

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

FAO-4177-2005(O&M)

Date of decision:-29.8.2019

Surjit Kumar and others

...Appellants

Versus

Chinnder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Prashar, Advocate
for the appellants.

Ms.Vandana Malhotra, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 7.2.2000 a group of residents of village Indachhuyi, namely, Satpal, Devi Dayal, Zile Singh, Jaswant, Gurbachan, Desh Ram were travelling in Matador bearing registration No.DNA-7317 proceeding towards Tohana; the said vehicle was being driven by Hoshiar Singh son of Rattan Singh, resident of that very village at a moderate speed observing all traffic rules on correct side; when the said vehicle had reached ½ km away towards village Chhinder, then a private bus bearing registration No.HR-39-2465(hereinafter referred to as the offending vehicle) came from opposite side being driven by respondent No.1 - Chhinder Singh at a very high speed and in a negligent manner; despite the fact that Hoshiar Singh driving the matador

had slowed down its speed and taken it to the extreme left side, the offending vehicle struck the matador, resultantly in the accident the occupants of the matador sustained injuries; they were taken to General Hospital, Tohana.

Later on the petitioners Satpal, Devi Dayal @ Devi Lal and Des Raj had filed separate claim petitions against respondents i.e. Chhinder Singh – driver, Shiv Shakti Co-operative Society Ltd., Tohana – owner and United India Insurance Company Ltd., Sangrur – insurer of the offending vehicle. Since all the claim petitions had arisen out of the same accident, they were tried together and disposed of vide a single award dated 22.12.2004 by Motor Accidents Claims Tribunal, Fatehabad.

On notice, all the respondents had appeared and filed written statements contesting the claim petitions. The stand taken by respondents was almost the same in all the three petitions.

Respondent No.1 had admitted the accident but shifted the blame to driver of matador stating that he was responsible for the mishap and a wrong criminal case was registered against the answering respondent and he was wrongly challaned by the police at the instance of petitioners.

Respondent No.2 also took same plea stating that petitioners were unauthorized passengers, therefore they were not entitled to get any compensation.

Respondent No.3 insurance company also took various legal objections and on merits denied the assertions in the claim petitions.

All the respondents prayed for dismissal of the claim

petitions.

Issues on merits were framed. The parties were afforded adequate opportunities to lead their evidence.

It is pertinent to mention here that petitioner Devi Dayal had expired during the pendency of the claim petition and his legal representatives were brought on record.

After hearing arguments, the claim petitions were allowed by the Tribunal vide award dated 22.12.2004. Petitioner Satpal, who had filed claim petition No.262 MACT of 2000 was awarded compensation of Rs.35,700/-(50% of the total assessed amount of compensation of Rs.71,400/-), the legal heirs of petitioner Devi Dayal, who had filed claim petition No.263 MACT of 2000 were awarded compensation of Rs.3,000/- in equal shares (50% of the total assessed compensation amount of Rs.6,000/-) and petitioner Des Raj, who had filed claim petition No.11 MACT of 2003 was awarded compensation of Rs.2,000/- (50% of the total assessed amount of Rs.4,000/-) along with interest at the rate of 9% per annum from the date of filing of the petitions till realization of the entire amount payable by all the respondents No.2 and 3 jointly and severally.

Feeling that the compensation awarded to them was on lower side, the legal representatives of Devi Dayal have filed the present appeal seeking enhancement of compensation, notice of which was issued to respondents and respondent No.3 – insurance company appeared through counsel.

I have heard learned counsel for the parties besides going

through the record.

Petitioner/claimant Devi Dayal had got his statement recorded in the Court stating that he remained admitted for about one month in General Hospital, Tohana, spending about Rs.1 lakh on his treatment. PW2 Dr.Satish Garg had deposed that on 17.2.2000 on receipt of x-ray report of Devi Dayal, he had opined that there was fracture of three ribs of left side and fracture of both bones right leg and that Devi Dayal remained as indoor patient from 7.2.2000 to 15.2.2000, in that way he must have spent Rs.2,000/- on his treatment. He had proved his bed head ticket as Ex.P6. PW1 Dr.A.L. Bajaj had proved the disability certificate of Devi Dayal showing that he had suffered 12% disability on account of weakness of right leg with stiffness of right knee and ankle joints. The legal heirs of Devi Dayal had placed on record bills/receipts Ex.P99 to Ex.P119 to the tune of Rs.5,234/- spent on medical treatment of Devi Dayal. The Tribunal considering that he must have spent some amount on transportation, special diet and attendant etc. found legal representatives of petitioner to be entitled to compensation of Rs.6,000/- in all. However, the Tribunal found that since there was nothing on record that Devi Dayal had died due to injuries received in the accident, hence legal representatives of Devi Dayal are not entitled to any compensation on account of any other head. The Tribunal had returned a finding that Chhinder Singh – respondent No.1 was not having a legal and valid driving licence at the time of accident, which resulted in breach of policy conditions absolving the insurance company of its liability to indemnify the insured with regard to discharging liability to pay compensation under

the award but insurance company was statutorily liable to pay compensation to the third parties. It was directed to pay compensation to the claimants. The Tribunal found it to be a case of contributory negligence to the extent of 50%, therefore compensation found payable to legal representatives of deceased was reduced to 50%.

This approach of the Tribunal was obviously wrong. The basis for the Tribunal arriving at the conclusion that it was a case of contributory negligence happened to be photographs. The photographs do not tell the complete story. The Tribunal lost sight of the fact that formal FIR with regard to the accident was lodged against Chhinder Singh driver of the offending vehicle and as per his version in the written statement even, he was challaned by the police for causing the accident. The inference reached at by the Tribunal that it was a case of contributory negligence is merely based upon conjectures and guess-work. No cogent and convincing evidence has been discussed in that regard while arriving at this conclusion. Nevertheless the persons travelling in the matador cannot be held to be guilty of contributory negligence and the compensation payable to them slashed in such a manner. At the most it could be termed as composite negligence. In **Royal Sundaram Alliance Insurance Company Ltd. Versus Krishna and others, 2016(2) PLR 535** by a Single Bench of this Court, it was observed in para No.3 as under:

3. *I reject this contention for two reasons; (i) a pillion rider cannot be said to have contributed to the accident and the driver must take responsibility for his conduct in taking more persons than authorised. As far as the pillion riders are*

concerned, it is a case of composite negligence, if the conduct of the driver of the vehicle must be taken as having contributed to the accident. The case of contributory negligence cannot, therefore, be attributed to the pillion riders; (ii) an assessment of contributory negligence is essentially a question of fact. The decision in Angrejo Devi (supra) records the fact that the deceased was 50 years of age and he had lost his balance by carrying more than what was authorised. I make no assumption when there was no evidence placed in this regard. Indeed, the counsel for the insurer himself admits that there was no evidence placed as regards the contributory negligence.

In another judgment **Subh Ram Versus Smt.Kripa Devi and Ors., 2013(1) PLR 683** by a Single bench of this Court, it was observed that so long as contributory negligence was attributed to the injured claimant, it could be taken only a case of composite negligence of the two vehicles namely the driver of the jeep and the driver of the insured's truck and in such an event, the claimants were entitled to proceed against any one of the tortfeasors; secure the compensation in full leaving it to one of the tortfeasors to seek for contribution against the co-tortfeasor to the extent of culpability.

In **Vidhya Devi and others Versus Govind and others, 2013(29) RCR(Civil)507** it was held that deceased was sitting in car driven by car driver, when deceased was not driving the car no negligence

can be attributed to the deceased and the truck driver was held liable to rash and negligent driving.

Therefore, the slashing of compensation awarded by 50% turning it as a case of contributory negligence was wrong and uncalled for. Though the appellants have not been able to establish that there father Devi Dayal, who had suffered injuries in the accident had died due to the injuries suffered in the accident but the nature of injuries suffered by him including fracture of three ribs of left side are indicative of that fact. Devi Dayal was found to have suffered permanent disability to the extent of 12% by PW1 Dr.A.L. Bajaj vide disability certificate Ex.P1. Section 140 of the Motor Vehicles Act, 1988, which deals with liability to pay compensation in certain cases on principle of no fault provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section and the amount shall be Rs.50,000/- in case of death and Rs.25,000/- in case of permanent disablement. Using that criteria even, compensation of at least 25,000/- should have been granted to legal heirs of deceased Devi Dayal. If we see the yardstick adopted by the Tribunal in assessing the compensation, it has been noticed that Rs.5,234/- were spent by Devi Dayal on his treatment. The Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at

times it gets misplaced or lost. The Tribunal had awarded a sum of Rs.766/- under various heads i.e. transportation, special diet, attendant etc. and Rs.6,000/- in total were awarded to the claimants when to other claimants the amount given was on much higher side. Under the circumstances, it would be proper and appropriate, if the compensation is enhanced to Rs.25,000/-, payable to the appellants in equal shares.

The Tribunal has awarded compensation of Rs.3,000/- along with interest @ 9% per annum from the date of filing of the petition payable by respondents No.2 and 3 jointly and severally. The same is enhanced to Rs.25,000/-.

In this way, the enhanced amount comes out to Rs.22,000/- (25,000 - 3,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.22,000/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

29.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No