



FAO-2769-2003

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

FAO-2769-2003(O&M)
Reserved on: 20.11.2025
Date of Decision: 28.11.2025

JHAPSI SAHNI

....Appellant

Versus

BHANWAR LAL VISHNOI AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ashit Malik, Senior Advocate with
Mr. Maneet Kaushik, Advocate
for the appellant.

Mr. Mukesh Kaushik, Advocate
for respondent No.2 through V.C.

Parmod Goyal, J.

CM-12730-C-2003

The present application has been filed for condonation of delay
in filing the appeal.

In view of the averments made in the application, the same is
allowed.

Main Case

The present appeal has been preferred by appellant/claimant
being aggrieved by grant of compensation of Rs.10,000/- only for the
injuries suffered by him in accident dated 01.06.1998 on account of rash and
negligent driving of Trailer bearing registration No.RJ-06G-2413 vide



impugned award dated 05.12.2002, passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal').

2. Appellant/claimant filed the claim petition under Section 163A read with Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.10,00,000/- for injuries suffered by him in accident dated 01.06.1998 caused by driver of Trailer bearing No.RJ-06G-2413. Learned Tribunal after considering the respective evidence led by parties concluded that accident had occurred on account of collision between two vehicles one driven by driver of Trailer bearing No.RJ-06G-2413 and another DTC Bus No.DL-IP-9970 in which appellant/claimant was travelling. Learned Tribunal concluded that since accident was result of head on collision, the author of FIR i.e. conductor of bus was not examined and only one lane was open for traffic for both the sides, therefore, drivers of both the vehicles were equally responsible for causing accident and held it to be the case of contributory negligence to the extent of 50% negligence on the part of each of the driver.

3. Learned counsel for claimant/appellant asserts that learned Tribunal has erred in holding present case to be the case of contributory negligence, rather present case is a case of composite negligence as appellant/claimant was third party qua bus as well as trailer which were involved in accident. There was no contribution on the part of appellant/claimant in causing the accident and, therefore, even if it is held by learned Tribunal that both the vehicles were responsible for causing the accident. The accident has to held to be result of composite negligence and not due to contributory negligence.



4. I find merit in the submissions raised by learned counsel for appellant/claimant that present case is of composite negligence where both the drivers and both the vehicles are jointly and severely liable for payment of compensation to third party i.e. appellant/claimant. In present case contributory negligence cannot be attributed to petitioner as he had not contributed in causing the accident. Appellant/claimant is therefore, entitled to claim entire compensation from either of the vehicles/drivers or from both.

5. In the present case, only owner and insurance company of trailer have been impleaded by appellant/claimant, therefore, even in absence of impleadment of owner and insurance company of bus in which injured was travelling, as far as the appellant/claimant is concerned, he is entitled to seek entire compensation from respondents No.1 and 2 alone.

6. The issue of apportionment in view of findings of composite negligence is between owner of trailer and owner of bus and their insurance companies and shall have no effect on the rights of appellant/claimant. Respondents No.1 and 2 shall be free to seek their remedies in accordance with law against owner and insurance company of Bus. Appellant/claimant shall be entitled to entire compensation and not to the extent of 50% as held by learned Tribunal from respondents No.1 and 2.

7. In the present case, appellant/claimant has claimed that his right leg was crushed on account of accident. He was taken to Civil Hospital Nilokheri and thereafter, was referred to Civil Hospital, Karnal. He was again referred to All India Institute of Medical Sciences, New Delhi and on



refusal by doctors to treat him he came back to Karnal and remained admitted in Nursing Home of Dr. Pradeep Bhatia for 10 days. Reliance was placed upon MLR Ex.P-1. It is case of claimant/appellant that since he was not having sufficient money to get treatment in private nursing home, he went back to District Darbhanga (Bihar) i.e. his native town. He remained under treatment under a private doctor. Since the bones of his right leg were crushed into small pieces, therefore, he could not be cured and his leg was amputated by doctor at Darbhanga and thereafter, also he remained under treatment for one month. He asserted that on account of amputation, the wound developed abscess (puss) and could not be cured at Darbhanga, therefore, he came back to Karnal and was again treated at General Hospital, Karnal. Thereafter, his leg was again amputated at Karnal. Claimant/appellant claimed to have spent Rs.2,00,000/- approximately on his treatment, medicines, transportation, special diet etc. He claimed that he used to be a vegetable vendor and was earning Rs.5,000/- to Rs.6,000/- per month. However, on account of injuries and amputation of leg he was unable to earn his livelihood.

