

21. In the case of ***Subulaxmi v. Managing Director, Tamil Nadu State Transport Corporation and Another [(2012) 10 SCC 177]***, the Hon'ble Supreme Court observed that Compensation can be granted towards permanent-disability as well as loss of future earnings. The Apex Court made the following observations:

"The Court in the case held that compensation can be granted towards permanent-disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

If the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a

normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

22. The appellant is a married lady. Her monthly income, on a modest guess, is taken as ₹3000/-. Her age is not indicated in the available record. At the time of accident, she had a three year old son. Assuming that she was between 36-40 years of age at the relevant time, multiplier of 15 would apply in the case. Considering the overall circumstances, I hold that the appellant's entitlement to compensation would work out as under:

S.No.	Heads of Compensation	Amount (in ₹)
i)	Annual income =	36,000
ii)	Loss of actual income due to 20% disability=	7,200
iii)	Loss of future income for 15 year (7200x15)=	1,08,000
iv)	Medical expenses=	20,000
v)	Attendance and conveyance charges	20,000
vi)	Special diet and nutrition=	1,000
vii)	Loss of future amenities in life=	30,000
viii)	Pain and suffering =	20,000
ix)	Total of (iii) to (viii)=	1,99,000

23. However, the appellant herself had claimed an over all compensation of ₹1,00,000/- in her claim petition. In view of that the awarded compensation is confined to ₹1,00,000/- and the appeal is allowed. The impugned order dated 09.09.1995 passed by the learned MACT is set aside and an award is passed for a total compensation of ₹1,00,000/-to be paid jointly and severally by the respondents to the appellant with interest @ 9% per

annum from the date of filing of the claim petition till its actual payment. Appellant is also held entitled to ₹10,000/- towards cost of litigation and the same is also awarded to her. The cost shall be payable by the Insurance company/respondent No.3. Pending applications, if any, stand disposed of accordingly.

(ARUN MONGA)
JUDGE

JANUARY 28, 2019
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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |