

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

Date of decision: 9.1.2019

1.

FAO No. 384 of 2006(O&M)

Manpreet Singh

.....Appellant

VERSUS

Surain Yadav and another

.....Respondents

Present: Mr. Gurcharan Dass, Advocate for the appellant.

Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate for respondent No.2.

2.

FAO No. 158 of 2006(O&M)

M/s Ludhiana Builders

.....Appellant

VERSUS

Manpreet Singh and another

.....Respondents

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate for the appellant.

Mr. Gurcharan Dass, Advocate for respondent No.1.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.158 and 384 of 2006 as these have emerged out of the same award dated 01.10.2005 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by Manpreet Singh – appellant (in FAO No.384 of 2006) in a motor vehicular accident that took place on 22.10.2001.

FAO No.158 of 2006 has been filed by M/s Ludhiana Builders, registered owner of Road Roller bearing No.AP-37114260 EY (alleged offending vehicle) whereas the other appeal has been preferred by the claimant seeking enhancement of compensation. For facility of reference M/s Ludhiana Builders shall be referred to as the 'appellant' whereas Manpreet Singh as 'claimant'.

FAO Nos.158 and 384 of 2006

The facts relevant for disposal of the appeals are that Manpreet Singh filed application for grant of compensation to the tune of Rs.12,50,000/- on the allegations that on 22.10.2001 at about 7 PM, he was coming back from Sant Lapon Wala as a pillion rider on scooter LML Vespa bearing No.PB-10-Z-Temp-1160 driven by Amrinderjit Singh @ Deepu. When they reached near Octroi post Dakha, Road Roller bearing No.AP-37114260 EY driven by Surain Yadav @ Surinder Yadav on the kacha side towards Ludhiana was going ahead. When Amrinderjit Singh wanted to overtake the road roller, driver suddenly brought the same on the road and struck with the scooter. The claimant and Amrinderjit Singh @ Deepu fell in front of road roller and received multiple injuries. Both the legs and right shoulder of the claimant got fractured. The accident was caused due to negligent driving of road roller and was witnessed by Nirmal Singh. FIR No.115 dated 30.10.2001 under Sections 279, 427, 337 and 338 IPC was registered against Surain Yadav at Police Station Dakha.

Respondents No.1 and 2 before the Tribunal filed separate replies denying that the accident was caused due to rash and negligent driving of alleged offending vehicle by Surain Yadav with the plea that the accident in question took place with the bus of Jujhar Transport Company

and respondent No.1 was falsely implicated after due deliberation and planning. They denied their liability to pay compensation with a prayer for dismissal of the claim application.

The claimant filed rejoinder reiterating the averments made in the petition while denying those made in the written statement of respondent No.1 and 2.

The controversy between the parties led to framing of following issues:-

1. Whether Manpreet Singh petitioner received the injuries on 22.10.2001 on account of the rash and negligent driving of road roller No.AP-37114260 EY registered in the name of M/s Ludhiana Builders, when it was being driven by respondent No.1 Surain Yadav alias Surinder Yadav? (OPA)
2. Whether the petitioner is entitled to claim compensation. If so how much and from which of the respondent? (OPA)
3. Whether the accident took place with the bus of Jujhar Transport Company, which has not been impleaded as respondent and the petition is bad for non-joinder? (OPR)
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No.1 in favour of

the claimant and accordingly the injured was held entitle to compensation assessed under issue No.2.

Counsel for the appellant has assailed findings of the Tribunal on issue No.1 by making multifold submissions. It is argued that the occurrence in question took place on 22.10.2001 but the FIR was registered on 30.10.2001 after delay of 8 days. It is further argued that as per testimony of Manpreet Singh and Nirmal Singh, the police reached the place of occurrence and shifted the injured to the hospital, therefore, there was no reason for delay of 8 days in lodging the FIR. Another submission made by counsel is that in the medical records while recording history, it has been mentioned that the accident was caused with a bus. Meaning thereby that the road roller and driver of road roller have falsely been implicated in the case later with a view to extract compensation from the appellant – Company. It is further argued that as per testimony of Manpreet Singh, there were no registration particulars on the road roller but Manpreet Singh has not explained in his testimony before the Court as to how he came to know about registration particulars of the road roller mentioned in the claim application as well as in his affidavit tendered by way of examination in chief. The last submission made by counsel is that Amrinderjit Singh, driver of the scooter on which Manpreet Singh was a pillion rider was the best witness to depose as to how the occurrence in question took place but he has been withheld from the witness box.

Counsel representing the claimant, on the contrary, has supported findings of the Tribunal on issue No.1 with the submissions that testimony of Manpreet Singh is duly corroborated by an independent witness namely Nirmal Singh AW-2. It is argued that both Manpreet

Singh and Nirmal Singh have consistently deposed that they had no relation with each other and Nirmal Singh came forward to depose in the case as he had actually witnessed the occurrence. It is further argued that Manpreet Singh sustained injuries in the occurrence and his failure to record his statement on the date of accident cannot enure to benefit of the appellant. The appellant or for that matter driver of the road roller has not alleged any animosity by the claimant against them in order to get them falsely implicated in criminal as well as civil proceedings.

To substantiate his plea for enhancement of compensation, it is argued that the claimant has suffered permanent disability to the extent of 70% but the Tribunal has awarded a meager amount of Rs.1,40,000/- towards loss of income. It is further argued that in view of nature and extent of disability suffered by the victim coupled with his alleged avocation of labour, he is entitle to loss of income by applying multiplier method. Claimant is entitle to compensation for loss of amenities of life, matrimonial prospects as well. The last submission made by counsel is that compensation allowed under various heads is grossly inadequate and liable to be enhanced.

