

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

FAO No.5942 of 2010 (O&M)

Date of decision:29.10.2010

Pritam Singh and others

....Appellants

versus

Parvesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. N.P.S.Mann, Advocate, for the appellants. .

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether the judgment should be reported in the digest ?

K.Kannan, J.(Oral)

1. The appeal is by the owner of the vehicle that was involved in the accident when a child aged 10 years was run over and he suffered injuries of his left hand. Before the Tribunal, one Dr.Vinod Sharma, was examined as PW1 and he had certified that there was amputation of the left index finger and the x-ray report revealed severe osteoporosis of carpal bones of left hand and loss of complete ray of index finger and first metacarpal. The Medical Board had certified the disability to the extent of 45%. On the basis of evidence adduced, the Tribunal accepted the plea for Rs.10,000/- for pain and suffering and awarded Rs.50,000/- for loss of limb and for future loss of income due to disablement. It had also provided for medical expenses as claimed and which was supported

by medical bills and a total compensation of Rs.81,841/- was arrived at which was rounded off to Rs.81,900/-, was awarded

2. The learned counsel urged the contention that there was an inevitable accident and the child had been run over through the rear wheel of the tractor. He would refer to the fact that the child which was going in a cycle fell down and no negligence could be attributed to the driver of the tractor. I cannot accept such a plea for the only reason that the law does not admit of a contributory negligence when the accident results in injury to a minor child. The accident involving a child when it is a victim must always be seen from the context of how the driver of the vehicle could still avoid the accident. Several Courts have held that a child functions according to its own reason and intelligence, hence logic and rationality are not expected from a child of tender age. The Division Bench of Madhya Pradesh High Court raised a query, “*can one ever conceive that a child, if would have been aware of the peril, would ever commit an act which is dangerous for him?*”. The Court answered in categorical “No”. Please see the judgments in Madhya Pradesh High Court in **State Road Transport Corporation Versus Abdul Rahman-AIR 1997 MP 248**. Similar reasoning have been adopted by the Delhi High Court in a decision in **Delhi Transport Corporation Versus Lalita-AIR 1982 Del 558**, by Karnataka High Court in **R. Srinivasa Versus K.M.Parasivamurthy-AIR 1976 Karn 92**, by the Madras High Court in **Muthusamy Versus S.A.R. Annamalai-AIR 1990 Mad 201**, by the Goa of Bombay High Court in **Matias Costa Versus Roquee Augustnha Jacito-AIR 1976 Goa 1**, and of this Court itself in **Jupiter General**

Insurance Company Limited Versus Gurcharan Singh-1966 AccCJ 382 (Punj) by the Rajasthan High Court in *Priti Versus Chairman, UPSRTC-2003 ACJ 289 (Raj.)*, by the Himachal Pradesh High Court in *Giata Bai Versus Himachal Road Transport Corporation-2007 ACJ 1061 (HP)*, by the Gujarat High Court in *Amul Ramchandra Gandhi Versus Abhasbhai Kasambhai Diwan-AIR 1979, Guj 14*. All this is merely to emphasize that the owner can never plead a case of inevitability of accident or impute contributory negligence to a child. The quantum of compensation already itself is very reasonable and to a child who has all the years before him to suffer throughout the life for loss of limb and serious incapacity to use one hand is truly prodigious and I find no reason to modify the award.

3. The appeal is dismissed.

(K.KANNAN)
JUDGE

29.10.2010
sanjeev