8. PW-2 Dr. S.L Verma had duly proved multiple injuries on the person of appellant/claimant vide MLR dated 02.06.1998 Ex.P-1. Perusal of MLR Ex.P-1 goes to show that appellant/claimant had suffered crush injuries of right leg below knee joint. Muscles, tendons and bones were exposed and bone was fractured. Vide Ex.P-2 bed head ticket regarding admission in emergency ward of General Hospital, Karnal fact that appellant/claimant was referred to All India Institute of Medical Science,



New Delhi also stands proved. PW-5 Dr. Pradeep Bhatia had duly asserted that on 03.06.1998 appellant/claimant was admitted in his nursing home on account of injuries suffered in the accident after his initial treatment at General Hospital, Karnal and All India Institute of Medical Science, New Delhi having crush injuries on his right leg and external fixator stood applied. Neglected dislocation of left hip was also diagnosed. Dislocation of hip was reduced closely and skeleton treatment was applied. He was discharged on 12.06.1998 and was charged Rs.2,000/- which included cost of medicines. Thereafter, appellant/claimant had never come back for his follow-up treatment.

9. Learned Tribunal on the basis of above noted evidence concluded that appellant/claimant has failed to show that he had suffered disability as well as amputation on account of injuries sustained in motor vehicular accident dated 01.06.1998. The disability certificate showing 85% disability on account of amputation proved by PW-3 Dr. Ravinder Arora was therefore ignored while calculating compensation.

10. Learned counsel for appellant/claimant has argued that learned Tribunal has failed to consider evidence of appellant/claimant in right perspective and has not taken into consideration statement of PW-3 Dr. Ravinder Arora who has clearly stated to have operated the appellant/claimant on 31.08.1999 and fact that revised amputation of stump of right femur was done and sequestrum was removed. PW-3 had asserted that appellant/claimant had remained admitted in General Hospital, Karnal from 30.08.1999 to 18.09.1999.



11. On consideration of evidence led by appellant/claimant, I find that learned Tribunal has erred in appreciating evidence led by appellant/claimant. Appellant/claimant by examining PW2, PW3 and PW5 who had medico legally examined appellant/claimant, treated and operated appellant/claimant for crush injuries on his right leg have duly proved that appellant/claimant had suffered grievous injuries in the accident dated 01.06.1999 and one of the injuries was crush injury below knee on the right leg. Appellant/claimant while appearing as PW1 clearly stated that as he could not afford treatment cost at Karnal, therefore, he left for his native place at Darbhanga where he remained under treatment and his right leg was amputated, however, since amputation had resulted in complications, he again came back to General Hospital, Karnal where he was admitted and again amputation was done on 31.08.1999 as was stated by PW-3.

12. In the present case, specific evidence of PW-3 Dr. Ravinder Arora regarding admission of appellant/claimant from 30.08.1999 to 18.09.1999 has been completely ignored by learned Tribunal. PW-3 Dr. Ravinder Arora had clearly stated that he had operated the appellant/claimant on 31.08.1999 and had done revised amputation of right femur. Merely because appellant/claimant could not produce his treatment records undergone by him at Darbhanga, the other evidence led by appellant/claimant cannot be ignored and has to be tested upon standard of proof i.e. preponderance of possibilities.

13. It is the case of respondents that appellant/claimant had recovered from injuries suffered by him in accident dated 01.06.1998, when



he left for his native place at Darbhanga. However, from evidence of PW-5 Dr. Pradeep Bhatia it is clearly made out that on 12.08.1998 when appellant/claimant was discharged on request, his right leg wound was highly contaminated. Prognosis of patient was very bad and was explained to patient. Patient was advised to take second opinion. From the evidence of PW-5 it is clearly made out that when appellant/claimant had left Dr. Pradeep Bhatia's Nursing Home, Karnal on 12.06.1998 he was in a bad condition. Therefore, statement of PW-1 regarding treatment at Darbhanga and first amputation at Darbhanga cannot be ignored merely because appellant/claimant had failed to produce medical records. The facts and circumstances of the present case have to be considered in totality of circumstances. In the present case on 12.06.1998 when appellant/claimant had last attended hospital at Karnal, he was in a bad shape. Again on 30.08.1999 when he came back to Karnal and was re-admitted in General Hospital, Karnal, he was again in bad shape. He had already suffered amputation prior to 30.08.1999 and was subjected to another surgery resulting into revised amputation. Therefore, conclusion of learned Tribunal that appellant/claimant had failed to prove that amputation was result of injuries suffered by appellant/claimant on 01.06.1998 cannot be sustained. It is held that appellant/claimant had succeeded in proving that he has suffered crush injuries in accident dated 01.06.1998 and had suffered amputation of leg on two occasions, one at Darbhanga and other at Karnal. The second amputation stands duly established by PW-3 who had conducted said amputation. There is no evidence on record to conclude that



appellant/claimant was fully cured after his discharge on 12.08.1998 from the hospital of PW-5 or that appellant/claimant had suffered injuries in other accident subsequently resulting into amputation of his leg twice.

14. In these circumstances, if the evidence of appellant/claimant is tested upon preponderance of possibilities, the only conclusion would be that amputation was result of injuries suffered in accident dated 01.06.1998. Appellant/claimant is therefore, entitled to compensation accordingly.

15. In the present case, appellant/claimant has claimed that he was a vegetable vendor earning Rs.5,000/- to Rs.6000/-, however, no evidence has been led by appellant/claimant and in medical records he has been shown to be a labourer. In absence of any reliable evidence it is held that appellant/claimant was an unskilled worker and his notional income is required to be ascertained on the basis of minimum wages payable to an unskilled worker. Accordingly, minimum wages as prevalent in 1998 are taken as income of appellant/claimant. It is held that appellant/claimant was earning Rs.1,800/- per month being unskilled worker. PW-3 has duly placed on record disability certificate thereby concluding 85% of permanent disability due to amputation of right leg above knee.

16. Keeping in view the fact that appellant/claimant had suffered amputation of right thigh upper 1/3rd level and had suffered 85% of permanent disability, appellant/claimant must have suffered overall functional disability of 70% on account of amputation of leg. Appellant/claimant was aged 42 years and therefore, entitled to multiplier of 14. Future prospects of 25% needs to be taken for calculating loss of income.



Accordingly, appellant/claimant is entitled to Rs.2,64,600/- [70% of 2250 (1,800 + 450) x 12 x 14] as loss of income. Appellant/claimant is also entitled to compensation of Rs.20,000/- for loss of future amenities of life and loss of future prospects. Appellant/claimant shall also be requiring change of either artificial leg or some support for his day to day life and accordingly, Rs.20,000/- is awarded towards future medical needs. Appellant/claimant shall be entitled to compensation of Rs.15,000/- towards medical expenses, transportation, special diet and cost of attendant. Appellant/claimant shall also be entitled to Rs.20,000/- for pain and sufferings and Rs.15,000/- for loss of income during the treatment. Appellant/claimant shall be entitled to enhanced compensation of Rs.3,44,600/- along with interest of 7.5% p.a. from the date of filing of claim petition till its realization. Appellant/claimant shall be entitled to following compensation:-

Income	Rs.1,800/- per month	Rs.1,800/- per month
Future prospects	25% (1,800 + 450)	Rs.2,250/-
Notional disability	70% of 2,250	Rs.1,575/-
Multiplier	14	14
Loss of dependency	1,575 x 14 x 12	Rs.2,64,600/-
Loss of future amenities		Rs.20,000/-
Future medical expenses		Rs.20,000/-
Medical expenses, transportation, special diet and attendant charges		Rs.15,000/-
Loss of income		Rs.15,000/-
Pain and sufferings		Rs.20,000/-
Compensation awarded in appeal.		Rs.3,54,600/-
Compensation awarded by Tribunal	Rs.10,000/-	
Enhancement of compensation	Rs.3,54,600/- (awarded in appeal) – Rs.10,000/- (awarded by Tribunal)	Rs.3,44,600/-



17. The present appeal is accordingly allowed.

28.11.2025
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No