

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

FAO No.1362 of 1999

Date of decision: 2nd November, 2021

Des Raj

... Appellant

Versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sumeet Goel, Advocate for the appellant.

Mr. D.K. Mittal, DAG Haryana
for respondents No.1 and 2.

Mr. S.S. Brar, Advocate for respondent No.3.

FATEH DEEP SINGH, J.

The instant appeal has been filed by claimant Des Raj challenging the Award dated 05.02.1999 of the Motor Accident Claims Tribunal, Ambala. Heard learned counsel for the parties and perused the records of the case.

The brief facts of the case are that on 03.05.1997 in the area of Village Shahpur, Tehsil and District Ambala, the claimant Des Raj after selling his vegetables was coming to his village on his scooter bearing registration No.HR01-2364 (in short, 'the Scooter') and around 7:30 a.m. near the Cold-Storage on the GT Road the offending bus bearing registration No.HR5B-2577 being driven rashly and negligently which was owned by respondents No.1 and 2 and being driven by respondent No.3 came from the opposite side and hit against the Scooter

resulting in accidental injuries to the claimant. The claimant claims that he received multiple grievous injuries resulting in fracture of the right arm, injuries on head, right eye etc. and was rushed to Civil Hospital and then referred to PGIMER Chandigarh where he remained admitted upto 06.06.1997. After his discharge the claimant got himself treated from Monga Hospital, Ambala Cantt. where he claims that the treatment is still being carried-on when this claim petition was filed on 04.08.1997.

The common stand of the respondents was of absolute denial denying that the bus in question was ever involved in any accident and that a false police case has been got registered. The Tribunal framed the following issues:-

1. Whether the accident in question took place due to rash and negligent driving of bus No.HR5B-2577 by respondent No.3 resulting into injuries to the claimant?
OPP
2. If issue No.1 is proved, to what amount of compensation, the claimant is entitled to and from whom? OPP
3. Relief.

The claimant examined eye-witness of the accident Lakhbir Singh as PW2 who reiterated the manner in which the accident had taken place attributing acts of rash and negligent driving to respondent No.3 and thereafter, detailed the manner of the accident and the resultant injuries. Copy of the FIR has been brought on record as Ex.P3. On the

other hand, respondent No.3 Dharam Pal driver of the offending vehicle testified as RW1 and in his cross-examination admitted having been challaned by the police pertaining to this accident and squarely accepted the fact that he did not ever represent against his alleged false implication in the motor accident case. From the above evidence, it is well established that in no uncertain terms an accident between the scooter and the bus has certainly taken place and launching of prosecution against the respondent driver of the offending bus clearly establishes beyond any doubt that it was due to the fault of the driver of the bus he has been prosecuted by the police. Learned Tribunal has rightly concluded it so. More so, there is sharp contradiction in the written statement filed by the respondents and the admission by the driver of the bus respondent No.3 in his cross-examination, which certainly goes against the respondents. The findings of the learned Tribunal on this issue No.1 are therefore upheld.

The wife of the injured namely Kuldeep Kaur has testified as PW3 and serialized how her husband has received multiple injuries resulting in his hospitalization for a period of almost one month and he remained under medical treatment for six months. As has been contended on behalf of learned counsel for the appellant/claimant which could not be controverted by the counsel representing the other side and the testimony of PW1 Dr. M.K. Tewari, Neuro Surgeon has established beyond any doubt as to the nature of the injuries and likely treatment given to the injured arising out of this accident. The most contentious

issue in the light of the arguments of the two sides is over the expenses incurred on the treatment. Nothing concrete by way of documentary evidence has been proved on the record except bald testimony of the wife Kuldeep Kaur as PW3 who claims that she has spent ₹ 2.00 lacs on the treatment of her husband. The Courts need to be weary of such a stand as it is a natural inclination of the claimant side to get hefty compensation. The claim that there is 100 % physical disability of Des Raj is not at all established and the certificate Ex. P1 and the OPD card Ex.PA/4 bear out that the injured at the time of accident and during his medical treatment was 41 years of age, contrary to the claim of Des Raj to be 35 years old. More so, it is claimed by the claimant that he was carrying on agricultural pursuits, which is not established by any means on record as no revenue record to show ownership of his land or proof of cultivating agricultural land is brought on record much less his earnings. The Court with some amount of guess-work and hypothetical calculations has drawn the conclusion that the annual dependency on the claimant by applying multiplier of 15 has to be taken. It is not established on the record that the claimant is unable to earn. The Court assuming the annual dependency and applying multiplier of 15 has reached at the conclusion that the claimant was entitled to compensation of ₹ 3,60,000/- besides the expenses of ₹ 1,75,000/- incurred on his treatment. The Court has shown compassion by awarding ₹ 40,000/- as future expenses on upkeep and maintenance of the injured and thus, arrived at a justifiable amount of total compensation to the tune of ₹ 5,75,000/- which is quite reasonable,

though on behalf of the claimant/appellant much opposition has been made to it and keeping in view the money worth of such an amount in the year 1999 when it was so granted, this Court does not feel that the amount of compensation so awarded is on the lower side and is rather just and reasonable. Since most of the file of the learned Tribunal is reported to have been destroyed in the fire that took place in the record room of this Court, not much can be appreciated from the evidence except what has come in the remnant of the file.

In the light of foregoing discussions, this Court does not feel inclined to show any indulgence as the amount of compensation is just equitable and is not supposed to be bounty and is merely to tide over the situation that has arisen out of the accident and therefore, the Award so passed is legally firm and justifiable.

The appeal being devoid of merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

November 2, 2021

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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