

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

FAO-1704-2017(O&M)

Date of decision:-5.8.2019

Harnek Singh @ Goldi

...Appellant

Versus

Mohammad Mustdeen and others

...Respondents

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

Argued by: Mr.Punit Jain, Advocate
for respondent No.3 – insurance company.

H.S. MADAAN, J.

Petitioner/claimant Harnek Singh alias Goldi had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Mohammad Mustdeen – driver, Rafiq – owner and Siri Ram General Insurance Company Ltd. - insurer of truck bearing registration No.HR-58A-1386 (hereinafter referred to as the offending vehicle), claiming compensation to the tune Rs.20 lakhs on account of suffering injuries in a motor vehicular accident.

As per the case of the claimant on 11.10.2014, he was returning home at village Tepla, Tehsil Rajpura, District Patiala on his motorcycle bearing registration No.PB-39C-7633; that at about 10/11:00 p.m., when he had reached in the area of Multani Dhaba, Rajgarh, Tehsil Rajpura, then the offending vehicle was parked on the road without giving

any indicator of parking lights; that the motorcycle of the petitioner/claimant struck against the offending vehicle, which was parked negligently by respondent No.1 Mohammad Mustdeen, resultantly the claimant received grievous injuries on his head, chest, feet, skull and ribs of the chest; that he was firstly taken to Civil Hospital, Ambala from where he was referred to Government Medical College and Hospital, Sector 32, Chandigarh; that he had spent Rs.3,50,000/- on his treatment and Rs.70,000/- on transportation besides Rs.50,000/- on special diet; that he was aged about 26 years at the time of accident and due to injuries suffered by him in the accident, he has become permanently disabled and unable to do his routine work; that earlier he was working as a labourer, earning Rs.20,000/- per month; that an FIR No.171 dated 12.10.2014/10.8.2014 for the offences under Sections 283, 337, 338 and 427 IPC was registered with Police Station Rajpura.

On being put to notice, all the three respondents had appeared and filed written statements. Respondents No.1 and 2 filed joint written statement whereas respondent No.3 filed separate written statement.

In the written statement filed by the former, they had denied that claimant received injuries in the accident. According to them, the claimant himself was negligent and the petition deserves to be dismissed.

Whereas in the written statement filed by respondent No.3 – insurance company, it had taken up various preliminary objections submitting that the claim petition was not maintainable; that the claim of the claimant/petitioner was false and there was no negligence on the part of respondent No.1. Material assertions in the claim petition were denied

contending that a wrong FIR had been lodged against respondent No.1 with regard to the accident. Denying the remaining allegations in the claim petition, such respondent also prayed for dismissal of the petition.

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

After contest, the Tribunal while allowing the petition vide award dated 1.7.2016, awarded compensation of Rs.79,500/- to the claimant along with interest @ 9% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally.

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 respondents and respondent No.3 – insurance company put in appearance through counsel. Initially counsel for the appellant had appeared but later on there was no representation on behalf of the appellant.

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

While deciding issue No.1, the Tribunal has come to the conclusion that it was a case of contributory negligence and the claimant himself was also at fault in happening of the accident. The Tribunal has observed that claimant had admitted that he struck against wrongly parked truck. While referring to various judgments of this Court, wherein it was observed that in every case where a vehicle coming from behind hits the stationary vehicle, it cannot be said that the entire negligence is of the

vehicle, which stood parked, the Tribunal has observed that it did not come in evidence that there was no light on the road and that headlight of the motorcycle and many other source of light available on the road and also the vehicle being a truck, which is quite a big vehicle, the motorcyclist can be said to have not exercised proper care while driving the motorcycle, in that way, he was equally negligent in causing the accident.

These observations and verdict of contributory negligence given by the Tribunal, to say the least, are misconceived based upon misappraisal of evidence and wrong interpretation of law. It needs to be mentioned here that claimant appearing as CW1 in his affidavit Ex.CW1/A had repeated on oath his case as given in the claim petition. Although he was cross-examined at length but his credibility could not be shaken on any material point. The respondent No.3 – insurance company had examined Sukhwinder Singh, Ahlmad, who had tendered in evidence certified copy of the RC of the offending vehicle as Ex.R1, certified copy of form of driving licence as Ex.R2, certified copy of the charge-sheet as Ex.R4 and copy of certificate of fitness as Ex.R5. Thus it comes out from the record that formal FIR was registered against respondent No.1 for having caused accident by his rash and negligent act of parking the offending vehicle on the road resulting in the accident. After completion of investigation, he was challaned and sent up to face trial. He has been charge-sheeted by the criminal Court in that regard. CW2 Daulat Ram in his affidavit Ex.CW2/A has fully corroborated the statement of the claimant stating that the offending vehicle was parked on the road without

giving any indicator or parking light. It was negligently parked by respondent No.1, which resulted in the accident and FIR was registered against respondent No.1. In his cross-examination, he stood unshaken. As against that, the respondents had not brought even an iota of evidence to rebut such cogent and convincing evidence brought on file by the claimant and to prove their version as given in their respective pleadings. In absence of any evidence, the Tribunal merely on the basis of guesswork and conjectures has given the finding that it was a case of contributory negligence. The motorcyclist going on the road could not have possibly anticipated that some vehicle was parked on the road unless some indications like blinking parking light was there or it was surrounded by some sticks etc. or some warning signal was there. Therefore, the finding of the Tribunal to hold the motorcycle driver also responsible for the accident was uncalled for and wrong.

