

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

**FAO-3639-2004
Decided on : 02.12.2022**

Dharambir

..... Appellant

Versus

Harmesh Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ram Kumar Saini, Advocate for
Mr. S.S. Dinarpur, Advocate
for the appellant.

Mr. R.C. Gupta, Advocate
for respondent No.4.

HARSH BUNGER J.

The present appeal has been filed by Dharambir assailing the award dated 17.04.2004 passed by the Motor Accidents Claims Tribunal, Kurukshetra [hereinafter referred to as 'the Tribunal'] and seeking enhancement of compensation on account of injuries sustained by him in a motor vehicular accident that took place on 18.05.2001.

Briefly, the claim set up by the Appellant/claimant was that on the fateful day of 18.05.2001, he along with one Dr. Manoj Kumar Rathi came from Radaur to Kurukshetra on Hero Honda Motorcycle, bearing

registration No.UP-12E/8045, to get his X-ray done and was on return to Radaur. At about 11-30 A.M., the Appellant/Claimant along with Dr. Manoj Kumar Rathi, reached near Kishangarh Road, Pipli, when a cyclist came from the Kishangarh road and Dr. Manoj Kumar Rathi, who was driving the Motorcycle, applied brakes in order to save the cyclist, but a Tractor bearing No.HR-07C/4661 driven by respondent No.3, namely Davinder Singh, came in a rash and negligent manner and hit the Motorcycle from behind and as an event of that, the Appellant/Claimant along with Dr. Manoj Kumar Rathi suffered multiple injuries and the said accident occurred due to the sole negligence of respondent No.3.

Accordingly, the Appellant/claimant claimed compensation of Rs.2,00,000/- along with interest at rate of 18% per annum from the date of accident till realization of the amount.

Harmesh Singh; Bachan Singh, both owners of Tractor bearing Registration No. HR-07-C-4661 [hereinafter referred to as 'Tractor']; Devinder Singh, driver of Tractor and the New India Assurance Company Limited, insurer of Tractor have been arrayed as respondents No.1 to 4, respectively in the present appeal.

It is apposite to state here that in the said accident, two persons got injured, i.e. Dharambir, the Appellant/claimant in the present appeal, and Dr. Manoj Kumar Rathi, who was the owner and driver of Motorcycle (Hero Honda Splendor) bearing Registration No.UP-12E-8045 [hereinafter referred to as 'Motorcycle'].

A perusal of the Trial Court record would show that in the claim petition filed by Dr. Manoj Kumar Rathi, i.e. MACT No.159/2001, titled as “*Manoj Kumar Rathi Vs. Harmesh Singh etc.*”, order dated

11.01.2002 was passed by the Tribunal, the relevant extract of which reads as under:

*“One another claim petition No.160 of 2001, titled as **“Dharambir Vs. Harmesh Singh etc.”**, arising out of the same accident is pending in this Court and is fixed for today and since common questions of law and facts are involved in both these cases, for the same, these are consolidated with each other and now onwards further proceedings shall be recorded only in this case and it shall form part of both of these cases. As such, the record of the said other case be annexed with these proceedings.”*

Thus the entire evidence in both the claim petitions, i.e. MACT No.159/2001 (subsequently numbered as MACT Case No.41 of 2002), titled as **“Manoj Kumar Vs. Harmesh Singh etc.”**, filed by Dr. Manoj Kumar Rathi as well as MACT No.160/2001 (subsequently numbered as MACT Case No.42 of 2002), titled as **“Dharambir Vs. Harmesh Singh etc.”**, was recorded in MACT No.159/2001 (MACT Case No.41/2002).

Both the above referred claim petitions were decided vide a common judgment/award dated 17.04.2004.

Dr. Manoj Kumar Rathi preferred an appeal bearing FAO-3638-2004, which came to be decided by this Court vide order dated 07.03.2018, whereby the said appeal was partly allowed. Relevant extract of the said judgment is reproduced as under:-

“ - X - X -

I have heard counsel for the parties, perused the paper book and the records.

