

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

(1) FAO No. 196 of 2015 (O&M)
Date of Decision: September 9, 2019

Bhup Singh ...Appellant

Versus

Mainpal and others ...Respondents

(2) FAO No. 197 of 2015 (O&M)

Subhash ...Appellant

Versus

Mainpal and others ...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Siddharth Gulati, Amicus Curiae,
for the appellants in the cases.

Mr. Naresh Kumar Ganga, Advocate,
respondent Nos. 1 and 2.

Brig. B.S. Taunque, Advocate,
for respondents No.3.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of the above mentioned two appeals, which have been filed seeking enhancement of the amount of compensation as awarded by the Motor Accident Claims Tribunal, Fatehabad.

2. It is not in dispute that the accident took place on 24.12.2012 between the two claimants, namely Subhash, who was driving the motor

cycle bearing registration No. HR-51Q-3670 along with Bhup Singh, who was pillion rider and a Bolero vehicle bearing registration No. HR-22F-9675, being driven in a rash and negligent manner by Mainpal—respondent No.1. Due to the impact of the accident, the claimants received multiple injuries and were immediately admitted in General Hospital, Fatehabad and subsequently shifted to Sarvodaya Multispeciality Hospital, Hisar. An FIR No. 638 dated 26.12.2012 for the commission of an offence punishable under Sections 279, 337 and 338 IPC was registered against the driver of the offending vehicle, namely Mainpal.

3. Two claim petitions were filed, one by Bhup Singh (appellant in FAO 196 of 2015), who was pillion rider, stating that on account of the injuries suffered by him in the accident he remained admitted in the hospital from 24.12.2012 to 10.1.2013 and suffered permanent disability to the extent of 30% and thus claimed a sum of ₹20 lakhs as compensation on account of the injuries suffered by him against Mainpal, driver and National Insurance Company, the insurer of the offending vehicle.

Similarly, Subhash (appellant in FAO 197 of 2015) averred in his claim petition that on account of the multiple injuries suffered by him in the occurrence that took place on 24.12.2012, he remained admitted in the hospital from 24.12.2012 to 4.1.2013 and suffered physical and mental agony and thus he also claimed a sum of ₹20 lakhs as compensation.

4. The claim petitions were contested and, after appreciation of the evidence led by the parties, the Tribunal assessed compensation at ₹4,32,635/- and ₹2,83,935/- payable to Bhup Singh and Subhash respectively. However, the Tribunal, while taking into account the fact that

the driver of the motor cycle, namely Subhash and the pillion rider, namely Bhup Singh were not wearing helmets at the time of the accident, held that since both the claimants were without helmets and as there was contributory negligence, as such they shall be entitled to 70% of the amount of compensation as assessed. Aggrieved against the said award and the deduction of 30% compensation, the instant appeals have been filed. Since the insurance company has not challenged the compensation as assessed by the Tribunal, the factum of the accident and the negligence of the driver of the offending vehicle is not in dispute.

5. In view of the above, what has to be looked into is, whether adequate compensation has been awarded to the claimants on account of the multiple injuries suffered by them in the accident that took place on 24.12.2012 and whether the Tribunal has erred in holding that there was contributory negligence on the part of the claimants since they were not wearing helmet at the time of accident and thereby deducting 30% of the awarded amount.

6. Learned counsel for the appellant—Bhup Singh (appellant in FAO 196 of 2015) submits that the amount of compensation awarded by the Tribunal is on the lower side. It is submitted that in the accident the appellant suffered a permanent disability and he remained admitted in the hospital from 24.12.2012 to 10.1.2013, but the Tribunal has not specifically awarded any amount of compensation on account of attendant charges, transportation etc.

7. Similarly with regard to Subhash (appellant in FAO 197 of 2015), it is submitted that the appellant remained admitted in the hospital

from 24.12.2012 to 4.1.2013, but the Tribunal has not specifically awarded any amount of compensation on account of attendant charges, transportation etc.

8. Per contra, learned counsel appearing on behalf of the respective respondents submit that adequate amount of compensation has been awarded by the Tribunal and no interference is called for by this Court in these appeals.

9. I have heard learned counsel for the parties and perused the impugned award.

10. In a judgment rendered in **Raj Kumar Vs. Ajay Kumar and others (SC) 2011 (1) SCC 343**, a formula has been prescribed for assessing compensation to be paid to a claimant who has suffered injuries resulting permanent disability, wherein it has been held that he has to be awarded compensation under the following heads namely:-

“F. Motor Vehicles Act, 1998, Sections 147, 166 and 173- Injury to a person in Motor accident- He is to be awarded compensation under following heads:- Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence

of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)”

11. Further a Division Bench of this Court in **Piara Singh and others Versus Satpal Kumar and other 2006 (4) R.C.R.(Civil) 546** while considering the issue as to what would be an adequate compensation to be awarded to a person who has suffered permanent disability has held that ₹2,000/- of 1% disability would be an appropriate compensation to be awarded under the head of permanent disability.

12. As already noticed, Tribunal, after scrutiny of the evidence brought on record by the respective parties, assessed compensation at ₹4,32,635/- and ₹2,83,935/- payable to Bhup Singh and Subhash respectively. Bhup Singh remained admitted in the hospital from 24.12.2012 to 10.1.2013. The Tribunal awarded a sum of ₹20,000/- on account of pain and suffering and special diet, while further allowing a sum of ₹3,17,635/- towards medical expenses, which stood proved on the record. He was further allowed a sum of ₹60,000/- towards permanent disability, which stood proved by Dr. T.R. Mittal PW.4, vide disability certificate (Ex. P.156). He was further allowed a sum of ₹35,000/- on account of loss in income.

13. As far as claimant—Subhash is concerned, he remained admitted in the hospital from 24.12.2012 to 4.1.2013. His medical expenses to the extent of ₹2,28,935/- were allowed by taking into account the bills proved on record as Ex. P.3 and Ex. P.5 to Ex. P.68. Further he was allowed, a sum of ₹15,000/- towards pain and suffering and special diet, ₹20,000/- on

on account of injuries suffered by him. However, the Tribunal did not grant any specific amount on account of attendant charges, transportation, special diet etc., in view of the judgment rendered in **Raj Kumar's cases (supra)**, therefore, the compensation payable to the appellants deserves to be enhanced.

14. Keeping in view above facts, this Court is of the opinion that the appellants are entitled to specific compensation on account of attendant charges, transportation etc., therefore, the compensation, which claimants are entitled to, is reassessed as under:-

Compensation payable to Bhup Singh

Sr. No.	Heads of claim	Amount
1	Compensation on account of loss of earning for a period of six months	₹ 35,000
2.	Loss of income due to 30% disability including future prospects	₹ 60,000/-
3.	Compensation towards attendant charges	₹ 3600
4.	Compensation towards transportation	₹ 4000
5.	Compensation for nutritious diet	₹ 15000
6.	Medical expenses and hospital charges	₹ 3,17,635
7.	Pain and suffering	₹20000
8.	Total	₹4,55,235

Compensation payable to Subhash

Sr. No.	Heads of claim	Amount
1	Compensation on account of loss of earning for three months	₹ 20,000
2.	Loss of income due to 10% disability including future prospects	₹ 20,000
3.	Compensation towards attendant charges	₹ 3600
4.	Compensation towards transportation	₹ 4000
5.	Compensation for nutritious diet	₹ 15000
6.	Medical expenses and hospital charges	₹ 2,28,935

Sr. No.	Heads of claim	Amount
7.	Pain and suffering	₹ 15,000
8.	Total	₹3,06,535

15. Now the second question that needs to be addressed is, whether deduction of 30% from the awarded amount of compensation is justified?

16. Learned counsel appearing on behalf of the appellants herein submits that deduction of 30% from the awarded amount of compensation is not justifiable, as none of the appellants herein could be faulted for the accident that took place and merely because they were not wearing the helmets, they could not be denied entire amount of compensation. In support of his contentions, he relies on the judgment of this Court in **Rupinder Sharma alias Komal Sharma and others Versus SPR Basant Kumar and another 2014 ACJ 869** to contend that contributory factor must be to the extent of collision and if the claimant or deceased was not wearing helmet, he/she could not be stated to be negligent in causing accident.

17. The question of contributory negligence and test thereof came to be settled in a judgment rendered by the Hon'ble Supreme Court in **Andhra Pradesh State Road Transport Corporation and another Vs. K. Hemlatha and others (2008) 6 SCC 767**. In that case, the Tribunal held that it was a case of contributory negligence and, therefore, made deduction of 1/3rd of the total amount of compensation as assessed. On appeal, the High Court came to hold that there was no question of any contributory negligence. On further appeal, the Hon'ble Supreme Court held that it has to be determined who contributed to the accident and if a person was driving

his vehicle negligently and rashly, blame cannot be apportioned, while further holding that in case damages are to be apportioned, it must be established that the claimant was at fault. In **Andhra Pradesh State Road Transport Corporation's case (supra)**, the Hon'ble Supreme Court observed as under:-

“13. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.”

18. In the instant case, there is no finding to the effect that Subhash was driving negligently. The Tribunal, while going through the evidence, noted that the cross-examination of the claimants/appellants could not be shattered and, therefore, came to the conclusion that this was a case of rash and negligent driving of the offending vehicle, which stood registered with the Insurance Company. Even the driver of the offending vehicle did not step into the witness box to dispute the fact that he was driving rashly or negligently. Therefore, merely because the claimants were not wearing the helmet at the time of accident, it cannot be held that they contributed towards the accident. Breach of rules in driving two wheeler without helmet by itself cannot be treated as composite or contribution to negligence on their part. Reference in this regard can be made to the judgment rendered in

New India Assurance Co. Ltd. through its Divisional Manager Meerut through its Authorised Officer Versus Smt. Sharda Devi and others 2011 (23) R.C.R. (Civil) 185, wherein the Allahabad High Court, while following the judgment of the Hon'ble Supreme Court in **Sudhir Kumar Rana Versus Surinder Singh and others 2008 (3) R.C.R. (Civil) 265**, held as under:-

“5. The Tribunal has taken into consideration the statement of the wife, who was riding on the pillion, that his husband Rakesh was wearing helmet. Further in view of the findings based on oral evidence, which is not disputed that the motor cycle was being driven on the left side of the road and that Indica Car suddenly took a turn towards right and collided with the motor cycle, there was no question of applying principles of contributory negligence. The negligence in wearing helmet and allowing the chidden to ride on the back seat, common with most of lower middle class families travelling on two wheelers cannot be taken as composite or contributory negligence on the part of the deceased, when it is found that he was liable for any wrong doing in driving or otherwise on account of which accident was caused. The breach of rules in driving two wheeler without helmet and driving it with three pillion riders, by itself cannot be treated as composite or contribution to negligence on his part...”

19. In **Sudhir Kumar Rana's (supra)**, the Hon'ble Supreme Court has even held to the extent that if a person drives a vehicle without a licence, he commits an offence, which by itself may not lead to a finding of negligence as regards the accident. In **Sudhir Kumar Rana's (supra)**, the Hon'ble Supreme Court held as under:-

“8. If a person drives a vehicle without a licence, he commits

an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

9. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.

10. We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. Appellant is entitled to the said sum of Rs. 30,000/- by way of compensation with interest at the rate of 7=% per annum from the date of the award till making of the payment. Even otherwise there is no reason as to why in view of the nature of the injuries he has suffered, he should be deprived of even the petty sum of Rs.30,000/- by way of compensation. The appeal is allowed with the aforementioned direction. No costs.”

20. In view of the above discussion, though it can be said that the appellants/claimants committed an offence by not wearing helmets, but that fact itself cannot be held liable to be a factor contributing towards the accident and as such the appellants cannot be held responsible for causing composite or contributory negligence. Therefore, the Tribunal has gone wrong in deducting 30% of the total amount of awarded compensation.

21. Consequently, these appeals are allowed. The award of the Tribunal to the extent it deducted 30% of the awarded amount is set aside.

The appellant—Bhup Singh shall be entitled to enhanced compensation of

₹4,55,235/- whereas the appellant—Subash shall be entitled to enhanced compensation of ₹3,06,535/-. The amount in excess over what was awarded by the Tribunal will also attract interest @7.5% from the date of the petition till the date of payment.

September 9, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes