

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

FAO-5378-2011(O&M)

Date of decision:-9.5.2019

Harbhajan Lal alias Bhajan Lal

...Appellant

Versus

Surinder and others

...Respondents

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

Present: Mr.Dheeraj Narula, Advocate
for the appellant.

Ms.Sonia Rai, Advocate for
Mr.Rajbir Singh, Advocate
for respondents No.1 and 2.

Ms.Anamika Mehra, Advocate
for respondent No.3.

H.S. MADAAN, J.

The petitioner/claimant Harbhajan Lal alias Bhajan Lal aged about 35 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Surinder – driver, Rajinder Singh – owner and The New India Assurance Company Ltd. - insurer of Pickup Mahindra having registration No.HR-55-D/1038(hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.50 lacs on account of suffering injuries in a motor vehicular accident.

As per the version of the claimant, he had been working as a skilled mason, earning Rs.250/- per day; that on 2.6.2009 at about 10:30

a.m., he was riding motorcycle bearing registration No.HR-24F-4682 going towards village Moujdeen side in order to drop Surjit Kaur and Mahinder Pal at Sirsa; the latter two were pillion riding on the motorcycle; that one Joginder Singh along with his relative was riding his own motorcycle, which was following the motorcycle being driven by the claimant and when the motorcycle driven by the claimant reached near Jagan Nath Public School, Sirsa on Rania road and time was about 10:30 a.m., then the offending vehicle came from back side being driven at a very fast speed and in a rash and negligent manner by respondent No.1 – Surinder and struck against the motorcycle being driven by the claimant from behind, as a result, the claimant and two pillion riders fell down on the road; the claimant suffered simple and serious injuries on his person; that after causing the accident, respondent No.1 ran away from the spot leaving the offending vehicle behind; the claimant had suffered multiple injuries including fractures on left leg on three places and head injury; that he was shifted to General Hospital, Sirsa, where first aid was provided to him and keeping in view his serious condition, he was referred to Metro Hospital, Hisar where surgery was performed upon him; that the claimant get treatment from Dr.V.K. Neuro Care and Research Centre, Hisar and he remained admitted in the hospital for a considerable time and a sum of Rs.3,00,000/- was spent on his treatment; that he was still getting treatment at the time of filing of claim petition; formal FIR No.334 dated 2.6.2009 for the offences under Sections 279, 337, 427 IPC was registered against respondent No.1 – Surinder with Police Station City, Sirsa. According to the claimant before the accident, he was hale and hearty but

due to injuries suffered by him, he has become permanently crippled and not able to perform his routine affairs.

On notice, all the three respondents appeared. Respondents No.1 and 2 filed joint written statement, whereas respondent No.3 filed separate written statement. In the joint written statement filed by respondents No.1 and 2, they refuted the assertions in the claim petition submitting that a false criminal case was registered by the police authorities against the respondent No.1 and the offending vehicle had been involved just to grab amount of compensation.

In the written statement filed on behalf of respondent No.3, it took up various legal objections challenging the maintainability of the claim petition and locus standi of the claimant to bring the same. According to the answering respondent, respondent No.1 was not having a legal and valid driving licence at the time of accident and terms and conditions of the insurance policy were violated; that the claim petition had been filed by claimant in collusion with respondents Nos.1 and 2.

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

On the pleadings of the parties, following issues were framed:

1. Whether petitioner Harbhajan Lal alias Bhajan Lal has sustained injuries in an accident caused by respondent No.1 Surinder while driving vehicle Pick up Mahindra No.HR-55/1038 rashly and negligently? OPP.
2. Whether the petitioner is entitled to any compensation, if so, to

what extent and from whom? OPP.

3. Whether the petition in question is not maintainable in the present form and the petitioner has no locus-standi to file the same? OPR.
4. Whether the insured violated any of the terms and conditions of the Insurance Policy in question, if so, its effect? OPR3.
5. Whether the petitioner has suppressed the true and material facts from the Court, if so, to what effect? OPR.
6. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, while allowing the petition vide award dated 8.4.2011, the Tribunal awarded compensation of Rs.3,51,000/- along with interest @ 9% per annum from the date of filing of the petition till realization, for which all the respondents were jointly and severally liable, besides cost of the petition to the claimant.

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

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

A perusal of the impugned award passed by the Tribunal goes to show that the Tribunal took note of the fact that the petitioner is a young man of 35 years whose left leg got fractured in the accident, in addition to that he had suffered neuro injury on head becoming physically disabled to the extent of 40% as per the disability certificate Ex.P1.

