

FAO-9290-2014 (O&M)

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221-A

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

FAO-9290-2014 (O&M)

Date of Decision : 15.05.2023

Saroj Devi

....Appellant

VERSUS

Saraju and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arjun Atri, Advocate for the appellant.

Mr. Suman Jain, Advocate for respondent No.3.

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ALKA SARIN, J. (Oral)

1. The present appeal has been filed by the injured claimant-appellant challenging the award dated 08.08.2014 passed by the Motor Accident Claims Tribunal, Gurgaon, whereby the contributory negligence has been apportioned in the ratio of 50:50.

2. Learned counsel for the claimant-appellant would contend that the injured claimant-appellant is aggrieved by the findings of the Tribunal as regards contributory negligence. It is further contention that the amount given to the claimant-appellant on account of pain and suffering is also on the lower side.

3. Per contra, learned counsel for respondent No.3 has contended that there is a categorical finding by the Tribunal that since the accident took place in the middle of the road, hence, it would be a case of contributory negligence and that the said finding warrants no interference.

4. I have heard learned counsel for the parties.

5. The Tribunal has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Medical Expenses	Rs.41,000/-
2	Pain and sufferings – per fracture/ per surgery	Rs.25,000/-
	Total Compensation	Rs.66,000/-
	Compensation awarded by the Tribunal	Rs.33,000/-

6. Admittedly, in the present case the claimant-appellant was a pillion rider and was not riding the motor-cycle. Further, a perusal of the record reveals that the driver of the offending truck has not stepped into the witness box and there is no evidence on the record that the accident took place in the middle of the road. The Tribunal on the basis of pure assumptions and presumptions has come to the conclusion in para No.17 by holding “*in such like cases if accident takes place in the middle of the road, the drivers of both the vehicles should be held responsible to have contributed equally to the accident*”. In the absence of any evidence that the accident took place in the middle of the road and specially in view of the fact that the driver of the offending vehicle had not stepped into the witness box, the said finding cannot be sustained. Even in the case of **Mohammed Siddique & Anr. Vs. National Insurance Company Ltd. & Ors. [AIR 2020 SC 520]** it has been held that the contributory negligence would be on account of the rider of the vehicle and not on account of pillion rider. In view thereof, the finding of contributory negligence cannot be sustained and is accordingly set aside. The argument of learned counsel for the claimant-appellant that the amount awarded on account of pain and sufferings is on the lower side deserves to be accepted inasmuch as the claimant-appellant, who is a housewife, remained admitted in Balaji Hospital for a period of fifteen days i.e.

from 30.07.2011 to 05.08.2011 and thereafter from 16.08.2011 to 23.08.2011 at Safdarjung hospital, New Delhi and hence the amount awarded under the head pain and sufferings is enhanced to Rs.50,000/-. Additionally, an amount of Rs.2,300/- (rounded off) is awarded towards attendant charges on the basis of minimum wages at that time.

7. In view of the above, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Medical Expenses	Rs.41,000/-
2	Pain and sufferings – per fracture/ per surgery	Rs.50,000/-
3	Attendant Charges	Rs.2,300/-
	Total Compensation	Rs.93,300/-
	Compensation Awarded by the Tribunal	Rs.33,000/-
	Enhanced amount	Rs.60,300/-

8. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till realization of the entire amount.

9. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

May 15, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO