

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

FAO No. 1413 of 2012(O&M)

& XOBJC-78-CII of 2012(O&M)

Date of decision: 10.12.2019

Balbir Singh

.....Appellant

VERSUS

Varinder Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Parmar, Advocate and
Mr. H.S. Minhas, Advocate for the appellant.

Mr. Parminder Singh, Advocate for respondent No.1.

Mr. Bhupinder Singh, Advocate for respondents No.2 and 3.

REKHA MITTAL, J.

This order will dispose of FAO No.1413 of 2012 and cross objections No.78-CII of 2012 as these have emerged out of the same award dated 02.01.2012 passed by the Motor Accidents Claims Tribunal, Hoshiarpur (in short 'the Tribunal') whereby compensation has been assessed in respect of injuries sustained by Varinder Chander in a motor vehicular accident that took place on 30.03.2008.

FAO No.1413 of 2012 has been filed by Balbir Singh, driver of offending tractor No.PUT-3117 whereas the cross objections have been filed by the claimant seeking enhancement of compensation.

Counsel for the appellant would argue that the appellant was not driver of offending vehicle, actually driven by Gurdeep Singh son of

Inder Singh, a motor mechanic to whom tractor was given for repair by Balraj Singh – respondent No.3. It is further argued that Sher Singh-respondent No.2 was registered owner of the vehicle, purchased by Balraj Singh on the basis of an affidavit. To bring home his contention, counsel has relied upon testimonies of Balbir Singh RW-1, Balraj Singh RW-2, Gurdeep Singh RW-3 and Bhulla Singh RW-4. It is vehemently argued that the Tribunal failed to appreciate evidence of aforesaid witnesses in right perspective and committed a gross error by upholding plea of the respondent/claimant that appellant was driver of offending vehicle and caused accident.

Another submission made by counsel, in the alternative, is that the present is a case of contributory if not exclusive negligence of the claimant who was under effect of liquor, deposed by Dr. Amit Saraf AW-9 and witnesses of the appellant. It is further argued that as per version of the respondent/claimant, he had gone to attend marriage and the accident happened when he was on his way back to his house at about 6.15 PM. Counsel would argue that since the claimant/respondent is a Head Constable, he used his official position to lodge criminal proceedings against appellant and filed false claim for compensation.

Counsel representing the respondent/claimant, on the other hand, has supported findings of the Tribunal on issue No.1 with the submission that the Tribunal on a detailed consideration of the matter had rightly arrived at the conclusion that Balbir Singh is responsible for the accident in which the claimant sustained serious injuries including amputation of one of his lower limbs. He would further argue that

compensation allowed by the Tribunal is grossly inadequate and merits enhancement.

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

Indisputably, the occurrence in question took place when the injured was driving motorcycle and there was collision between tractor or its attachment and motorcycle of the victim. The claimant appeared in the witness box and examined Anoop Kumar, his son and Iqbal Singh, his son in law, who were stated to be on their way back to their village Harta Khera after attending wedding of an acquaintance of Varinder Chand, at village Badla. Counsel for the appellant has failed to point out any materials elicited in cross examination of the injured, Anoop Kumar and Iqbal to impeach their credibility or create doubt in their testimonies with regard to the person, driving the offending tractor at the relevant time.

Varinder Chand lodged criminal proceedings on the basis of first version recorded in the FIR dated 01.04.2008 wherein there is specific reference that offending vehicle was driven by Balbir Singh. Counsel for the appellant, in response to a query, would fairly concede that no such plea has been raised by the appellant that Varinder Chand had any hostility against him for getting him falsely indicted in criminal and claim proceedings. He has also failed to point out any materials on record that claimant had any reason to exonerate Gurdeep Singh of his liability had the offending vehicle been driven by him (Gurdeep Singh). On due investigation of FIR, Balbir Singh was put to trial for causing the accident and convicted by the Court of Judicial Magistrate Ist Class, Hoshiarpur,

though appeal preferred against that judgment was allowed by the Appellate Court. Gurdeep Singh RW, in his cross examination, has categorically admitted that tractor was driven by Babir Singh. Testimony of Balraj Singh that tractor was driven by Gurdeep Singh has no evidentiary value as Balraj Singh, admittedly, was not present at the time of occurrence. Balbir Singh is not a stranger to Balraj Singh who purchased the offending vehicle from Sher Singh as Balraj Singh admitted that Balbir Singh used to cultivate his land. Taking into consideration the aforesaid, it is difficult to accept contention of the appellant that he was not driver of offending vehicle at the time of accident or the Tribunal has faulted in upholding plea of the claimant that accident was caused by the appellant while driving the tractor.

Counsel for the appellant has tried to derive some mileage from testimony of Dr. Amit Saraf to contend that contributory negligence is liable to be attributed to the injured. Dr. Amit Saraf in cross examination, stated that as per observations recorded at the time of admission of patient, he was under effect of alcohol. The doctor who admitted the patient has not been examined. There is nothing on record to suggest that any tests were conducted to find out extent of alcohol. There is no evidence that how many hours before the occurrence, the injured had consumed alcohol. In the given circumstances, the Tribunal has rightly refused to accept contention of the appellant that accident took place because of the injured being under influence of liquor or contributory negligence is liable to be attributed to him.

This brings the Court to cross objections filed by the claimant seeking additional compensation.

The Tribunal awarded Rs.2,76,274/- detailed hereunder:-

Reimbursement of medical expenses	Rs.81,274/-
Compensation for disability	Rs.1,50,000/-
Special diet	Rs.5,000/-
Pain and suffering	Rs.10,000/-
Loss of amenities of life	Rs.10,000/-
Loss of expectation of life	Rs.10,000/-
Service of an attendant	Rs.5000/-
Transportation	Rs.5000/-

Reimbursement of medical expenses, based upon bills, is affirmed. The injured was working as Head Constable of Punjab Police. No evidence has been adduced to prove that on account of sustaining injuries rendering him disable to the extent of 75% on account of amputation of lower limb below knee, he has suffered loss of salary during the period of treatment or recovery or promotion avenues etc. That being so, claimant is not entitle to loss of future income on account of disability.

The Tribunal has awarded a sum of Rs.1,50,000/- on account of disability and another Rs.20,000/- on account of loss of amenities of life and expectation of life. Taking into consideration that the injured has not suffered in his career, compensation allowed by the Tribunal on account of disability to the tune of Rs.1,70,000/- is affirmed.

The Tribunal has awarded Rs.10,000/- for pain and suffering. The injured was discharged from C.M.C. Hospital, Ludhiana on

14.04.2008. He suffered amputation of leg. In view of nature of injuries sustained coupled with the period of treatment, the claimant is awarded Rs.40,000/- for pain and sufferings and additional amount of Rs.10,000/- for special diet, services of an attendant and transportation.

In view of the above, total compensation is Rs.3,16,274/- and additional amount is Rs.40,000/- (Rs.3,16,274/- - Rs.2,76,274/-) payable with interest at the rate of 7.5% per annum from the date of petition till realisation.

The appeal and cross objections are disposed of in the aforesaid terms.

DECEMBER 10, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no