Keeping in view the avocation of the claimant as mason/labourer, the disability sustained by him in the accident has definitely affected his income. The Tribunal has awarded Rs.2,58,000/- towards treatment expenses on the basis of hospital bills and a sum of Rs.25,000/-towards future expenses. A sum of Rs.35,000/- was awarded towards pain and suffering.

Whereas the Tribunal has awarded a sum of Rs.10,000/- to the claimant towards transportation and special diet. However, I find keeping in view the nature of the injuries, the amount so awarded is on the lower side and it should have been awarded separately under various heads. Therefore, a sum of Rs.20,000/- towards transportation charges, Rs.20,000/- as special diet and Rs.20,000/- for services of attendant required to look after and take care of the claimant soon after he received injuries during the period of his hospitalization and thereafter also and further while the claimant was taken to doctor for follow up treatment were awarded to the claimant.

The Tribunal has awarded a sum of Rs.1,25,000/- towards permanent disability. However, I find this amount to be on lower side. Learned counsel for the claimant has referred to authority **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396** by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

- (i) For permanent disability upto 10% Rs. One Lakh.
- (ii) Disability above 10% and upto 30% ₹ 3 lakhs.

(iii) Disability upto 60% ₹ 4 lakhs.

(iv) Disability upto 90% ₹ 5 lakhs.

(v) Disability above 90% ₹ 6 lakh.

The case of the claimant is covered by third eventuality wherein on account of disability up to 60%, an amount of Rs.4 lakhs was granted as compensation. Therefore, the compensation awarded to the tune of Rs.1,25,000/- is enhanced to Rs.4 lakhs.

The Tribunal has awarded a sum of Rs.15,000/- to the claimant towards the loss of enjoyment of life. However, keeping in view the fact that the claimant would not be able to walk, run and work like a normal human being as he could do prior to the accident, this amount is found to be on lower side and is enhanced to Rs.35,000/-.

In that way, the total compensation comes out to Rs.8,13,000/-.

The Tribunal has reduced the compensation payable by 25% observing that the claimant-injured had also contributed to the accident to some extent by triple riding. However, I do not find himself in agreement with the Tribunal on that point. Though triple riding is not permissible as per law but then it has to be determined as to whether the claimant contributed to the accident, the answer in this case has to be in negative. The offending vehicle had hit the motorcycle from behind. Resultantly all the three riders including the claimant had fallen down and suffered injuries. It is not the case where the driver of the motorcycle on account of having two other pillion riders could not control the motorcycle properly resulting in the accident.

Learned counsel for the claimant has referred to authority **Devisingh Versus Vikramsingh and others, 2008(2)RCR(Civil) 107** wherein it was observed that when driver of motorcycle carrying two pillion riders in violation of Section 128 which allowed only one pillion rider and the said motorcycle had met with an accident with a jeep, breach of safety provisions does not per se guilty of contributory negligence on the part of the driver of motorcycle. Learned counsel for the claimant has further referred to judgment **Karnail Singh and others Versus Balwinder Singh and another, 2014 ACJ 1762** by a Co-ordinate Bench of this Court wherein dealing with a case when a car had dashed against the motorcycle from behind resulting in injuries to motorcyclist and two pillion riders and the Tribunal had found that motorcyclist and pillion riders were guilty of contributory negligence as three persons were riding on a motorcycle and held that claimants were entitled to 50% of compensation awarded. The Co-ordinate Bench had observed that three persons travelling on a motorcycle may be guilty of traffic offence but there is no reason to make any inference regarding negligence as contributory by the only fact that three persons were going on a motorcycle. Learned counsel for the claimant has further referred various other judgments in that regard like **IFFCO Tokio General Insurance Company Ltd. Versus Akhtar Hussain and others, 2015(2) RCR(Civil) 840**, **United India Insurance Company Limited Versus Kailasho and others, 2015(2) PLR 230** by another Co-ordinate bench of this Court.

Therefore, it is found that the claimant was not guilty of contributory negligence and compensation awarded to him is not to be

reduced by 25% as ordered by the Tribunal.

The Tribunal has awarded a total sum of Rs.3,51,000/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till realization.

In that way, the enhanced amount comes to Rs.4,62,000/- (8,13,000 - 3,51,000). The appellant/claimant shall be entitled to recover the enhanced amount from respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment.

With such modification, the appeal is allowed partly.

9.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No