

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3067-2002(O&M)

Date of decision: 30.04.2019

Sushma

.....Appellant

versus

Union of India and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Ms.G.K.Mann, Advocate for the appellant
Ms.Sonia Sharma, Advocate for respondent nos.1 and 2

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

This is an appeal filed against the award dated 5.2.2002, passed by Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'), vide which, compensation of Rs.one lakh was assessed to the claimant on account of injuries suffered by her. However, considering that the Tribunal also held that there is contributory negligence to the extent of 50%, compensation was allowed to the extent of Rs.50,000/- only. Certain conditions were also imposed. 9% per annum interest was also granted from the date of filing of claim petition till realization.

Facts of the case are that Sushma, then aged about 20 years, a student of B.A.II year, while boarding a bus bearing Registration Number CH-01-G-5530, belonging to the Chandigarh Transport Undertaking, was going to her college in Sector 42, Chandigarh. She was standing on the rear

door. When bus reached near Kajheri roundabout, driver took turn at a high speed towards right side and then towards left side. As a result of which, claimant fell down from the bus and sustained head injuries. She was taken to the PGI, Chandigarh. As per medical certificate (Ex. P2), she suffered 100% disability, relating to her whole body, which is not likely to improve. Claimant approached the Tribunal under Section 166 of Motor Vehicles Act, 1988 for grant of compensation.

In the written statement, respondents nos.1 and 2 took a plea that the claimant was traveling the bus while standing on the rear door and she fell out of her own and there is no fault on the part of the bus driver. Respondent no.3 bus driver took a plea that he was driving the bus at a slow speed at the roundabout. There was a great rush at about 9.30 AM. There were number of vehicles on the road. Claimant fell down out of the bus of her own fault. There was no negligence on the part of respondent no.3.

From the pleadings, following issues were framed:-

- 1. Whether the claimant sustained head injury in a motor vehicle accident which took place due to the rash and negligent driving of respondent no.3 while he was driving vehicle no.CH-01-G-5530. If so, its effect? OPP*
- 2. If issue no.1 is proved, to what amount of compensation, the claimant is entitled to and from whom? OPP*
- 3. Whether respondent no.2 was not holding a valid driving licence? OPR*
- 4. Relief*

While deciding issue no.1, the Tribunal held that it is case of contributory negligence to the extent of 50-50%. While considering about amount of compensation, it took into consideration the medical bills of Rs.800/- and the disability and calculated the compensation as Rs.one lakh,

and applied the cut of 50% on account of contributory negligence to award Rs.50,000/- as compensation.

Claimant is not satisfied with the compensation awarded by the Tribunal and has approached this Court.

I have heard learned counsel for the parties and have also carefully gone through the file.

First and foremost question arising for consideration before this Court in the present appeal is as to whether there was contributory negligence on the part of the claimant or not?

I have gone through the lower Court file. Admitted facts are that claimant was standing on the rear door. Accident took place at the roundabout in the early hours when the claimant was going to her college. The bus apparently took a turn to the right side and then to the left side from the roundabout. According to the claimant, the driver took turn at a high speed, as a result of which, she fell down. The Tribunal, while recording the findings, took a view that it was the duty of the driver and conductor to see that in case bus is overloaded, the bus is driven only when the passengers occupied their seats. In case of early rush hours, the driver is supposed to take extra care. It is not denying fact that the bus was having door. Therefore, before the bus starts, door of the bus should have been closed.

In the present case, it was early rush hours. Apparently, there was no seat in the bus. Therefore, the claimant had to stand on the rear door. There was apparent negligence on the part of the driver and conductor of the bus in not closing the door of the bus, particularly, when the bus is overloaded. When bus took a turn at the roundabout, the claimant standing on the rear door and was thrown out. Driver knew that it was rush hours and

the students are standing on the rear door. Therefore, he should have slowed down the bus at the roundabout, where bus takes a turn on the one side and then on the other side. Therefore, the Tribunal erred in holding that there was a contributory negligence to the extent of 50-50%. There was a complete negligence on the part of the bus driver. Accordingly, findings on issue no.1 are reversed and it is held that there was 100% negligence on the part of the Bus driver.

Now, coming to the quantum of compensation. It comes out that at the time of accident, the claimant was 20 years of age. She was a student of B.A. Part II. She was unmarried. As per disability certificate (Ex.P2), the disability is 100% in relation to the whole body and this condition is not likely to improve. The doctor also recorded that head injury led to the left hemiparesis, poor intelligence and memory and speech disability. In this way, the claimant will have to lead a life of completely disabled person with dependency for whole of life. She will not be able to get any job or employment and with such disability, nobody will marry her.

Therefore, in these circumstances, I am of the view that multiplier system has to be applied to assess the compensation. In a case titled as Jagdish vs. Mohan and others, 2018 (2) R.C.R. (Civil) 308, the Apex Court in case of 90% permanent disability, upheld the multiplier system. The relevant extract from the observations is reproduced as under:-

5. In computing the amount of compensation, the Tribunal noted that the appellant was a carpenter and had claimed that he was in receipt of an income of Rs. 6,000/-per month. In the absence of documentary evidence, the Tribunal took the monthly income of the appellant at Rs. 4,050/-. The appellant

having been found to suffer from 90 per cent disability, the loss of the future monthly income was computed at Rs. 3645/-. The Tribunal applied a multiplier of 18 and held that the appellant was entitled to compensation for loss of future income of Rs. 7,87,320/-(Rs. 3645 X 12 X 18). The Tribunal awarded an amount of Rs. 1.80 lakhs on account of mental and physical hardship and agony, Rs. 90,000/-for loss of comfort, Rs. 25,000/-for expenses and Rs. 95,908/-on account of medical expenses. An amount of Rs. 1 lakh was awarded for attendant charges. The Tribunal awarded a total amount of Rs. 12,81,228/-as compensation on which interest was allowed at the rate of 7.5 per cent per annum from the date of the filing of the claim petition. No amount was awarded towards expenses for future treatment.

Therefore, in the present case, considering the income of the claimant to be as daily wage labour, as in the year 2002, her income is assessed at Rs.2500/-. She is treated to be as self employed and for future prospects, 45% i.e. Rs.1125/- is added and total income comes to Rs.3625/-. From the said income, 1/3rd as personal expenses i.e. Rs.1208/- are deducted. Therefore, her effective income comes to Rs.2417/-. Since, the injured-claimant was 20 years of age, multiplier of 18 is to be applied. Amount of compensation comes to $2417 \times 12 \times 18 = \text{Rs.}5,22,072/-$. Rs.one lakh for mental pain and suffering is allowed. Another sum of Rs.three lakh for loss of prospects of marriage is allowed. For the attendant, another sum of Rs.two lakh is allowed. The total amount of compensation comes to Rs.11,22,072/-, which is to be allowed to the claimant and the respondents

shall be jointly and severally liable to pay the said amount. 7% per annum interest from the date of filing of claim petition till realization is also allowed. The entire amount will go to the claimant who can utilize the same the way she likes.

The present appeal is allowed accordingly.

30.04.2019

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes