

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

FAO-3464-2012(O&M)

Date of decision:-22.7.2019

Gurdeep alias Amit

...Appellant

Versus

Amrik and others

...Respondents

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

Present: Mr.Deepak Sharma, Advocate
for the appellant.

Mr.Lalit K. Gupta, Advocate
for respondents No.1 and 2.

Ms.Puneeta Sethi, Advocate
for respondent No.3.

H.S. MADAAN, J.

CM-15453-CII-2012

This is an application under Section 151 CPC for condoning
the delay of 105 days in refiling of the appeal.

Heard.

The reasoning given in the application is plausible and
satisfactory. Even otherwise, the appellant is not going to gain anything
by belatedly filing the appeal. The application is, therefore, accepted and
the delay of 105 days in filing of the appeal is condoned.

FAO-3464-2012

Petitioner-claimant – Gurdeep alias Amit, aged about 18

years having suffered injuries in a road side accident, had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 before Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the Tribunal) for grant of compensation to the tune of Rs.10 lakhs against the respondents i.e. Amrik Singh – driver, Surinder Singh – owner and New India Assurance Company Ltd., Ambala – insurer of Canter bearing registration No.HR-37-C-1866 (hereinafter referred to as the offending vehicle).

As per the version of the petitioner/claimant, on 22.1.2009 at about 12:30 p.m., he along with one Gursimar Singh son of Sh.Bhim Singh and Pankaj son of Sh.Hukam Chand was going towards Ismailabad on a motorcycle make Suzuki bearing registration No.HR-41A-3531 driven by Pankaj on correct side of the road; that when they had just reached Ambala-Hisar road within the area of village Chammu Kalan, in the meanwhile the offending vehicle being driven by respondent No.1 – Amrik Singh in a rash and negligent manner and at a high speed, came from Ambala side and hit their motorcycle, resultantly all the three riders fell down and suffered multiple, simple and grievous injuries; that Amrik Singh tried to run away from the spot along with the offending vehicle, however he was intercepted and apprehended and on being asked, he disclosed his name and identity. According to the claimant, he had suffered simple, multiple and grievous injuries on various parts of his body including a fracture in the left foot.

On being put to notice, all the three respondents had

appeared. Respondents No.1 and 2 filed a joint written statement whereas respondent No.3 filed a separate written statement.

In the joint written statement filed by the respondents No.1 and 2, they had denied involvement of the offending vehicle in the accident much less due to its rash and negligent driving by respondent No.1. It was contended that respondent No.1 had been falsely involved in this case and as a matter of fact, the petitioner/claimant had suffered injuries due to his own rash and negligent driving.

In the written statement filed by respondent No.3 – insurance company, it had taken up several legal objections contending that there was violation of terms and conditions of the insurance policy absolving the insurance company of its liability to pay any compensation. On merits, material assertions in the petition were denied. The involvement of the offending vehicle in the accident was also denied.

In end, all the respondents prayed for dismissal of the claim petition.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After contest, the Tribunal, while allowing the petition partly vide award dated 29.8.2011, awarded compensation of Rs.60,000/-being one third of Rs.1,80,000/- along with interest @ 6% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally. Taking it as a case of contributory negligence, the Tribunal found the respondents to be liable to the extent of 1/3rd. The manner in which the compensation is to be apportioned was also given in

the award.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal seeking enhancement of compensation, notice of which was given to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

While examining the question as to on account of whose rashness and negligence, the accident had taken place, the Tribunal had observed that respondent No.1 was not solely responsible for the accident and the major blame for the accident was to be shared by the person, who was driving the motorcycle on which the claimant was pillion riding. The relevant paras of the award are being reproduced as under:

14. The facts are not disputed that petitioner was pillion rider on a motorcycle occupied by three persons and they approached Ambala Hissar Road from a side lane. Neither motorcycle driver nor respondent No.1/ truck driver appeared in the witness box. The fact that two wheeler/ motorcycle was driven without license would not be a ground to hold him negligent as Tribunal has to determine this aspect after assessing the evidence led before it. Reliance in this regard can be placed upon Sudhir Kumar Rana versus Surinder Singh 2008 2 RCR (Civil) 266. Similarly, the fact that there was violation of Section 128 of the Motor Vehicles Act as driver of motorcycle was carrying two

pillion riders, would amount to breach of safety provisions stipulated under Section 128 of Motor Vehicles Act but it would not per se amount to negligence of the motorcyclist or the pillion rider. Reliance in this regard can be placed upon Devisingh versus Vikramsingh and others 2008 2 RCR (Civil) 107.

15. *Learned counsel for petitioner tried to make out a case that in fact, offending canter had struck against the rear side of the motorcycle but there is no evidence in this regard that motorcyclist had already taken his motorcycle to his correct lift of the road after entering the main road and offending truck hit against the rear side of motorcycle. The ratio of Prem Chand versus Jasoda and others 1985 ACJ 315 relied upon by learned counsel for the petitioner would not be applicable to the facts of the present case.*

16. *From the version of petitioner that he was the pillion rider of motorcycle which came from side lane, it is apparent that he did not say anywhere that motorcycle rider Pankaj had slowed down the speed of the motorcycle at intersection and only thereafter took the vehicle on the main road. He rather stated that Pankaj did not notice the offending vehicle. Even in FIR Ex.P-123, it is not mentioned that motorcycle rider slowed down speed of his motorcycle at the intersection before taking his vehicle on Ambala Hissar Road. A driver of vehicle who has to take his vehicle from a side lane to the main road is required to take abundant care and caution so that no impediment is caused for the moving traffic on the main road. Since motorcycle rider Pankaj failed to take notice*

of the truck in question while approaching the main road coupled with the fact that there were three riders on motorcycle and the fact that motorcycle rider was not having a driving license, the blameworthiness for the happening of this accident is held in the manner to the extent of 2/3rd on the motorcyclist and 1/3rd on the respondent No.1/canter driver, as so ruled in above said authority titled Ratni Devi Shyam Suka and others versus B. Venkata Rami Reddy and others (supra). Issue No.1 is disposed off accordingly.

While deciding issue No.1, in that regard, the Tribunal had not taken into consideration the fact that oral and documentary evidence brought on file by the claimant had gone unrebutted inasmuch as respondent No.1 had not appeared in the witness-box to depose on oath his case as given in the written statement. Furthermore, from the statement of PW1 - Sh.Mohinder Singh, Criminal Ahlmad, who had brought the record of case 'State Versus Amrik Singh', FIR No.7 dated 22.1.2009 for the offences under Sections 279, 337 and 338 IPC registered with Police Station Ismailabad, it come out that respondent No.1 had been challaned and was facing trial for causing accident by his rash and negligent driving of the offending vehicle. Though the motorcycle driver also comes out to have shown lack of care and caution and was guilty of wrongful driving and the motorcycle carrying three riders was against traffic rules. The motorcycle driver is to share blame for happening of the accident. But at the same time respondent No.1 – driver of the offending vehicle cannot be given clean chit. In my considered view the drivers of the motorcycle and

offending vehicle share the blame equally and not to the extent of 2/3rd and 1/3rd respectively, as has been done by the Tribunal.

Issue No.1 is modified accordingly.

Now coming to issue No.2. The petitioner-claimant getting his own statement recorded as PW2 had stated that he had suffered crush injuries on his face, wound injuries near eye, fracture of left foot, backbone, thigh and some injuries on various parts of the body; that he was treated for 13 days at PGI, Chandigarh, surgery was performed on his left foot and plastic surgery was also performed with regard to backbone; that he was referred to Civil Hospital, Ambala for treatment, he remained under treatment for 37 days at M.M. Medical College and Hospital, Mullana, in that way, he had spent more than Rs.1,30,000/- on his treatment, diet, transportation facilities and attendant etc. PW3 Dr.Anil Kumar deposed regarding admission of claimant/injured in their institute from 22.1.2009 till 5.2.2009 stating that it was a case of road side accident having multiple injuries with multiple facial laceration and abrasions; that the injured was having fracture of clavicle left side. He had proved various supporting documents. PW4 Dr.Rajiv Aggarwal deposed that the injured was brought to his hospital on 15.2.2009 and he was discharged on 23.2.2009, receiving a sum of Rs.12,300/- as treatment charges. He also placed on record various supporting documents. PW5 Dr.Sanjay Aggarwal deposed that patient Gurdeep alias Amit was brought to his private hospital on 24.2.2009, where surgery was performed on 6.3.2009 and he was discharged on 1.4.2009. This witness stated that the patient was having multiple non healing ulcers over the body parts and he

