

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4833-2013 (O&M)
Date of decision : 16.02.2024

Hakam Singh ... Appellant(s)

Versus

Dara Singh & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.K. Saini, Advocate for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Ravinder Arora, Advocate for respondent No.4.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant Hakam Singh who was not a party to the proceedings before the Motor Accident Claims Tribunal, Ambala.
2. The claim petition was filed before the Tribunal under Section 166 and 140 of the Motor Vehicles Act, 1988 for grant of compensation on account of injuries suffered by the claimant therein i.e. Dara Singh. It was averred in the claim petition that on 10.12.2009 the claimant - Dara Singh - was going on a motor cycle bearing registration No.CH-21-T-978 which was driven by his brother - Hakam Singh (appellant herein). When they reached village Tasimbli and turned the motorcycle towards Ambala side, a car bearing registration No.HP-01S-0622 driven by the driver of the offending vehicle (respondent No.2 herein) at a very high speed and in a rash and negligent manner without blowing horn, struck against the motorcycle as a

FAO-4833-2013 (O&M)

-2-

result of which the claimant (Dara Singh) and the appellant herein (Hakam Singh) fell down and received multiple injuries. After the accident the claimant (Dara Singh) was taken to Dhawan Orthopedic Hospital, Ambala Cantonment wherein he remained unconscious for about three days and was operated upon for the fracture on his right leg. He spent a sum of Rs.1,50,000/- on his treatment, medicines etc. An FIR No.88 dated 13.12.2009 was registered under Sections 279, 337 and 338 of the Indian Penal Code, 1860 at Police Station Panjokhra, District Ambala. The petition was contested by the owner and the driver of the offending vehicle as well as the insurance company. While disposing off the claim petition, the Tribunal held that since the claimant (Dara Singh) was a pillion rider, he could not be held guilty of contributory negligence and hence held that the claimant (Dara Singh) suffered the injuries due to the composite negligence of Hakam Singh (appellant herein) driver of the motor cycle as well as the driver of the offending vehicle (respondent No.2 herein) and the liability to pay 50% of the compensation was fastened upon the appellant herein. Hence, the present appeal.

3. The learned counsel for the appellant would contend that the appellant was not even impleaded as a party before the Tribunal and that there is nothing on the record to even remotely show that any negligence could be attributed to the appellant herein. The learned counsel would further contend that this was not a case of head-on collision rather it was a case where the motorcycle was hit from behind. The learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case

of **Khenyei Vs. New India Assurance Co. Ltd. & Ors. [2015 (2) RCR (Civil) 1019]** wherein it has been held that in the case of composite negligence, apportionment of compensation between two tort-feasors viz-a-viz the claimant is not permissible and he can recover, at his option, whole damages from any of them.

4. *Per contra* the learned counsel for respondent No.4-Insurance Company has contended that the appellant has rightly been held responsible to pay 50% of the compensation.

5. I have heard the learned counsel for the parties.

6. In the present case the offending vehicle hit the motorcycle from behind. Firstly, it was not a case of composite negligence inasmuch as no negligence could be attributed to the rider of the motorcycle. Secondly, without the appellant being a party to the proceedings, no order could have been passed against him.

7. In view of the above, the present appeal is allowed and the impugned award of the Tribunal is set aside only to the limited extent where respondent Nos.2 to 4 herein were held entitled to recover 50% of the compensation from the appellant herein. Pending applications, if any, also stand disposed off.

16.02.2024
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

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