

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

F.A.O.NO. 2424 OF 2002

Date of decision:31st August, 2010

Deepak Kumar

.....Appellant

Versus

Bharat Kumar and others

.....Respondents

BEFORE: HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. Vijay Pal, Advocate for
Mr. Deepak Agnihotri, Advocate
for the appellant.

Mr. Piyush Gagneja, Advocate
for Mr. N.K.Khosla, Advocate,
for New Inida Insurance Company/respondent No. 3.

Mr. Inderjeet Sharma, Advocate,
for United India Insurance Company.

- 1.** Whether Reporters of local papers may be allowed to see the judgment? Yes/No
- 2.** To be referred to the Reporters or not?Yes/No
- 3.** Whether the judgment should be reported in the Digest? Yes/No

K.Kannan, J.(Oral)

1. The appeal is by the claimant whose petition was dismissed by the Tribunal. The accident was alleged to have occurred when he was travelling as a pillion rider on Scooter bearing Registration No. PB-23 11L 1725 owned by fifth respondent herein and driven by the fourth respondent. The Insurance Company for the scooter is sixth respondent herein. The vehicle collided with another scooter bearing Registration No. PB 11K 8854. The vehicle was owned by the second respondent

and driven by the first respondent. The Insurance Company for the said scooter was third respondent. The Tribunal found that the accident arose when the respective drivers, attempted to save a child which had darted across the road. The Tribunal found therefore, that there was no negligence on the part either one of the drivers. I am of the view that such a finding is not correct at all for while a negligence could not be attributed to a child, a driver of a vehicle can have no justification to dash with another vehicle and plead that the accident took place on account of a negligent act of a child. The accident which has resulted in a collision, I would find, is attributable to both the drivers of the vehicles and they were equally negligent. I would, therefore, apportion the liability between the respective drivers in the ratio of 50:50.

2. The case would require consideration for the injuries sustained in the accident. The claimant was a 16 year old boy studying in Xth Standard at the time of the accident. The accident resulted in amputation of the foot and doctor has assessed the disability to be 45%. Even as per the Workmen's Compensation Act, 1923 "Amputation below knee with stump exceeding [12.70 Cms]" or end bearing, the loss of earning capacity is 60%. A young boy of 16 years has lost his foot and he has given evidence to the effect that he is unable to walk and that he has a prosthesis fixed, as what is called as 'Jaipur foot'. He has given evidence to the effect that he has spent over Rs. 1,20,000/- for medical expenses. He has been cross examined on his means to

incur such expenses and it has been elicited through him that he had borrowed money. He has also stated that the Jaipur foot itself cost about Rs. 5,000/-. The medical bills Ex. A-4 to A-22 which have been produced total up to Rs. 14,861. There is no evidence for the fact that he had spent Rs. 1,25,000/-. I am prepared to accept that he must have spent not less than Rs. 50,000/- including the cost of the prosthesis and I would therefore, award Rs. 50,000/- towards the medical expenses. He had been taken to Gulati Hospital, Rajpura, immediately after the accident and later referred to PGI, Chandigarh. He had been admitted in PGI and later an operation had been performed, amputating his leg. The admission into two hospitals and the amputation suffered by him must have caused immense pain and suffering and I would award him towards pain and suffering Rs. 25,000/-. The trips to hospital in a state when he could not have walked must have involved in transportation expenses for which I would award sum of Rs. 20,000/-. He was still a boy in his teens and the loss of amenities of life and the immense hardship for having to lose a foot, when he is unable to run, walk or play must means enormous hardship and caused lowering of esteem for a boy of his age. I would award him a claim for compensation for such amenities at Rs. 1,00,000/-. Even as per Schedule II the multiplier suggested for persons aged between 15 to 20 years is 16 and the income for persons who were not earning the minimum notional income per year must be taken to be Rs. 15,000/-. I would take the disability of 45% as resulting in

loss of earning capacity to 50% which is what the Workmen's Compensation Act assesses. The loss of earning capacity therefore, shall be $15,000 \times 16 \times 50\% = 1,20,000/-$. In all, the total amount of compensation that he shall be entitled to would be Rs. 1,20,000/- towards loss of earning capacity, Rs. 50,000/- towards medical expenses, Rs. 25,000/- for pain and suffering, Rs. 20,000/- for transportation expenses and Rs. 1,00,000/- for loss of amenities of life, hardship for having lost his foot and towards lowering of esteem. The amount under all heads would aggregate to Rs.3,15,000/-. This amount shall be apportioned between the owners of both the scooters which in turn shall, by virtue of the policies of insurance, be payable in 50:50 between 3rd and 6th respondent. This amount which has been determined shall carry interest @ 7.5% from the date of the petition before the Tribunal till the date of payment. The claimant shall be permitted to withdraw 50% of the amount immediately and the remaining shall be kept in deposit for a period of five years, during which period he shall be entitled to withdraw the interest and on completion of period of five years he shall be entitled to receive the balance. The appeal by the claimant is allowed on the above terms.

[K.KANNAN]
JUDGE

31st August, 2010
Shivani Kaushik