

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

Date of decision: 21.08.2019

FAO No.4715 of 2010 (O&M)

Mahabir Singh and another

... Appellants

Versus

National Insurance Co. Ltd. and others

... Respondents

FAO No.6134 of 2010 (O&M)

Kirpal Singh

... Appellant

Versus

Mahabir Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. BS Mittal, Advocate
for owner and driver of canter.

Mr. PK Ganga, Advocate
for the claimant.

Mr. Nitin Grover, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4715 and 6134 of 2010 as these have emerged out of the same award dated 01.04.2010 passed by the Motor Accidents Claims Tribunal, Sirsa whereby compensation has been assessed on account of injuries sustained by Kirpal Singh in a motor vehicular accident that took place on 19.04.2008.

FAO No.4715 of 2010 has been filed by the driver and owner of canter No.HR-57/2207 insured with National Insurance Company Ltd. whereas the other appeal has been filed by the claimant seeking enhancement of compensation.

FAO No.4715 of 2010

The sole submission made by counsel for the appellants is that as accident is the result of composite negligence of aforesaid canter and tractor No.HYF/4716 owned by Kishan and driven by Subhash respondents No.4 and 5 therein, findings of the Tribunal on issue No.1 are liable to be modified and 50% negligence should be attributed to the driver of tractor involved in the accident and accordingly liability to pay compensation should be shared by the owners/insurers of both the vehicles. To bring home his contention, it is argued that Kirpal Singh injured in his affidavit tendered by way of examination in chief has categorically stated that accident took place due to composite rash and negligent driving of both drivers of canter No.HR-57/2207 and tractor No.HYF/4716. It is further argued that Mahabir Singh, driver of offending canter appeared in the witness box to deny rashness and negligence attributed to him but driver of tractor did not appear in the witness box to explain his position, therefore, an adverse inference is liable to be drawn against him. It is further argued that the Tribunal has wrongly held that challan for causing the accident was presented against Mahabir Singh alone but actually the challan was presented against both Mahabir Singh and Subhash for causing the accident

though eventually both of them were acquitted of the offence charged against them.

Counsel representing the claimant, on the contrary, has supported findings of the Tribunal attributing entire negligence to Mahabir Singh for causing the accident. It is argued that even if Kirpal Singh had stated that accident is the result of composite negligence of both the vehicles, the Tribunal has to record its findings by taking a considered view in the light of materials on record.

I have heard counsel for the parties, perused the paper book and copies of documents supplied during the course of hearing as records of the case have burnt in a fire incident.

Kirpal Singh in his affidavit has deposed that accident took place due to composite rash and negligent driving of both the aforesaid vehicles. Kirpal Singh was one of the occupants of canter No.HR-57/2207 driven by Mahabir Singh. He was sitting in the body of canter at the back of cabin, meant for the driver. In his cross examination by counsel for the insurance company of canter, he has admitted that since they were sitting in the body at the back of canter, they could not see which vehicle was coming from opposite side. In cross examination by counsel for respondents No.4 and 5, driver and owner of tractor before the Tribunal, he has deposed to the following effect:-

The canter in question hit the tractor in question. I was sitting in the back side in body of the canter and that is why, I cannot say as to how the vehicles have struck. Even prior to the

accident in question, the canter had skidded twice but it just escaped from accident.

Since Kirpal Singh was sitting in the canter, he could know if the canter was being driven at a fast speed or in a rash and negligent manner. At the same time, as he was sitting on the back of canter, he could not possibly explain if the vehicle coming from opposite direction was driven at a fast speed much less in a rash and negligent manner. In the given scenario, the mere fact that Kirpal Singh had stated that accident is the result of composite negligence of both the vehicles would not be sufficient to attribute rashness and negligence to driver of the tractor.

