

(1995) 02 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from the Order No. 1050 of 1985

Sarwan Singh

APPELLANT

Vs

Paramjit Singh and Others

RESPONDENT

Date of Decision: Feb. 14, 1995

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (1996) ACJ 660 : (1995) 110 PLR 407

Hon'ble Judges: Amarjeet Chaudhary, J

Bench: Single Bench

Advocate: C.S. Punia, for the Appellant; Sarwan Singh, for the Respondent

Final Decision: Dismissed

Judgement

Amarjeet Chaudhary, J.

This appeal is directed against the award of the Motor Accidents Claims Tribunal, Ludhiana dated 24.7.1985 which had dismissed the claim petition for the reason that the claim petition was barred by time and the claimant had not sustained injuries due to rash and negligent driving of respondent No. I, Paramjit Singh, who was driving Motor cycle No. PUI-4774.

2. Dissatisfied with the award, the present appeal has been filed for setting aside the award and acceptance of the appeal.

3. After having heard the learned counsel for the parties perusing the paper book and the gazette, produced by the learned counsel for the appellant, it is observed that there was no delay in filing the claim petition. The claim petition could not be filed on the last date i.e. 3.1.1983 being a gazetted holiday.

4. In this case, the injuries sustained by the claimant have been duly proved. Dr. Harcharan Singh, AW-1 had stated that he found fracture of both bones, i.e. tibia and fibula of left leg.

5. In view of the statement of the Doctor, it cannot be disputed that the claimant had not suffered injuries.

AW-2 Darshan Singh had given the eye-witness count of the accident. He had stated that the claimant was removed to Mullanpur by the Air Force personnel. He further stated that the motor cycle bearing No. PUI-4774 was lying there along with cycle of Sarwan Singh in the middle of the road.

F.I.R. was also registered which was duly proved.

Dr. Suresh Kumar Gupta, AW-10 had examined the injured and found eight injuries on his person.

6. The accident had taken place when the claimant had approached the main road running between Mullanpur and Raikot from the Kacha path and had tried to cross the road towards his own side when respondent No. I, who was riding on a motor cycle struck against the cycle of the claimant in rash and negligent manner. In such eventuality, the probability of offending vehicle being not far away from the Kacha Path, cannot be ruled out. If a person comes on the main road from the side line and is knocked down by another vehicle on the main road then both the parties can be held guilty of contributory negligence, for their failure to take precautions.

7. In this view of the matter, I hold both the parties equally responsible for the accident.

8. I had come in the statement of Dr. Y.C. Markan, AW-II that Sarwan Singh had got fracture of upper end of tibia with limited range of motion at the knee joint ranging from 0 to 60 degree and had his leg shortened by one inch and the range of motion at the hip joint was also restricted. This disability was to the extent of 40%.

9. Keeping in view the nature of injuries and disability of the claimant to the extent of 40% he would have been entitled to Rs. 80,000/- as compensation but since it has been held in the earlier part of the judgment that it is a case of contributory negligence and both the parties are equally responsible for the accident, the claimant is held entitled to Rs. 40,000/- as compensation with 12% interest from the date of filing of the claim petition. The liability to pay compensation would be that of the Insurance Company.

10. In view of the above discussion, the appeal is allowed and the award of the Motor Accidents Claims Tribunal, Ludhiana is set aside.

11. No Costs.