

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

**FAO No. 2704 of 2001(O&M)
Date of decision : 22.07.2019**

Harish Chander

..... Appellant

versus

Ramesh Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Chander Pal Tiwana, Advocate for the appellant.

Mr.Aseem Aggarwal, Advocate for respondent No.4-insurance
Company.

KULDIP SINGH, J. (ORAL)

This is an appeal for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Faridabad vide award dated 10.03.2000.

Facts of the case are that on July 24,1997 at about 9.00 a.m. claimant-appellant Harish Chander was going on his cycle towards Sainik Colony, Faridabad when he was hit by the offending truck No. HR-38A-1675 being driven rashly and negligently by respondent No.1. The Tribunal held that there was 50% contributory negligence on the part of the claimant-appellant. As per disability certificate Ex.PW2/B disability was 30% as the left foot of the claimant was amputated. The Tribunal allowed Rs. 10,322/- for the medical bills, Rs.20,000/- for pain and suffering and calculated the compensation for disability at Rs.80,322/- and after applying the cut of 50%, allowed the total compensation of Rs. 40,161/-. The Tribunal also observed that the claimant was 23 years of age at the time of accident.

I have heard learned counsel for the parties and perused the record with the help of their assistance.

The Tribunal while discussing the contention of contributory negligence raised by the insurance company held that the claimant saw the truck from a distance of 1½ kilometers. He could have swerved his cycle to the kutchra portion of the road which he did not do. It was a head on collision. Therefore, there was 50% contributory negligence on the part of the claimant also. In my view the aspect of contributory negligence is not correctly appreciated by the Tribunal. The claimant was going on a cycle towards Sainik Colony, Faridabad. It is an inhabited area. When the driver was driving his truck it was his duty to drive the same carefully. The pedestrians and cyclists were also there on the road and it was for him to drive his vehicle safely. It was not the duty of the claimant to swerve his cycle towards the kutchra portion of the road on seeing the truck. Rather, it was the duty of the truck driver to drive it with caution. The speed of a truck is much more than a cycle. So, the cyclist i.e. claimant might have no time to get out of the way of the truck. Therefore, there was no contributory negligence on the part of the claimant-appellant. Thus, the findings of the Tribunal in this regard are reversed.

There is amputation of the left foot and the disability assessed is 30%. Therefore, there is apparent loss of income to the tune of 30%. Considering that the minimum wages for the year 1997 could be around Rs.1800/-per month and also considering that this loss is going to continue in future also, the loss of income is assessed at Rs. 800/- per month as in the year 1997. Therefore, applying the multiplier of '16' the loss of income is

assessed at Rs. 1,53,600/-(800 x 12x 16). Rs. 10,322/- on account of medical bills are allowed. Rs. 20,000/- on account of pain and suffering for being admitted in hospital for a period of less than three months are also allowed. An amount of Rs. 17,000/- on account of special diet and attendant charges is also awarded. The total compensation comes to Rs. 2,00,922/- and the same is allowed as enhanced compensation with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till realisation.

Appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

22.07.2019
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No