



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

103**FAO-3919-2001****Date of decision:02.04.2026**

DR.VIRINDER KUMAR

...APPELLANT

VERSUS

SUKHDEV SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Chetan Mittal, Senior Advocate with
Ms. Shefali Goyal, Advocate
Mr. Ritvik Garg, Advocate
for appellant.

Mr. Prashant Bansal, Advocate
for respondents No.1 and 2.

Mr. Amit Kundra, Advocate
for respondent No.3.

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by appellant-claimant against award dated 28.04.2001 passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as '**Tribunal**'). Appellant has challenged findings of Tribunal on issue No.1 (issue regarding negligence) and issue No.2 (quantum of compensation) arrived at by learned Tribunal vide impugned award.

2. Vide award dated 28.04.2001 passed by learned Tribunal, appellant-claimant was awarded compensation of Rs.1,72,000/- out of total compensation of Rs.3,44,000/- determined by it in view of contributory negligence attributable to appellant-claimant. Appellant-claimant is aggrieved by finding of learned Tribunal on the issue of contributory

negligence as well as insufficient compensation.

3. Learned Tribunal, after considering contentions raised by respondents and by appreciating evidence led by AW-4, the sole eye witness to accident, had concluded negligence to the extent of 50% on the part of appellant-claimant.

4. Learned counsel for appellant-claimant has argued that in present case, respondent No.1-driver of offending vehicle alone was negligent and appellant-claimant had not at all contributed in causing the accident. It is further claimed that compensation so awarded to appellant-claimant is totally insufficient as learned Tribunal has not taken into consideration income of appellant-claimant and had failed to calculate loss of earning capacity on account of 50% disability due to injuries suffered by appellant-claimant in the accident.

5. Learned counsels for respondents have supported the conclusions drawn by learned Tribunal and have asserted that appellant-claimant while appearing as AW-4 had duly admitted that accident was head-on collision that the road at the place of accident was 30 feet wide, having 5 feet katcha berms on either side and there was no vehicle in between the car and offending bus, which clearly proves that appellant-claimant was equally responsible for causing accident as was held by learned Tribunal.

6. The finding of contributory negligence is always dependent upon act of omission or act of commission, which had contributed in causing of accident. In present case, the sole eye witness to accident who had stepped into witness box was injured-appellant-claimant as AW-4. The driver of offending bus had not appeared as RW and had not stated the manner of

accident on oath. There is no evidence available except for cross-examination of appellant-claimant while appearing as AW-4 as to conclude contributory negligence on the part of appellant-claimant. Accident has been admitted by respondents No.1 and 2, however, learned Tribunal, by appreciating cross-examination of AW4, had concluded contributory negligence.

7. On consideration, I am of the view that the finding so recorded by learned Tribunal cannot be sustained and same is a result of mis-reading of cross-examination of AW4. The learned Tribunal has only considered part of cross-examination but has not taken the entire cross-examination into consideration, which it ought to have been taken. For the purposes of ready references, cross-examination of AW4 is reproduced as under:-

“The claim petition was read-over to me by my Advocate before I signed the same. I have not brought my driving licence today in the court nor the registration certificate of my car. I have suffered a loss of Rs.63,000/- as my earned leave for three months was consumed for the purposes of treatment. I am getting my salary regularly. I am still working as Medical Officer against a regular post. I have not brought my salary certificate today. At the time of accident, I was getting Rs.20,000/- Now I am getting Rs.24,000/- p.m. I have not brought any proof of having availed earned leave for three months. I am entitled to medical reimbursement. I am having a bank account. Whatever expenditure was incurred on my treatment the money was drawn from the bank account. Kiranjit was on the backseat, while my daughter was occupying the seat rear driver seat. Distance between the place of accident and my residence is about 22 k.ms The bus was spotted by me from a distance of about 2 furlongs. Distance between

