

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3737-2017 (O&M)

Reserved on : July 19, 2022

Pronounced on : July 25, 2022

Sonu

...Appellant

Versus

Jaspal Bhatti and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Inderjeet Singh, Advocate for the appellant.

Mr. R.C. Kapoor, Advocate
for respondent No.3-Insurance Company.

ARVIND SINGH SANGWAN, J.

The challenge in this appeal filed by the claimant is to enhance the amount of compensation awarded by the Tribunal as well as to hold that the accident in question occurred due to the rash and negligent driving of respondent No.1 while driving the truck No.PB-12-N-05856.

Brief facts of the case are that the appellant, a minor boy aged about 13 years, on 14.3.2013 was going on his bicycle and when he was in front of one Moga Transport, the offending truck, driven by respondent No.1 in rash and negligent manner, came from the opposite side and struck with the bicycle and the appellant fell down. In that process, the truck ran over the left leg of the appellant-claimant. The claimant was taken to the Civil Hospital, Yamuna Nagar, where he was referred to the PGI, Chandigarh.

The claim petition is filed claiming a compensation of Rs.10,00,000/- on the grounds that a sum of Rs.02 Lacs was spent on the treatment and another amount of Rs.50,000/- is required for future treatment and the appellant has suffered permanent disability on his left leg apart from the loss of studies and other amenities of life.

The Tribunal, on Issue No.1 recorded a finding that the accident in question took place due to contributory negligence of the appellant, who was driving the bicycle and respondent No.1, who was driving the truck.

The operative part of the findings recorded by the Tribunal in this regard reads as under :-

"14. Coming to the manner in which the accident took place, the case of the petitioner is that he was going on his bicycle from his residence i.e. Khadda Colony, Old Hamida to Yamuna Nagar Market and when he reached in front of Moga Transport on Saharanpur road, Yamuna Nagar, the offending vehicle came in wrong side and struck his bicycle. The petitioner in his sworn deposition claims that he was standing on the left side of the road while going towards Saharanpur. When he says that he was standing, it does not mean that he was on foot as has been suggested by the learned counsel for the respondent/insurance company. He could be standing with bicycle. From the site plan Ex.P18, it appears that the petitioner came on Yamuna Nagar-Saharanpur road from South, i.e. from the side of

Yamuna Auto Market. There is a divider on the road. The accident is shown to have taken place at point 'A' which is almost at the cut of the divider. If the petitioner was to go to Yamuna Nagar towards Khan Chand Chowk, he should not have gone to point 'A'. He should have taken left towards West. The fact that he went up to point 'A' means that he was to go towards East. It appears that the accident took place when he was in the process of crossing the cut but in order to cover up his own negligence, he has taken a plea that he was standing on the left of the road. In fact, he was right in the middle of the road when the accident took place. He did not take precaution of looking for the vehicles coming from East. It is not the allegation that the offending vehicle came in the wrong side dissecting the cut of the divider. The petitioner simply claims that the offending vehicle came in the wrong side i.e. in the left of the road. This is falsified by the site plan. It is clear that the accident took place while the petitioner was crossing the cut in order to come on the road for going to Yamuna Nagar towards East. Had he taken proper care and precaution, he would have noticed the offending vehicle coming from behind, but it seems that he did not look for the vehicles coming from that side. However, this does not mean that respondent No.1 was not negligent. He too was duty bound to drive slowly keeping in mind the fact that there was a cut on the road from which anybody could have come across on the road all of a sudden. In these circumstances, it can be safely said that the petitioner and respondent No.1 were equally negligent.

Resultantly, the issue is partly decided in favour of the petitioner and partly in favour of the respondent.”

