

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.647-2001(O&M) and
X-OBJ-21-CII-2002
Date of decision: 02.05.2019

Pritpal Singh

.....Appellants

versus

Rajwinder Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Naresh Prabhakar, Advocate for the appellant
Mr.B.S.Jaswal, Advocate for the respondent No.1

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 judgment will dispose of FAO No.647-2001 and Cross
Objections No.21-CII-2002.

Brief facts of the case are that on 3.10.1998, at about 6.15 PM, claimant Rajwinder Singh was driving scooter bearing Registration Number PB-01-L-6296. His wife, daughter and brother's son were also riding the same scooter. When they reached near Ice Factory on Fatehgarh Churian Road, Amritsar, a Maruti Van bearing Registration Number PB-02-F-9666 being driven by Lakha Singh – respondent no.2 came rashly and negligently and hit the scooter from the back side. As a result of accident, claimant and occupants fell down. Claimant received head injuries and became unconscious at the spot. Respondent no.2 fled away from the spot along

with his Maruti Van. According to the claimant, he suffered permanent disability to the extent of 75% in the right and left eyes. Claimant claimed that he spent Rs.1,50,000/- on his treatment. He was working in the Home guard Department as Instructor and drawing salary of Rs.6000/- per month. He was 40 years of age at the time of accident. He claimed Rs.Six lakhs as compensation. The vehicle was found to be uninsured. Respondent no.1 owner and respondent no.2 driver were impleaded as respondents. Respondent no.2 did not appear, whereas respondent no.1 appeared and stated that he had already sold the vehicle to one Satnam Singh. The claim petition is bad for non-joining of Satnam Singh. He also denied the accident and claim set up by the claimant.

From the pleadings, following issues were framed:-

1. *Whether the petitioner received injuries in a Motor Vehicle Accident, which took place on 3.10.1998 on Fatehgarh Churian Road, Amritsar on account of rash and negligent driving of Maruti Van bearing Registration No.PB-02-F-9666 by respondent no.2? OPA*
2. *Whether the petitioner is entitled to any compensation. If so, how much and from which of the respondents? OPA*
3. *Whether the petition is liable to be dismissed on account of non-impleading of necessary parties? OPR*
4. *Relief*

The Tribunal discarded the bills Ex.A40 and Ex.A41 issued by Rishi Ram, Physiotherapist. However, the Tribunal awarded Rs.90,000/- on account of bills for his treatment. Another sum of Rs.60,000/- as compensation was allowed for injury on the head and total compensation to the extent of Rs.1,50,000/- was allowed with interest @ 9% per annum. If the awarded amount is not deposited within two months, 12% per annum

interest was payable.

Against the said award, the owner has come up in appeal before this Court stating that he is not liable to pay the compensation and the compensation granted is excessive. The claimant has filed Cross Objections, claiming enhancement in compensation.

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

First of all, I will take up the appeal of the owner.

Learned counsel for the appellant states that there were four persons on the scooter and it is a case of contributory negligence. The second plea is that 12% per annum interest granted by the Tribunal is excessive. Regarding contributory negligence, it has to be noted in the claim petition itself that the claimant was driving the scooter and his wife was riding the pillion. Daughter of the claimant and brother's son were also riding with the pillion. Meaning thereby, two children were also riding the pillion. Daughter is stated to be 10 years of age and age of the brother's son has not come on record and presumably, he was also in the same age group as the daughter of the claimant.

It is contended that the scooter is meant for two persons and when four persons are riding, it is likely to lose the balance. Therefore, there is contributory negligence. For this purpose, reliance has been placed on the authority of Single Bench of this Court in Angrejo Devi and others vs. Jai Parkash and others, 2013(2) R.C.R. (Civil) 161. Perusal of the said authority shows that in that case, three persons were riding the motorcycle, which was hit by another motorcycle. In that case, the learned Single Bench of this Court observed as under:-

15. A motor cycle is designed to ride two persons, if used by more than two persons, then the driver will have to share part of his seat, he will not be able to control the vehicle effectively. Moreover, the weight on account of third passenger will affect its stability. In the case in hand, Dharam Singh deceased was driving the motor cycle, in violation of section 128 of the MV Act, with two passengers on the pillion seat. He was more than 50 years old and there is every likelihood of losing control over the vehicle, seeing other vehicle coming from opposite side. Accidents occur in a fraction of seconds and on slightest miscalculation of judgment. Although it is on the record that respondent no.1 was rash and negligent in driving the motor cycle, yet it cannot be ignored that deceased-Dharam Singh was also driving the motor cycle in violation of the provisions of the MV Act. The Ld. Tribunal has rightly come to the conclusion that it was a case of contributory negligence of the deceased Dharam Singh and respondent no.1 in the ratio of 50% each.”

Learned counsel for the appellant has also relied upon the D.B. authority of Madras High Court in Managing Director, Tamil Nadu State Trans. Corpn. Ltd. vs. Abdul Salam and others, 2004(2) T.N.M.A.C. 59 and another authority of Delhi High Court in Ved Kumari vs. Kishan Lal 1999 (2) R.C.R. (Civil) 507.

The Single Bench authority of this Court in Angrejo Devi's case (supra), shows that three adult persons were riding the motorcycle and it was hit by another two wheeler, the Court was of the view that motorcycle of the claimant contributed to the accident because it is likely to lose the balance.

In the present case, facts are different. Here, the claimant and his wife were riding the scooter. Two children were also riding the same

scooter. It was not hit from the front but the Maruti Van coming from the back side hit the scooter. There is nothing on file to show that the scooter lost the balance, which contributed to the accident. If there is overloading on the two wheeler, it does not give a licence to the four wheeler to hit the said two wheeler from the behind and then claim contributory negligence. Therefore, I repel the contention of learned counsel for the appellant that it is case of contributory negligence.

Regarding 12% per annum interest, perusal of award shows that only 9% per annum interest was granted and only in case amount is not deposited within two months, 12% per annum interest was payable. There is nothing illegal in the same.

Learned counsel for the appellant has not pressed the ground that on account of sale of Maruti Van to one Satnam Singh, he is not liable, since, as per record, he was shown as registered owner and as per latest law laid down by the Apex Court, registered owner is liable to pay the compensation. Consequently, appeal bearing FAO No.647-2001 filed by the appellant-owner is liable to be dismissed.

Now, coming to the Cross Objections filed by the claimant.

It comes out that the Tribunal discarded the Physiotherapy certificates Ex.A40 and Ex.A41, issued by the Rishi Ram, Physiotherapist.

I am of the view that there was no reasonable ground to discard the said certificates. Medical record Ex.A3 produced by the claimant shows that claimant received head injuries. He had to be operated upon as there was accumulation of blood in the brain. There were also injuries on the left and right eyes with blackening, for which, treatment was also given.

Therefore, normally in case of such injuries, the physiotherapy is advised.

Physiotherapists have their private practice and do not issued the bills as issued by the regular hospitals. However, it cannot be said physiotherapy was not done and bills are fake. Hence, the amount of bills Ex.A40 and A41 is also allowed, which comes to Rs.12,200/- + Rs.6,200/- = Rs.18,400/-.

The Tribunal also recorded the findings that as per statement of Dr. Dayal Singh Shergill (AW4), there was bilateral visual disability to the extent of 75%. In the cross-examination, it is stated that as per his examination he did not find anything to detect that it is because of any vehicular accident.

I am of the view that it is merely opinion of the doctor. In order to find out as to whether bilateral visual disability to the extent of 75% is due to accident, this Court has to examine the original record of the hospital. Record of the hospital shows that claimant was brought in the hospital in unconscious condition with head injury. The blood had accumulated in the head and operation had to be conducted. It was also recorded that there are no chances of survival of the claimant. The medical record also shows that doctor found the blackening of the right eye and the left eye was also found sluggish. There was suspicion of injury on the right eye. The treatment of both the eyes was done. There is nothing in the medical summary to show that before admission of the claimant, there was such injuries on his both eyes and there was visual disability or that he was wearing spectacles due to defect in the eyes.

After going through the medical summary, it also comes out that on 25.10.1998, a minor operation of left eye was done and temporary tapping was done, which goes to show that the treatment was done for

injury of both eyes. There was head injury, which was very serious in nature. Therefore, because of the head injury and injury on both the eyes, visual disability is to be attributed directly to the motor vehicular accident. Probably the doctor before making statement did not examine the medical summary and treatment given by Muni Lal Chopra Memorial Hospital, Amritsar.

As such, it is held that 75% disability is due to accident, for which, the claimant is entitled to compensation. Considering that the claimant was 40 years of age at the time of accident and he was Instructor in Home Guard Department, a consolidated compensation of Rs.two lakhs is awarded on account of 75% disability and consequent loss of enjoyment of the life for the remainder of life of the claimant. As such, Cross Objections No.21-CII-2002 are to be allowed. Rs.two lakhs on account of 75% disability on account of injuries to both eyes and loss of enjoyment of life and Rs.18,400/- on account of bills of Physiotherapy are allowed. Compensation is enhanced to the tune of Rs.2,18,400/-. The enhanced compensation shall be payable with interest @ 7% per annum from the date of filing of claim petition till realization. It is further noted that Rs.60,000/- are apparently allowed by the Tribunal to the claimant on account of pain and suffering and for admission in the hospital for 28 days, which are payable under separate head.

In view of the foregoing discussion, FAO No.647-2001 is dismissed and Cross Objections No.21-CII-2002 are allowed.

02.05.2019
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
No