The Tribunal has allowed compensation of Rs.1,42,991/- towards medical expenses and doctor(s) fees etc. Counsel for the appellant has not advanced

any arguments justifying enhancement of compensation under this head. There is no challenge to oral and documentary evidence produced by the claimant in respect of injuries sustained and period of hospitalisation including confinement in ICU from 18.05.2001 to 08.06.2001. The Tribunal has awarded an amount of Rs.12,000/- for pain and sufferings. Claimant is held entitled to an amount of Rs.25,000/- under this head. Compensation of Rs.5100/- allowed by the Tribunal for nutritious diet and attendant charges is enhanced to Rs.10,000/-. With regard to transportation, claimant is awarded an amount of Rs.10,000/-.

The Tribunal has awarded an amount of Rs.3000/- towards loss of earning. Findings of the Tribunal that in the records of hospital, his income is shown as Rs.1000/- per month though some change was made in document Ex.P146 from Rs.1000/- to Rs.1,00,000/- qua income of the victim. However, it is not denied that the claimant is BAMS. He remained hospitalised for a period of one month. He sustained several injuries reiterated by Dr. Harsh Kumar PW7. He must have taken some time to recover after discharge from the hospital. Taking a reasonable and cumulative view of the facts and circumstances on record, interest of justice would be served, if the claimant is awarded an amount of Rs.10,000/- qua loss of income for a period of three months. In view of the above, total compensation payable to the claimant is Rs.1,97,991/- (1,42,991 + 25000 + 10000 + 10000 + 10000) and the additional amount is Rs.32,900/- (1,97,991 – 1,65,091), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.”

The instant appeal is filed by Dharambir, who was a pillion rider on the Motorcycle being driven by Dr. Manoj Kumar Rathi. So far as Appellant-Dharambir is concerned, the Tribunal had determined the compensation of Rs.6,500/- detailed in paragraphs No.55 and 56 of the award, however on account of finding recorded by the Tribunal under Issue No.1 that the negligence in causing the accident was apportioned between the driver of Motorcycle and the driver of Tractor to the extent of 50:50, the Appellant/claimant was awarded an amount of Rs.3,250/- along with interest at the rate of 9% per annum from the date of filing of the petition till the actual date of payment. The aforementioned paragraphs No.55 and 56 are extracted hereunder:-

“55. Total compensation payable is reflected in the following chart:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount of compensation</i>
<i>1.</i>	<i>Medical expenses and doctor's fees etc.</i>	<i>Rs.4,000/-</i>
<i>2.</i>	<i>Pain and suffering</i>	<i>Rs.2,000/-</i>
<i>3.</i>	<i>Permanent disability</i>	<i>Nil</i>
<i>4.</i>	<i>Nutritious diet</i>	<i>Nil</i>
<i>5.</i>	<i>Attendant charges</i>	<i>Nil</i>
<i>6.</i>	<i>Transportation charges</i>	<i>Rs.500/-</i>
<i>7.</i>	<i>For loss of earning</i>	<i>Nil</i>
	<i>Total</i>	<i>Rs.6,500/-</i>

56. As regards liability of the respondents inter se, respondent Nos.1 and 2, being owners, respondent No.3 being driver and respondent No.4 being insurer, are jointly and severally liable to make payment of compensation to the extent of their share of liability, i.e. 50% (keeping in view the findings of Issue No.1). As regards rest of the amount of compensation, driver, owner and insurer of the motorcycle

(Hero Honda Splendor) bearing Registration No.UP-12-E-8045 having not been made parties by the claimant, no recourse can be had against them. Thus the claimant is not entitled to the rest of 50% amount of compensation.”

The respondents in the claim petition before the Tribunal were held to be jointly as well as severally liable to make the payment, however the first liability to pay was fastened upon the New India Assurance Company Limited (respondent No.4).

Learned counsel for the Appellant submitted that the Tribunal has erred in law and facts in deciding Issue No.1 by holding that negligence in causing this accident is apportioned between Claimant-Dr. Manoj Kumar Rathi and Devinder Singh (respondent No.3) to the extent of 50:50. It is submitted that the accident in question took place on account of rash and negligent driving of Devinder Singh alone, therefore, the finding recorded by the Tribunal on Issue No.1 is liable to be reversed. Learned counsel also submitted that the Tribunal has further erred in not awarding just and adequate compensation to the Appellant/claimant, especially considering the injuries sustained by him in the accident.

On the other hand, learned counsel representing respondent No.4 has supported the findings returned by the Tribunal as well as the compensation awarded by the Tribunal to Appellant/claimant and prayed for dismissal of the present appeal.

I have heard learned counsel for the parties, perused the paper book and the records.

The following points arise for determination in this appeal:-

1. Whether the finding on Issue No.1, regarding contributory negligence, returned by the Tribunal is justified?

2. To what amount of compensation, if any, is the Appellant/claimant entitled and from whom?

3. Relief.

Findings:

POINT NO.1:

(1.1) Learned counsel for the Appellant/claimant has contended that the Tribunal has erred in recording the finding under Issue No.1, whereby it has apportioned the contributory negligence upon the drivers of the two vehicles, i.e. Tractor being driven by Devinder Singh and Motorcycle being driven by Dr. Manoj Kumar Rathi, to the extent of 50:50. It is contended that the accident had taken place on account of rash and negligent driving of Devinder Singh alone, accordingly the finding on Issue No.1 recorded by the Tribunal is liable to be reversed.

(1.2) On the other hand, learned counsel for respondent No.4- Insurance Company has supported the findings of the Tribunal and while referring to the cross-examinations of PW-2, namely Dharambir, and PW-5, namely Dr. Manoj Kumar Rathi, has submitted that there is no error in the finding recorded by the Tribunal on Issue No.1, the relevant extract of which is reproduced as under:-

“ - x - x -

25. As a sequel to the discussion made earlier, negligence in causing this accident is apportioned between the claimant Manoj Kumar Rathi and Devinder Sing respondent No.3, to the extent of 50:50. This issue is thus decided accordingly only partly in favour of the claimants and against the respondents.

- x - x -”

(1.3) After considering the rival submissions of the parties and upon perusal of the case file, it is revealed that there is no eye-witness of the accident in question, who has been examined in this case, and even the driver of Tractor, i.e. Devinder Singh, has not stepped into the witness box. Further, the cross-examinations of PW-2 and PW-5 read as under:

Cross-examination of PW-2 (Dharambir):

“I have seen the Pipli-Ladwa road. It is correct that the road is wide enough to pass two vehicles simultaneously. It is correct that the Kishangarh road is situated on the right side of Pipli-Ladwa road while going to Ladwa on Pipli road. At the time of accident, Dr. Manoj Kumar was driving the Motorcycle on the right hand side. We had not overtaken the Tractor but the Tractor driver had hit the Motorcycle from behind and the Motorcycle was also damaged. There was no traffic on the left side of the road. The Motorcycle was being driven at 30 kilometer per hour speed. I can not tell the make of the Tractor. It is correct that I and Manoj Kumar became unconscious at the time of accident.

It is correct that if the cyclist had not come on the road, the accident would have not taken place. I have not maintained any record of the expenditure. I paid a sum of Rs.2,000/- to Dr. Pawan Goel. I used to work as Agricultural Labourer with Mohinder of Rathore and he is alive. He is owner of 20/25 acres of land but I had taken only 4 acres land on Batai. Today I have not brought any prescription slip which can show that I ever remained under treatment of any doctor upto 20.05.2001. It is incorrect to suggest that I had exaggerated and inflated expenditure on the treatment. It is further incorrect to suggest that I had not suffered any loss of income. It is further incorrect to suggest that I

had never paid any amount to my brother. It is incorrect to suggest that I quite right now and had suffered only minor injuries, which had never affected my work. It is incorrect to suggest that no Tractor was involved in the accident and I have manipulated the facts. It is incorrect to suggest that I am deposing falsely.”

Cross-examination of PW-5 (Manoj Kumar Rathi):

“On the date of the accident, I was going to Radaur from Kurukshetra on Motorcycle. Dharamvir (mentioned as 'Dharambir' in the present appeal) was my patient at that time and he was pillion rider. It is correct that Pipli-Ladwa road is wide enough and it can easily allow passing of two vehicles. I was driving my Motorcycle at the speed of 30/35 kilometer per hour. One cyclist came from the Kishanpura road and was in process of crossing the road and all of a sudden came before my Motorcycle. The Motorcycle had no impact with the cyclist. I was conscious even after accident. I had become unconscious after 2/3 minutes when people tried to stand me. I did not know the name of the driver at that time. I had only noted the number of the Tractor at that time. Police had recorded my statement after one month of the accident on discharge from Hospital. I had narrated the accident to the Police whatever I knew. Name of the driver and description of driver were not disclosed to the police by me in my statement. It is incorrect to suggest that accident took place due to my own rash and negligent driving. My Motorcycle was on the left side of the road at the time of accident.