I have heard counsel for the parties, perused the paper-book and records.

Before advertng to the submissions made by counsel for the parties, it is pertinent to mention at the outset that registration of FIR is not *sine qua non* for maintaining an application for grant of compensation. However, in the present case, FIR was registered on 30.10.2001 though Manpreet Singh had stated that his statement was recorded by the police

2/3 days after the occurrence. In the given circumstances, Manpreet Singh cannot be condemned for delay of 8 days in lodging the FIR.

Manpreet Singh appeared in the witness box and reiterated his version by way of affidavit filed in examination in chief. He was cross examined at length but nothing tangible and material has been elicited in his cross examination to shatter his veracity or discredit his testimony. Not only this, statement of Manpreet Singh is duly corroborated by Nirmal Singh, an independent witness examined in the case. Counsel for the appellant has failed to point out any materials on record in order to create a doubt that either Nirmal Singh was not present at the spot or he is an interested witness. As has been rightly argued by counsel for the claimant, there is nothing on record suggestive of the fact that Manpreet Singh had any hostility against the driver and owner of the alleged offending vehicle in order to get them falsely implicated in the proceedings. This apart, had the occurrence been not caused by the offending vehicle and a vehicle was to be implicated by Manpreet Singh with an intention to grab compensation, there was less likelihood of his implicating a vehicle which was not insured. This apart, driver of the offending vehicle did not appear in the witness box to counter case of the claimant and rebut testimonies of the witnesses examined to discharge onus of issue No.1. An adverse inference is liable to be drawn against the respondents for failure of driver of the road roller to appear in the witness box without any tangible explanation.

Much stress has been laid by counsel for the appellant that in history of patient accident was stated to be caused with a bus. Manpreet Singh, in his cross examination has stated that initially he was taken to

hospital at Dakha and he became sedated on account of medicines/drugs etc. The mere fact that in the medical records, there is mention of bus in place of road roller is not sufficient to reject testimonies of Manpreet Singh and Nirmal Singh recorded before the Tribunal and subject to cross examination at the behest of counsel for the contesting party. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal on issue No.1 that accident in question took place due to rash and negligent driving of road roller by Surain Yadav – respondent No.1. Accordingly, findings of the Tribunal on issue No.1 are affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal.

The Tribunal has awarded compensation of Rs.3,65,449.40p detailed hereunder:-

Medicine bills	Rs.1,83,249.40
Loss of income	Rs.1,40,000/-
Pain and suffering	Rs.20,000/-
Operation charges	Rs.10,000/-
Special diet	Rs.5,000/-
Loss of income	Rs.4200/-
Attendant charges	Rs.3000/-

Compensation qua medical expenses allowed by the Tribunal is based upon bills and the same is affirmed. Similarly, compensation awarded by the Tribunal for pain and suffering and operation charges is affirmed.

The Tribunal has assessed income of the victim at Rs.2100/- per month on the basis of Deputy Commissioner's (in short 'DC') rates. Even as per notification issued by the State of Punjab fixing minimum wage, the minimum wage of an unskilled labour at the relevant time was Rs.2080/- per month. Accordingly, income of the victim assessed by the Tribunal is affirmed.

The Tribunal has noticed that the victim remained hospitalized for a period of 60 days. Dr. Tejaz Johan from Department of Orthopaedic, CMC Hospital, Ludhiana AW4 was examined. As per testimony of Dr. Tejaz Johan, the victim was admitted on 22.10.2001 and he had close fracture of both bones left leg with lacerated wound left leg and ankle, wound dorsum right foot and ankle and close fracture midshaft right humerus with radial nerve palsy. He was operated and again admitted on 08.12.2001, 16.07.2002, 31.12.2002, 31.01.2003 and 15.10.2003. Taking into consideration nature of injuries sustained by the victim coupled with the factum that he was hospitalized on different occasions from 22.10.2001 to 15.10.2003 along with the fact that the victim has been treated as a labourer, interest of justice commands that he is entitled to loss of total income at least for a period of six months in respect of treatment and recovery. Accordingly, claimant shall be entitled to a sum of Rs.12,600/- towards loss of income under this head (additional amount of Rs.8400/-).

The injured has suffered disability to the extent of 70% in respect of both bones left leg, right foot and fracture, shaft of right humerus. Dr. Gagandeep Singh, Orthopaedic Surgeon, Civil Hospital, Ludhiana AW-8 was examined to prove nature and extent of disability and

disability certificate Ex.AW8/A. However, testimony of Dr. Gagandeep Singh is silent as to how this disability of 70% is to be treated as functional disability or disability qua the whole body. Taking into view the avocation of the victim coupled with nature and extent of disability, it would be in the fitness of things that disability to the extent of 70% is treated as functional disability to the extent of 50% for assessing loss of future income by applying multiplier method. The victim was 30 years old at the time of occurrence. Accordingly, loss of future income is assessed at Rs.2,14,200/- (Rs.2100/- x 12 x 17 x 50%).

The claimant is awarded an amount of Rs.25,000/- towards loss of amenities of life and matrimonial prospects. The Tribunal has awarded an amount of Rs.8000/- towards special diet and attendant charges. The claimant shall be entitle to a sum of Rs.15,000/- under this head (additional amount Rs.7000/-).

In view of the above, total compensation is Rs.4,80,049.40/- and additional amount is Rs.1,14,600/- (Rs.480,049.40 – Rs.3,65,449.40) payable with interest at the rate of 7.5% per annum from the date of petition till realization. All other terms and conditions of the award shall remain intact.

The appeals are disposed of accordingly.

JANUARY 9, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no