had charged a sum of Rs.35,600/- from the patient. PW6 Dr.Bimla Anand, who had medico-legally examined the claimant/injured at Civil Hospital, Ambala on 22.1.2009 proved the MLR as Ex.P19, the MLR showing six injuries. Whereas PW7 Dr. Vikas Paul, a member of Medical Board to assess disability of the claimant stated that permanent disability was found to be 15% on account of old case; skin grafting was done; right knee lumbar region and right foot with cosmetic deformity with difficulty in squatting. He had proved disability certificate as Ex.P124.

The Tribunal has awarded the compensation under various heads, which are as under:

1.	Treatment expenses	Rs.74,000/-
2.	Conveyance charges	Rs.6,000/-
3.	Special attendant	Rs.5,000/-
4.	Special diet	Rs.5,000/-
5.	Future loss of earnings	Nil
6.	Loss of amenities of life	Rs.30,000/-
7.	Loss of academic year	Rs.30,000/-
8.	Pains and sufferings	Rs.30,000/-
9.	Future medical treatment	Nil
	Total	Rs.1,80,000/-

While granting reimbursement of Rs.74,000/- towards medical 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. Thus, the compensation under that head is enhanced to **Rs.80,000/-**.

With such type of injuries suffered by the injured, claimant

would be requiring future medical treatment and some arrangement for the same deserves to be made. I award a sum of **Rs.20,000/-** under that head.

The compensation granted to the claimant as transportation expenses is to the extent of Rs.6,000/- only, which in my view is a meagre amount. With injured having remained hospitalized for a considerable time and undergoing various tests and keeping in account the view the visits for follow-up treatment, the amount needs to be enhanced to **Rs.25,000/-** and it is ordered accordingly.

The Tribunal further awarded a sum of Rs.5,000/- on account of special attendant, which in my view is on lower side. Thus, I enhance it to **Rs.25,000/-**.

Similarly, the amount of Rs.5,000/- awarded towards special diet is on lower side, which is enhanced to **Rs.25,000/-**.

The Tribunal has awarded a sum of Rs.30,000/- each (Total **Rs.90,000/-**) under the heads, pain and suffering, loss of amenities of life, loss of academic year, which in my view is just and proper and do not call for any interference. The same are kept intact.

The Apex Court in judgment **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Ltd. and another, 2014(14) SCC 396** has provided the yardstick for award of compensation to a child, who suffered permanent disability in a motor vehicular accident providing that for permanent disability upto 10%, Rs.1lakh is to be awarded besides some more compensation under different heads.

As deposed by Whereas PW7 Dr. Vikas Paul, the permanent

disability in this case is 15%. Thus, compensation of **Rs.1,50,000/-** is awarded to him on that score.

No amount has been awarded to the claimant on account of loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of **Rs.30,000/-** is awarded to him under that heads.

With such type of injury, claimant may not be able to find a suitable life partner. Thus, I award a sum of **Rs.50,000/-** under that head.

Thus, the total compensation comes out to Rs.4,95,000/-.

The issue No.2 is modified accordingly.

Now coming to issue No.3. While modifying issue No.1, the drivers of the motorcycle and offending vehicle are to share the blame equally. Therefore, finding of the Tribunal that the respondents No.1 to 3 were liable to pay one third amount jointly and severally is set aside and they are held liable to pay 50% of the compensation amount instead of 1/3rd. Issue No.3 is modified accordingly.

The findings on issues No.4 and 5 are affirmed.

The Tribunal has awarded compensation of Rs.60,000/-being one third of Rs.1,80,000/- along with interest @ 6% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.4,95,000/-. The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.4,95,000/- and liability to pay the amount to the extent of 50% being joint and several of all the respondents. The amount be given in cash to

the claimant.

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

22.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No