The Tractor was of Eicher make. I had come to Kurukshetra for diagnosis of pillion rider, namely Dharamvir. It is correct that the accident in question could have been averted if the cyclist had not come in front of my Motorcycle. The Motorcycle was also

damaged. It is incorrect to suggest that Motorcycle was not damaged from the back side. I was on the extreme left side of the road. I can not tell the built of the road at the place of accident. The other traffic was also flowing on the road at that time and some vehicles were coming from the opposite side also. It is correct that the Kishanpura turning is on the right hand side while going from Pipli to Ladwa. It is correct that if a cyclist comes from Kishanpura then he had to cross the road for reaching on the left side of the road. Volunteered said that the cyclist had come from behind of a vehicle coming from the opposite direction all of a sudden. It is incorrect to suggest that the Tractor was never involved in any accident. It is incorrect to suggest that I fell on the road after colliding with the cyclist. It is incorrect to suggest that I have filed a false claim petition involving the Tractor in question”

(1.4) A perusal of the statements of PW-2 and PW-5, as extracted above, would manifest that the Motorcycle was being driven by Dr. Manoj Kumar Rathi on the right side of the road and Village Kishangarh on Pipli-Ladwa road (on which the Motorcycle was being plied) falls on the right side of the road. Admittedly, the Cyclist had come from the side of Village Kishangarh and had the Motorcycle being driven cautiously, diligently and at a moderate speed then the Motorcyclist could have easily avoided the Cyclist on the road. It is also borne out from the evidence on record that had the Tractor maintained safe distance from the Motorcycle going ahead of it then the sudden appearance of the Cyclist in front of the Motorcycle could not have affected the Tractor and the collision could have been avoided. The identity of the vehicles involved in the accident are not in dispute as the said Issue has rightly been decided by the Tribunal. Thus, the finding recorded

by the Tribunal apportioning the negligence in causing the accident between Dr. Manoj Kumar Rathi (driver of the Motorcycle) and Devinder (driver of the Tractor) to the extent of 50:50 is well reasoned and justified.

(1.5) Apart from the above, the finding regarding “contributory negligence” has not been interfered by this Court in the appeal (FAO-3638-2004) filed by the Driver of Motorcycle, i.e. Dr. Manoj Kumar Rathi, which was decided on 07.03.2018. Thus, the finding of the Tribunal on “contributory negligence” as recorded under Issue No.1 is upheld.

POINT NO.2:

(2.1) Learned counsel for the Appellant/claimant has contended that while deciding Issue No.3, the Tribunal awarded compensation under various heads, which are on the lower side, and the same was required to be enhanced. To substantiate his contention, he has relied upon the testimony of Dr. Pawan Kumar Goel (PW-1), who proved the Discharge Card (Ex. P-2) showing that the Appellant/claimant was an indoor patient in M/s Pawan Surgical Hospital, Kurukshetra from 18.05.2001 to 20.05.2001. Learned counsel further relied upon the testimony of Sh. Roop Chand (PW-13), brother of the Appellant/claimant, who had proved certain Medical Bills. It is argued that keeping in view the injuries sustained by the Appellant/claimant coupled with the period of hospitalization, the compensation awarded by the Tribunal is liable to be enhanced.

(2.2) Learned counsel for respondent No.4 contended that the injuries suffered by the Appellant/claimant were simple in nature and no fracture was found. Accordingly, it is submitted that adequate compensation has been awarded by the Tribunal.

(2.3) There is no challenge to the oral as well as the documentary evidence produced by the Appellant/claimant in respect to the injuries sustained and the period of hospitalization.