Mahabir Singh, driver of the canter was examined and he deposed by way of affidavit that accident was caused by driver of the tractor as he came from the wrong side of the road and hit his tractor in the canter. Nothing has been explained by Mahabir Singh what was the correct side for the tractor to be driven and which side the tractor was brought by its driver. He even had gone to the extent of saying that Kirpal Singh was not an occupant of the canter. Taking into consideration the materials on record, I do not find any reason to differ with findings of the Tribunal that accident is the result of rash and negligent driving of offending canter as a result whereof occupants of the canter including Kirpal Singh sustained injuries.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no

merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

FAO No.6134 of 2010

The Tribunal awarded Rs.3,15,451/- (rounded off to Rs.3,16,000/-), detailed hereunder:-

Loss of amenities of life	Rs.1,00,000/-
Mental and physical shock, pain and sufferings already suffered or likely to be suffered in future	Rs.90,000/-
Loss of expectation of life	Rs.25,000/-
Inconvenience, hardship, discomfort and disappointment, frustration and mental stress in life	Rs.25,000/-
Reimbursement of medical expenses	Rs.75,451/-

Counsel for the appellant/claimant would argue that the victim has suffered disability to the extent of 50% and he is entitle to loss of future income by applying multiplier method. It is further argued that compensation allowed by the Tribunal under various heads is grossly inadequate and needs enhancement.

Counsel representing respondents No.1 and 2, on the contrary, has supported assessment made by the Tribunal with the submissions that there is no justification for allowing additional compensation.

The Tribunal has allowed reimbursement of medical expenses on the basis of bills and the same is affirmed. The claimant examined Dr. Vijay Kumar, Medical Officer, Jindal Hospital, Hisar. He tendered into evidence his affidavit Ex.PW1/A to depose that on 19.04.2008, he

examined Kirpal Singh and diagnosed to have severe spinal cord injury after road side accident. He had weakness of all four limbs and respiration difficulty. He was operated for this injury, admitted in ICU and discharged on 09.05.2008. He was coming for follow up treatment and lastly visited in the month of April, 2009. He may require treatment for 2-3 years more. He was having upper and lower limbs weakness. Taking a reasonable view in the light of testimony of treating doctor of the injured, he is entitled to loss of earning during the period of treatment and recovery for a period of one year. Taking a clue from notification issued by the State of Haryana fixing minimum wage of an unskilled labour, income of the injured is assessed at Rs.3600/-. Loss of income for a period of one year is calculated at Rs.43,200/- (3600 x 12).

The injured has suffered permanent physical disability to the extent of 50%. Dr. Pawan Kumar, Medical Officer, General Hospital, Sirsa, one of the members of medical board that assessed disability would depose that the patient sustained cervical spine injury in the form of partial fusion of C3 and C4 vertebrae with cord oedema. He had weakness bilateral upper limbs and difficulty in walking fast. Power of bilateral upper limbs was 4/5 with paresthesia. Disability calculated was 50%. In cross examination, the witness has stated that there are rarest chances of any improvement in condition of the patient with physiotherapy and other like treatments.

The injured was a labourer prior to the occurrence. When the case is examined in the light of avocation of the injured, functional

disability is to be assessed at a rate higher than permanent physical disability assessed by the medical board. In this context, reference can be made to judgment of Hon’ble the Supreme Court **Raj Kumar Vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101**. In the given circumstances, functional disability is assessed at 65%. The injured was 35 years old at the time of unfortunate occurrence and a multiplier of 16 is required to be applied. In view of the above, future loss of income is assessed at Rs.4,49,280/- (3600 x 12 x 16 x 65%).

The claimant is allowed Rs.50,000/- for pain and sufferings and Rs.1 lakh for loss of amenities of life and expectation of life. He is awarded Rs.30,000/- for transportation, special diet and services of an attendant. Accordingly, compensation allowed by the Tribunal under various heads is modified in the aforesaid terms. In view of the above, total compensation is Rs.7,47,931/- and additional amount is Rs.4,31,931/- (7,47,931 – 3,16,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

21.08.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No