2025:PHHC:003542

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

233 **FAO-3839-2016 (O&M)**
Date of Decision : 13.01.2025

KANTA .... Appellant

VERSUS

RADHEY SHYAM SINGH AND ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jarnail Singh Saneta, Advocate for the appellant.

Mr. Rajbir Singh, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the injured claimant-appellant aggrieved by the quantum of compensation awarded vide award dated 08.10.2015 passed by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal') as well as the finding qua the contributory negligence.

2. Brief facts relevant to the present *lis* are that on 08.07.2014 the claimant-appellant along with her husband, namely, Rajesh, and Nirmla (wife of brother of her husband) had left their Village Silana at about 8:00 am on a motorcycle bearing registration No.HR-79-4025 and were going to Village Madodi to meet their aunt (Bua). When they reached near New Bypass Village Dobh, a car bearing registration No.DL-9CAD-3515 which was being driven rash and negligently, at a fast speed and without observing the traffic rules, came from the side of Bhali Anandpur and struck against

the motorcycle. Due to the impact, the claimant-appellant along with other occupants of the motorcycle fell on the road. On being asked, the driver of the car disclosed his name as Radhey Shyam Singh son of Ram Gopal. It was averred in the claim petition that after the accident several persons gathered at the spot and taking advantage of the same, the driver of the car – Radhey Shyam Singh (respondent No.1 herein) – fled from the spot leaving the car there. After arranging some vehicle, the claimant-appellant along with the others was shifted to Rohtak for medical. FIR No.282 dated 08.07.2014 was registered against respondent No.1. On notice the respondents No.1 and 2 appeared and filed their joint written statement raising various preliminary objections regarding maintainability, *locus standi*, cause of action and estoppel. On merits all the allegations made in the claim petition were denied. The factum of the accident was also denied and it was averred that respondent No.1 has been roped in a false case by the claimant-appellant in collusion with the local police. Respondent No.3-Insurance Company filed its separate written statement raising various preliminary objections regarding *locus standi*, cause of action and maintainability. It was averred that respondent No.1 was not holding a valid and effective driving licence at the time of the alleged accident.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Cost of treatment	₹1,09,000
2.	Pain and Sufferings	₹15,000
3.	Transportation and healthy diet	₹20,000
4.	Loss on account of 20% disability	₹60,000
5.	Minus 50% on account of contributory negligence	[₹2,04,000 - ₹1,02,000] = ₹1,02,000
	Total compensation	**₹1,02,000**
	Interest	**@9% per annum**

4. The Tribunal on issue No.1 held it to be a case of contributory negligence as the injured claimant-appellant was one of the pillion riders on the motorcycle.

5. Learned counsel for the claimant-appellant would contend that since there were two pillion riders, it was held to be a case of contributory negligence. It is further the contention of the learned counsel that the injured claimant-appellant is a house wife and due to the injuries sustained by her, which is 30%, she is permanently disabled on account of fracture right medial malleolus with stiffness right ankle and she is unable to do the household work properly. It is further the contention that a multiplier method ought to have been applied. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]**. It is further the contention that the amount awarded under the head pain and sufferings as well as the amount awarded under the head diet and transportation are on the lower side.

6. *Per contra*, learned counsel for respondent No.3-Insurance Company would contend that since the injured claimant-appellant was triple riding on the motorcycle, hence, it has rightly been held to be a case of contributory negligence. It is further the contention that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

7. Heard.

8. In the present case the Tribunal has held it to be a case of contributory negligence as the injured claimant-appellant was triple riding on the motorcycle. However, it is not the case where the injured claimant-appellant was the rider of the motorcycle. She was only riding the motorcycle as a pillion rider. At best it would be a case of a traffic violation and cannot be a case of contributory negligence. The Hon'ble Supreme Court in the case of **Mohammed Siddique & Anr. vs. National Insurance Company Limited & Ors. [Civil Appeal No.79 of 2020 decided on 08.01.2020]**, which was a case where the victim was one of the two pillion riders on a motorcycle, has held as under :

> *"13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on*

the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could

have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of

> *10% towards contributory negligence, is clearly unjustified and the same has to be set aside."*

9. In view thereof, the finding of the Tribunal qua contributory negligence is set aside. The injured claimant-appellant in the present case is a house wife and due to the injuries sustained by her, which is fracture right medial malleolus with stiffness right ankle, she would have restriction of movement. In view thereof, the disability qua the body is taken as 15%.

10. The Hon'ble Supreme Court in the case of **Pappu Deo Yadav** (supra) has held as under :

> *"12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle).*
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> *13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to*

be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity."

11. In view of the law laid down in the case of **Pappu Deo Yadav** (supra), a multiplier method is applied in the present case keeping in view the permanent disability of 15% suffered by the injured claimant-appellant

since the injury has affected her work which is that of a house wife. In view thereof, the notional income of the injured claimant-appellant is taken as that of a casual labourer prevalent at the time of the accident i.e. ₹5,640 per month. Keeping in view her age at the time of the accident, a multiplier of '15' would be applicable. The injured claimant-appellant would also be entitled to 40% future prospects. It has come on the record as per the MLR (Ex.P-46) that the injured claimant-appellant has sustained two injuries i.e. a lacerated wound on the right leg which was bone deep and complaint of pain all over the body. The disability certificate (Ex.P-41) describes the disability as 30% qua the limb. In view thereof, the amount awarded under the head pain and sufferings is on the lower side and the same is enhanced to ₹1,00,000 and the amount awarded under the head transportation and diet is also enhanced to ₹50,000. The amount awarded under the head cost of treatment is maintained.

12. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly income	₹5,640
2	Annual Income	[₹5,640 x 12] = ₹67,680
3	Loss of annual Income on account of 15% permanent disability	₹10,152
4	Loss of income after applying multiplier '15'	[₹10,152 x 15] = ₹1,52,280
	Future prospects @40%	[₹1,52,280 + ₹60,912] = ₹2,13,192
5	Pain and suffering	₹1,00,000/-
6	Transportation and diet charges	₹50,000
7	Medical expenses	₹1,09,000
	Total Compensation	**₹4,72,192**

13. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9% per annum from the date of filing of the claim petition till the realization of the entire amount.

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

13.01.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No