(2.4) The Tribunal has allowed compensation of Rs.4,000/- towards medical expenses and doctor fee etc., however learned counsel for the Appellant/claimant has not advanced any arguments justifying enhancement of compensation under the said head. The Tribunal has awarded an amount of Rs.2,000/- for pain and sufferings, however it would be just and appropriate to award an amount of Rs.4,000/- under the said head to the Appellant/claimant. The Tribunal has not awarded any amount for nutritious diet and attendant charges. It cannot be lost sight of that when the Appellant/claimant was taken to the hospital, atleast 2-3 family members would have come to attend him during the period of hospitalization. It is now well settled that the tortfeasor cannot take benefit of the gratuitous service rendered by family members. Even if nothing is being paid to them as attendant charges, they must be paid for the loss of their wages and the amount they would have spent in hospital for food etc as they must have left their work to attend to the Appellant-claimant. Therefore, the Appellant/claimant is held entitled to an amount of Rs.4,000/- under the said head. With regard to the transportation, the Appellant/claimant is awarded an amount of Rs.2,000/-.

(2.5) In this case, the Tribunal has restricted the compensation awarded to Appellant-Dharambir to the extent of 50% only, in the light of the findings on “contributory negligence” recorded under Issue No.1, by observing that since Appellant-Dharambir had not impleaded the Owner, Driver and Insurer of the Motorcycle involved in the accident, hence no

recourse can be made in that regard.

(2.6) In my considered view, in the attending facts and circumstances of this case, the above said course adopted by the Tribunal was not justified. Contributory negligence cannot be attributed to a pillion rider unless some overt act is attributed to such pillion rider which in turn would have caused the accident. Reference in this regard can be made to the judgment rendered by the Hon'ble Apex Court in ***“Mohammed Siddique and another Vs. National Insurance Company Ltd. and others”***, 2020 (1) RCR (Civil) 689. No such evidence is forthcoming in this case. Moreover, a perusal of the order passed in FAO-3638-2004 filed by Dr. Manoj Kumar Rathi would show that this Court has not interfered in the finding on “contributory negligence” as returned under Issue No.1 by the Tribunal.

(2.7) It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of Court while doing substantial justice.

(2.8) In order to do substantial justice to the appellant herein, the Tribunal could have moulded the relief by impleading Dr. Manoj Kumar Rathi as party-respondent to the claim petition filed by Dharambir, especially when both the claim petitions were clubbed together and decided by the Tribunal vide a common judgment and all the parties were already represented before the Tribunal. Considering the facts that the finding on contributory negligence under Issue No.1 in this case has been upheld and even in the appeal filed by Dr. Manoj Kumar Rathi, the said finding being not disturbed and Dr. Manoj Kumar Rathi being responsible for contributory negligence to the extent of 50%; accordingly, Dr. Manoj Kumar Rathi is held liable to compensate the appellant in this case to the

extent of 50% of the awarded amount and the balance 50% is to be paid by respondents No.1 to 4 in this case/appeal, jointly and severally.

POINT NO.3:

Relief:

(3.1) In view of the above, the total compensation payable to the Appellant/claimant is enhanced to Rs.14,000/-,which is tabulated as under:-

Sr. No.	Heads	Amount of compensation
1.	Medical expenses and doctors' fees etc. {as held by the Tribunal}	Rs.4,000/-
2.	Pain and suffering	Rs.4,000/-
3.	Nutritious diet and attendant charges	Rs.4,000/-
4.	Transportation charges	Rs.2,000/-
	Total compensation	Rs.14,000/-

(3.2) The Appellant/claimant is held entitled for the grant of amount of Rs.3,750/- (Rs.7,000/- - 3250/-) along with interest at the rate of 7.5% per annum from the respondent No.1 to 4 in the present appeal jointly and severally; and Rs.7,000/- along with interest @ 7.5% per annum from Dr. Manoj Kumar Rathi, from the date of filing of the petition till realization of the same.

(3.3) It is further directed that respondent No.4-Insurance Company shall deposit the awarded amount with the Tribunal within a period of two months from the date of receipt of the certified copy of this order. Respondent No.4-Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the Owner/Driver of the Motorcycle, i.e. Dr. Manoj Kumar Rathi, by way of execution of this order.

No other point was urged.

The appeal is accordingly partly allowed and is disposed of in

the aforesaid terms. Having regard to the nature of this case, the parties shall bear their own costs.

All pending application(s), if any, shall stand disposed of.

02.12.2022
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No