the tractor trolly and the car was 1 ½ furlong. The accident took place 1 k.m. prior to Bhakra X Canal. Except the driver there was none else on the tractor-trolly. Age of driver of the bus was around 26-27 years. I cannot say if driver of the bus was around 26-27 years. I cannot say if driver of the bus fled the scene or not. It is correct that before the accident took place the bus and the car were on pucca road. Accident also took place on the metalled road. When the accident took place bus had already crossed the tractor trolly. No vehicle was intervening the tractor-trolly and the bus. The road on the place of occurrence is about 30 ft wide and there was no kacha pavement/berms 15 ft. wide, on both the sides of the road. (Volunteered). The kacha berm on both the sides was about 5 ft. wide. Right side of the bus had hit the right hand side of the car. It is incorrect to suggest that accident was caused due to my rash and negligent driving. It is also wrong to suggest that I have not suffered any permanent disability. It is correct that I am performing the duties assigned to me in routine in the hospital. It is wrong to suggest that I have not suffered any loss on account of the accident.”

8. If the cross-examination of AW4 along with assertion made in examination-in-chief as regards to manner of accident are taken into consideration, it is clearly made out that AW4 had specifically stated that bus No.PB-11D-9572 offending vehicle was duly noticed AW4 coming from opposite side and bus was in the process of overtaking tractor trolley. AW4 had stated in examination-in-chief that he was driving his Maruti car at speed of 50KMPH on the correct left hand side of the road. AW4 had also stated that the bus was being driven in rash and negligent manner at high speed and while taking over tractor trolley had hit against his car. AW4 had

applied brakes and his car had almost come to halt when he was hit by bus resulting in severe damage to car and injuries to him and person accompanying him. AW-4 duly stated that bus was driven by respondent No.1-Sukhdev Singh and FIR No.160 dated 13.09.1998 was lodged. Above noted facts stated in examination-in-chief needs to be kept in mind while appreciating statement made in cross-examination. Merely because appellant-claimant had spotted the bus from a distance of about 02 furlongs and distance between tractor-trolley and car was 1-1/2 furlongs and at the time of accident there was no vehicle between bus and car, would not lead to the conclusion that the appellant-claimant had contributed in causing the accident. Similarly, merely, because road was 30 feet wide would also not lead to the conclusion that appellant-claimant had contributed in causing the accident. Above facts needs to be considered with assertions of appellant-claimant, wherein he had specifically stated that he was driving his car at moderate speed on left hand side of road which is correct side of the road. Appellant-claimant had also claimed that he had duly applied the brakes and his car was hit by a bus in the process of overtaking tractor-trolley and when car was hit, it had almost stopped. All these facts stated by AW-4 has not been contradicted or shown to be wrong by respondent No.1 by leading positive evidence. Respondent No.1-driver of offending vehicle has not dared to come into witness box and make statement regarding manner of accident on oath and face cross-examination. If the evidence of AW-4 is read in totality, it is clearly made out that appellant-claimant had not contributed by way of any act of omission or commission in causing the accident dated 12.09.1998. The finding of learned Tribunal as regards to contributory

negligence, therefore, cannot be sustained and is accordingly set aside.

9. Learned counsel for appellant-claimant has also challenged quantum of compensation. Learned Tribunal has granted following compensation vide impugned award:-

i)	Shortening of leg	Rs.50,000/-
ii)	Pain and suffering	Rs.50,000/-
iii)	Disability	Rs.1,00,000/-
iv)	Expenses on transportation attendant and special diet.	Rs.50,000/-
v)	Loss of amenities and enjoyment of life.	Rs.50,000/-
vi)	Loss of earned leave	Rs.36,000/-
vii)	Medical leave	Rs.8,000/-
	Total	Rs.3,44,000/-

10. In a case of injury where injured had suffered permanent disability, compensation is payable to injured claimant under the heads of 'reimbursement on expenses of transportation charges, attendant charges and special diet', 'pain and sufferings', 'loss of income during treatment', 'loss of earning capacity on account of permanent injuries', 'loss of future amenities of life', 'loss of future prospects' and 'future medical expenses'.

11. As far as medical expenses are concerned, appellant-claimant had claimed full reimbursement from his employer being a Government Doctor. Appellant-claimant has been granted Rs.15,000 for expenses towards transportation, attendant and special diet. As per evidence led by appellant-claimant, appellant-claimant had remained hospitalized for 16 days and remained under treatment of doctor for three months. It is also claimed that appellant-claimant was confined to bed for three months under the advice of

doctor. Keeping in view total period of hospitalization and treatment, amount of Rs.40,000/- would be appropriate under the head of transportation, attendant charges and special diet. Appellant-claimant must have suffered loss of future amenities as he had suffered permanent disability on account of shortening of leg and restricted movement of hands. Accordingly, appellant-claimant shall be entitled to compensation of Rs. 1,00,000/- for loss of amenities. Appellant-claimant is a Government Doctor and must have suffered loss of future prospects also on account of permanent injuries. Accordingly, an amount of Rs.1,00,000/- is awarded towards loss of future prospects. No evidence has been led to show requirement of any future medical expenses, therefore no compensation is payable under said head. The learned Tribunal has granted compensation of Rs.50,000/- towards pain and sufferings, which needs to be enhanced and same is accordingly enhanced to Rs.1,00,000/-. Appellant-claimant has also been granted Rs.36,000/- towards loss of earned leave and Rs.8,000/- towards loss of medical leaves. As far as medical leaves are concerned, medical leaves are available to Government employee as a matter of right and they are not encashable. Accordingly, no compensation for loss of of medical leaves is justified. As far as loss of earned leaves are concerned, same is encashable at the time of retirement of Government employee and if substantial leaves are taken away, it amounts to direct loss to the Government employee and accordingly loss of earned leave during period of treatment is to be considered loss suffered during the treatment by appellant-claimant. Appellant-claimant has availed earned leave for three months and was earning Rs.20,000/- per month, therefore, he would be entitled to

Rs.60,000/- on account loss of earned leaves/loss of income during treatment.

12. The main contentious issue is as regards to loss of earning capacity to which appellant-claimant is entitled to in view of 50% permanent disability suffered on account of restricted movement of arm, shortening of leg by 02 cms.

13. Admittedly, in the present case, petitioner is a Government employee working as a doctor in Government hospital. Learned counsel for Insurance Company has referred to judgment titled as **New India Assurance Company Ltd. Vs. Satish Chander Sharma and Anr.**, 2022 (2) ACJ (SC) 175 to argue that when injured is a Government employee who had suffered permanent injuries, he would not be entitled to loss of earning capacity as he continues to be in service and in present case, appellant-claimant continued in service and retired on attainment of superannuation and therefore, is not entitled to any loss of earning capacity as appellant-claimant had not suffered loss of earnings on account of permanent injury.

14. In view of judgment cited by learned counsel for Insurance Company, I find merit in the case projected by learned counsel for Insurance Company. In present case, appellant-claimant continued to be a Government employee and was earning same salary even after suffering permanent injuries. The permanent injuries, no doubt, must have curtailed his enjoyment of amenities of life in future, future prospects and therefore, this Court has already enhanced compensation under all the three heads vis. 'pain and suffering', 'loss of future amenities' and 'loss of future prospects'.

In view of facts and circumstances of the present case, where appellant-

claimant continues to remain in service and have retired on attainment of superannuation, no compensation for loss of earning capacity on account of permanent injury shall be payable.

15. Accordingly, re-worked compensation payable to appellant-claimant is as under:-

Medical expenses, transportation & attendant charges		Rs.40,000/-
Loss of amenities		Rs.1,00,000/-
Loss of future prospects		Rs.1,00,000/-
Pain and sufferings		Rs.1,00,000/-
Loss of earned leaves/loss of income during period of treatment	Rs.44,000/- (Rs.36,000+Rs.8,000)	Rs.60,000/-
Compensation awarded by Tribunal	Rs.1,72,000/-	
Compensation awarded in appeal		Rs.4,00,000/-
Enhancement of compensation	Rs.4,00,000/- (awarded in appeal)- Rs.1,72,000/- (awarded by Tribunal)	Rs.2,28,000/-

16. Appellants-claimant shall also be entitled to interest over enhanced amount/amount deducted on account of contributory negligence to the extent of 7.5% from the date of filing of claim petition till its realization. The liability of respondents to pay compensation shall be as per award.

17 Appeal is disposed of in above terms.

18. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)

JUDGE

02.04.2026

Sunil Chander

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No