By taking it to be a case of 50% contributory negligence, the Tribunal awarded a compensation in the following heads :-

Sr. No.	Heads	Amount
01.	Pecuniary loss	
(a)	Medical expenses	Rs.27,560/-
(b)	Special Diet	Rs.7,000/-
(c)	Transportation	Rs.5,000/-
02.	Non-pecuniary loss	Rs.30,000/-
03.	Post-operative complication, loss of amenities in life, pain and suffering	Rs.35,000/-
	Total :	Rs.1,04,560/- (rounded off Rs.1,05,000/-
	50% of total	Rs.52,500/-

The appellant was, thus, held entitled to compensation of Rs.52,500/-.

The Tribunal while deciding issue No.3 held that there was no violation of the Insurance Policy as the respondent No.1 was holding a valid driving license, therefore, the Insurance Company was held liable to indemnify the insurer i.e. respondent No.2.

Counsel for the appellant has placed on record the certified copies of statements of PW1 to PW5, which are taken on record as Mark 'A' (collectively). Hence, requisition of the Tribunal's record is dispensed with.

Counsel for the appellant has argued that it has come in the statement of PW4 Chanchal Singh, grandfather of the appellant wherein he has stated that the appellant is a student of Class 6th and was initially

admitted in Civil Hospital, Yamuna Nagar and then referred to PGI, where he remained admitted from 15.3.2012 to 2.4.2012. The appellant was operated upon in PGI and a rod was inserted and skin grafting was also done. On account of the accident, the left foot is disfigured and due to that he cannot put weight on it and walk properly. A sum of Rs.20,000/- was spent on Special Diet as advised by the doctor. PW4, being grandfather was working as attendant for him, therefore, he himself could not earn anything. He further stated that claimant was taken to PGI 14 times in a taxi @ 2,500/- per visit and has spent Rs.35,000/- on transportation. It is also stated that for further treatment he has spent a sum of Rs.50,000/- and the appellant remained confined to bed and, therefore, he could not study.

Counsel for the appellant has submitted that in the cross-examination of PW4, no suggestion was given by the driver and owner or by the Insurance Company regarding negligence of appellant, therefore, nothing could come on record to disbelieve the statement as even a suggestion by the Insurance Company was given that the injured was a pillion rider on the bicycle and suffered the injuries.

Counsel for the appellant then referred to the statement of appellant, who appeared as PW5 and has narrated the manner in which the accident has taken place. This witness has stated that when he was going on road, the offending truck, driven by respondent No.1, came in a rash and negligent manner from the opposite side and hit the bicycle and ran over on his foot. Thereafter, the truck driver left the truck at the spot

and ran away. He was taken to the Civil Hospital, Yamuna Nagar from where he was referred to PGI, where he remained admitted for one month and spent Rs.2,00,000/- on his treatment as a rod was fixed in his leg. In cross-examination by the driver and owner, it was suggested that accident was not caused by the negligence of respondent No.1.

In cross-examination by the Insurance Company, again, a suggestion was given that he was a pillion rider on a bicycle at the time of the accident. Further, a suggestion was given by the Insurance Company that the truck in question has never caused any accident and the same is falsely implicated.

Counsel then referred to the statement of PW3 Dr. Dipender Sidhu, Orthopedic Surgeon, Swami Vivekananda Hospital, Yamuna Nagar, who was Medical Officer at Yamuna Nagar Hospital has stated that he has assessed the disability of the appellant after clinical and radiological examination and the Board has given 10% permanent disability on account of operation of left side meta-tarsal fracture as the appellant is having difficulty in standing and walking.

In cross-examination, this witness has stated that only the discomfort may decrease with the passage of time and physiotherapy, however, denied the suggestion that the disability may be reduced.

Counsel for the appellant has further referred to the statement of PW2 Dr. Sandeep, Senior Resident, Plastic Surgery Department, PGI, Chandigarh, who stated that the appellant was

admitted in PGI with history of an accident caused by a truck while riding a bicycle and the left foot of the appellant was crushed. The patient was treated in the Plastic Surgery Department as well as Orthopaedic Department and remained admitted from 14.3.2012 to 2.4.2012 and was operated by a senior doctor.

In cross-examination by the Insurance Company, this witness stated that the appellant remained under treatment as OPD patient for a long time. This witness also stated that Chanchal, grandfather of the appellant used to bring him to the hospital.

To the contrary, no evidence was led by the respondent and even respondent No.1-Jaspal Bhatti, the driver of the offending vehicle, never appeared to prove the contributory negligence.

Counsel for the appellant has argued that in the written statement filed by the Insurance Company the factum of accident was denied and once the Tribunal has recorded a finding that the accident has occurred with the offending truck, there was no occasion to hold that it was a case of contributory negligence.

Counsel for the appellant has relied upon the judgment of this Court in FAO No.3670 of 1999 titled **Sahbo and others Vs. Balwan Singh and others** decided on 1.12.2010, wherein it has been held that if in the written statement the factum of accident is denied and the accident is proved by victim, the Tribunal cannot hold it to be case of contributory negligence. Even in the statement of PW3, the claimant and

PW5-Chanchal, grandfather of the appellant, nowhere suggest that it was a case of contributory negligence as the victim was going on bicycle, which cannot be plied on a high speed, whereas it was the offending truck, which has caused the accident by running over the bicycle rider.

This situation arises in a number of claim petitions as the general tendency of driver and Insurance Companies is to deny the accident so that claimant may lead evidence. Situation may be different if driver, owner and Insurance Company admit factum of accident but plead it to a case of contributory negligence. If the Tribunal on appreciation of claimant's evidence found it to be true it would only mean the Tribunal is neglecting the defence of driver, owner and Insurance Company and, thus, can not held the claimant himself to be contributory negligent.

Accordingly, the finding on issued No.1 with regard to contributory negligence is reversed and it is held that the accident occurred due to rash and negligent driver of respondent No.1.

With regard to just and fair compensation, this Court finds that the Tribunal has not decided the same with the correct prospective of law and it has been held by the Hon'ble Supreme Court in 2014(14) SCC 369 **Malika Arjun Vs. Divisional Manager, National Insurance Company,** that in case of a minor child where the disability is between 10% to 30%, compensation of Rs.3,00,000/- lumpsum can be awarded. In this case, as per the statement of PW3 Dr. Dipender Sidhu and PW2

Dr. Sandeep, Senior Resident, Plastic Surgery Department, PGIMER, Chandigarh, it is proved that the appellant suffered permanent disability and was operated for mata-tarsal fracture and in the cross-examination, this witness stated that only the discomfort may decrease but not the disability, the amount of compensation is enhanced to Rs.3,00,000/- under the head of disability.

Counsel for the appellant has further submitted that under the head of discomfort, inconvenience and loss of earning to the parents during the hospitalization, as per the statement of PW5 Chanchal, grandfather of the appellant be granted Rs.25,000/- and on account of medical and incidental expenses due to hospitalization, over and above the medical bill of Rs.27,560/-, a sum of Rs.25,000/- be awarded. Counsel for the appellant has further argued that the under the head of Special Diet, an amount of Rs.25,000/- be granted and under the head of future medical expenses for removal of rod and accidental expenses Rs.25,000/- be also awarded.

After hearing learned counsel for the appellant, I find that the Tribunal has not assessed just and fair compensation and, accordingly, the compensation is assessed as under :-

Sr. No.	Heads	Amount
01.	Pecuniary loss	
(a)	Medical expenses	Rs.52,560/-
(b)	Disability 10% + Special Diet + Transportation + Post-operataive complication + Loss of amenities in life + pain and sufferings	Rs.3,00,000/-
	Total :	Rs.3,52,560/- Rs.3,53,000/- (rounded off)

The amount of Rs.52,500/- already awarded by the Tribunal shall be deducted from the said amount. Since it is held that the accident occurred due to sole negligence of respondent No.1, the entire amount of compensation will be paid by respondents jointly and severally within a period of two months from today along with interest @ 7.5% per annum, failing which the Insurance Company will be liable to pay 12% interest on the balance amount.

Disposed off, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

July 25, 2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No