Learned counsel for the insurance company has referred to authority *Nishan Singh & Ors. Versus Oriental Insurance Company Ltd. through Regional Manager & Ors., 2018(2) RCR(Civil)891* by the Apex Court, wherein it was observed that question of contributory negligence arises when both parties are involved in the accident due to rash and negligent driving and that when car was following truck and no fault can be attributed to truck driver, blame must rest on driver of car for having driven his vehicle rashly and negligently.

This judgment does not help the insurance company for various reasons. Firstly none of the respondents has admitted the accident in question what to talk of taking up a plea of contributory negligence.

Furthermore, the respondents have not led any evidence in that regard. As already observed, respondent No.1, who could be an important witness for the respondents did not get his statement recorded in that regard. The witness examined by the respondents was not present at the spot and his testimony is not of much value. It was for the respondents to show that the offending vehicle was not parked on the road or that the parking lights were blinking or further that all the precautionary measures had been taken to ensure that the vehicles coming on the road were warned about such vehicle having been parked on the road. In absence of such evidence, the plea of contributory negligence cannot be sustained. This judgment does not come to help of the appellant – insurance company in any manner.

However, in FAO-1667 of 1997 having title '**National Insurance Company Ltd. Versus Sandeep Madan and others**', decided on 26.7.2016 by a Co-ordinate Bench of this Court wherein it was observed as under:

I have gone through the citations referred by learned counsel for the appellant. Each case has its own peculiar facts and circumstances. The contributory negligence of the driver of the vehicle which hit stationary vehicle was fixed keeping in view the facts and circumstances of the cases referred by learned counsel for the appellant. If a vehicle is parked in the middle of the road during night time and some vehicle coming on road ram in it, no inference can be drawn that driver of vehicle coming on road was negligent. If a person is driving vehicle at a reasonable speed

during night hours, he may notice stationary vehicle or any other substance lying in the middle of the road only when he reaches very near and by that time, despite applying full brakes, it may not be possible to stop that vehicle and to avoid hitting the stationary vehicle or substance lying on the road. In such circumstances, attributing negligence or contributory negligence to the driver of moving vehicle in causing the accident will be very harsh conclusion.

*In case of **Jaspal Kaur and others Vs. Sach Khand Bricks Gram Udyog and others (supra)**, there was no evidence that the truck was parked on the metalled road. Keeping in view this fact, contributory negligence of the driver of the vehicle which hit stationary truck was held.*

*In case of **Lachhmi and others Vs. Ranjit Singh (supra)**, the facts of the case are not clear, as such, it cannot be made out as to under what circumstances, the driver of both the vehicles which met with accident were found to be equally responsible for the accident.*

*In case of **Subhash Chand and others Vs. Satya Rani and others (supra)**, the accident was not with a stationary vehicle, as such, the observations in that case has no impact on the facts and circumstances of this case.*

*In case of **Mewa Devi and Ors Vs. Ram Kumar and Ors 2016 (2) PLR 739**, this Court has observed that if a vehicle is parked on road without any indication, reflector, light, flag etc.*

fixed at the spot to indicate parking of vehicle on the road, there is no contributory negligence on the part of vehicle which came from behind and hit the stationary vehicle.

Therefore, finding of the Tribunal on issue No.1 is modified and this issue is decided in favour of the claimant and against the respondents holding that petitioner/claimant Harnek Singh has suffered injuries in a motor vehicular accident, due to negligence on the part of respondent No.1 while parking of the offending vehicle on the road without any indication, which is owned by respondent No.2 and insured with respondent No.3.

Now coming to issue No.2. The claimant has been awarded consolidated amount of Rs.1,59,000/- as compensation without granting the compensation separately under various conventional heads.

The Tribunal has observed that the claimant has proved medical bills of Rs.58,250/-. However, as a matter of common knowledge 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 inadvertently or some of the bills/receipts etc. get lost or misplaced. Considering that fact, I award a sum of **Rs.60,000/-** under the head medical treatment.

With such type of injuries suffered by the injured, claimant would be requiring further treatment and some arrangement for the same deserves to be made. I award a sum of **Rs.25,000/-** under that head.

No amount has been awarded by the Tribunal towards pain and suffering separately. In view of the number of injuries suffered by the

claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injuries including a serious head injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.25,000/-** under that head.

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, some amount should be awarded towards transportation expenses. I award a sum of **Rs.25,000/-** under that head.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.20,000/-** under that head.

No amount has been awarded to the claimant on account of attendant charges separately. The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.25,000/-** is accordingly awarded to the appellant/claimant on that score.

No amount has been awarded to the claimant on account of loss of amenities and 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.50,000/- is awarded to him under that heads.

Thus the total amount of compensation comes out to **Rs.2,30,000/-**.

The Tribunal has awarded compensation of Rs.79,500/-. The

same is enhanced to Rs.2,30,000/-.

Since in view of the above discussion, respondent No.1 has been found to be guilty of rashness and negligence in wrongly parking of the offending vehicle on the road without taking necessary precautionary measures, respondent No.1 being driver, respondent No.2 being owner and respondent No.3 being insurer of the offending vehicle are jointly and severally liable to pay the compensation amount. Furthermore, the conclusion arrived at by the Tribunal that it was a case of contributory negligence has also been set aside. The other terms and conditions given in the award shall apply to the enhanced amount as well.

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

5.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No