

***** Vs. Sarabjit Singh and Another

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Court : Punjab and Haryana

Decided On : Feb-17-2014

Appellant : *****

Respondent : Sarabjit Singh and Another

Judgement :

FAO No.815 of 1995 1 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH ***** FAO No.815 of 1995 Date of decision : February 17, 2014
***** Dr.

Kulbir Singh PurewalAppellant Versus Sarabjit Singh and another
.....Respondents FAO No.980 of 1995 ***** Dr.

Kulbir Singh PurewalAppellant Versus State of Punjab and another
.....Respondents CR No.1590 of 1995 ***** Dr.

Kulbir Singh PurewalAppellant Versus Nirmal Singh and another
.....Respondents ***** CORAM: HON'BLE Mr.JUSTICE K.

KANNAN ***** Present: Mr.Manish Jain, Advocate for the appellant.

Mr.Deepak Thapar, Advocate for respondent no.1 (In FAO Nos.980, 815 of 1995 and CR No.1590 of 1995) Kukreja Ritu 2014.02.26 16:06 I attest to the accuracy and integrity of this document Chandigarh FAO No.815 of 1995 2 Mr.P.S Bajwa, DAG, Punjab.

***** K.

KANNAN, J (ORAL) All these appeals are connected arising out of the same accident that took place on 10.1.1991.

FAO No.980 of 1995 is for enhancement of claim for compensation awarded to the claimant who was also incidentally the driver of the Maruti Car involved in the accident.

The other vehicle which was involved in the collision was an Ambassador car that belonged to the State in which Inspector General of police was travelling.

The claimant would contend that the accident took place by the negligence of the driver of the State car and the Tribunal was in error in finding that the claimant was also guilty of contributory negligence and imposing 50% cut on the quantum of compensation assessed in his favour.

There were also claims made by the driver of the Ambassador car and the passenger of the Ambassador car which are the subject matter of revision and appeal respectively in CR No.1590 of 1995 and FAO No.815 of 1995.

In this revision and appeals the awards in challenge are the compensation awarded to the driver and the passenger and imposing a 20% liability of the total amount found payable to the respective claimants on the driver of the Maruti Car.

The contention would be that there was no rationale for imposing 20% liability of the 50% of the amount assessed as payable to the respective claimants.

The counsel would point out that the sworn evidence that the State vehicle was responsible for the accident must have been Kukreja Ritu 2014.02.26 16:06 I attest to the accuracy and integrity of this document Chandigarh FAO No.815 of 1995 3 rejected and would point out to the observations made by tribunal that the versions of the witnesses cited by the respondents were inconsistent.

Consequently, the ultimate finding that both the vehicles were responsible for the accident was wrong.

In this case the passenger of the Ambassador car who was a high rank police official who held position as the Inspector General of Police had himself given evidence that the accident took place when the Maruti Car was overtaking a truck and came in collision with the Ambassador car.

The driver of the truck was also examined as RW-3 who stated that the Maruti Car was overtaking him and it first struck against his truck before colliding with the Ambassador car.

The Tribunal observed that there have been no version at all, at any point of time, that the Ambassador car had hit against a truck and then collided with the Maruti car.

Apart from the fact that it was a new case introduced at the trial, the Tribunal also observed that he was not a summoned witness and he had been approached by the police on their own and therefore he must be trotting out a false case only to support the State.

I have considered the entire reasoning and all the evidence discussed by the Tribunal.

Even if the version of the driver of the truck that the Maruti Car had hit the truck first before colliding with the Ambassador car could not be accepted, an evidence adduced by the driver at least proved that there was another vehicle at the scene of accident and his evidence should be taken at least the extent of the driver of the car was attempting to overtake the truck. I attest to the accuracy and integrity of this document. 2014.02.26 16:06 I attest to the accuracy and integrity of this document. Chandigarh FAO No.815 of 1995 4 truck.

Again if a senior police official of the rank of Inspector General gives evidence in the Court that the accident took place when the Maruti car was overtaking a truck, it ought to evoke confidence in the Tribunal to accept his version.

There is simply no reason for a person of such responsibility to utter false evidence in Court.

The Tribunal was in error in characterizing his evidence as unworthy.

If there had been a collision on road with two vehicles coming from opposite directions and when there was also evidence that the collision took place at the time when the Maruti Car was overtaking a truck, I will find the ultimate decision taken by the Tribunal that both the vehicles were responsible for the accident would not require to be disturbed.

Minor contradictions are bound to happen but it does not detract from an overall inference that was possible by redrawing the scene pictorially that it was a case of contributory negligence of the claimant who was the driver of the Maruti car.

I will, therefore, confirm the finding and reject an argument placed by the counsel for the appellant that there was no negligence on the part of the owner of the Maruti car.

As regards the compensation assessed, the claimant was an orthopedic surgeon himself and he had suffered three fractures namely a fracture of the right femur and fracture of both the lower bones of the right leg.

The fractures were reduced by open surgery and by implant of plates, he was hospitalized on 10.1.1991 till 31.1.1991.

The Tribunal, in stead of assessing the several heads of claim cited some case laws where compensation in the range of Kukreja Ritu 2014.02.26 16:06 I attest to the accuracy and integrity of this document Chandigarh FAO No.815 of 1995 5 2,00,000 to 2,90,000/- had been granted and chose to award Rs.2,20,000/-.

Assessment of compensation for injuries have to be on a case to case basis and only principles regarding the manner of assessment could have been of another precedent value.

I, therefore, will make an attempt to see whether Rs.2,20,000/- as assessed was required to be modified.

If I accept the evidence that the expenses incurred to the tune of Rs.15,000/- and allow for hospital charges attendant charges and diet and transportation, at amount of Rs.20,000/-, provide for a compensation of Rs.30,000/- for three

fractures and surgery and provide again for loss of amenities by shortening of the limb caused by disability at 35,000/- and take the loss of income at Rs.50,000/-, still the amount would be less to Rs.2,20,000/-.

I would, therefore, not find any scope for enhancement of the amount already granted.

If 2,20,000/- was the total amount that could be assessed it ought to be subjected to the abatement of a claim to the extent of apportionment of liability for the degree of negligence.

Since I have upheld the finding regarding the contributory negligence, a 50% abatement will result on account of casting equal responsibility for the accident.

Then a compensation assessed at Rs.1,10,000/- shall become payable to the claimants with interest against the owner of the Ambassador car which is the State.

There is no specific mention made as to how the Tribunal has directed that this amount shall be paid 80% by the State and 20% by the Driver.

State is liable for the negligent act of driver and Kukreja Ritu 2014.02.26 16:06 I attest to the accuracy and integrity of this document Chandigarh FAO No.815 of 1995 6 no part of the liability shall be specifically ascertained as payable by the driver.

The right of enforcement shall, therefore, avail to the claimant against the State as regards the whole and not in the manner assessed by the Tribunal.

CR No.1590 of 1995 is a revision by the driver of the Maruti Car who is directed to pay 20% of the amount assessed to be payable to the driver of the Ambassador car.

The compensation assessed was Rs.80,00/- the Tribunal abated the claim to the extent of 50% on account of contributory negligence and on the sum of Rs.4,000/-, the Tribunal has directed 20% of the amount to be paid by the driver of the Maruti Car and 80% by the insurer if there was a negligence by the driver of the Maruti

car, the policy of insurance ought to make possible a full right of indemnity to the insurer namely the driver owner of the Maruti Car.

The liability to the extent of 20% on the driver is legally untenable and is set aside.

The amount which the driver of the Ambassador car was found entitled to shall be wholly recoverable from the insurer of the Maruti Car namely, Oriental Insurance Company.

FAO No.815 of 1995 is against the compensation of a passenger of the Ambassador car.

The Court has assessed Rs.91,600/- as the compensation payable to him and again directed 20% of the same to be paid by the driver of the Maruti Car.

This is erroneous and the entire amount was bound to be recovered without any abatement in favour of the claimant against the insurer-Oriental Insurance Company Limited.

Although no appeal has been filed by Kukreja Ritu 2014.02.26 16:06 I attest to the accuracy and integrity of this document Chandigarh FAO No.815 of 1995 7 the claimant-Sarabjit Singh as against the award of Rs.50,000/-, I invoke the power under Order 21 Rule 33 and apply the law laid down by the Supreme Court in Ibrahim versus Raju in 2011 (10) SCC634 that a claimant is entitled to be awarded the amount which he is entitled, although it is more than what he has claimed.

The ultimate award that is passed by this Court is in excess of what was already assessed by the Tribunal.

The error of the Tribunal in causing an abatement of the negligent driving of the respective drivers of the Maruti Car and the Ambassador car would require to be corrected for a passenger could never be stated to have been guilty of contributory negligence.

As far as the passenger is concerned, it was a case of a composite negligence of liability and since in the case, he has included the Insurance Company as a party he is entitled to recover the same against the Insurance Company in full.

The Insurance Company in turn will have a right of recovery against the State for 50% of the amount with the Insurance Company.

However, if a full satisfaction had already been recorded it would not require to be reopened.

If on the other hand full satisfaction is not recorded in the claim petition filed by Sarabjit, he shall be entitled to effect the recoveries from the party against whom 50% of the amount is now directed to be paid.

To clarify, if 50% of the amount has already been paid by the insurer, then the remaining amount shall also be recovered against the Insurance Company but since the State is not a party in the claim petition filed, the Insurance Company may effect the recoveries against a State by independent proceedings.

Kukreja Ritu 2014.02.26 16:06 I attest to the accuracy and integrity of this document Chandigarh FAO No.815 of 1995 8 The FAO No.980 of 1995 is dismissed.

CR No.1590 of 1995 and FAO No.815 of 1995 are allowed to the extent indicated above relieving the appellant of any liability being the driver and passenger of the Ambassador car.

February 17, 2014 (K.

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