

**(1984) 04 P&H CK 0029**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : F.A.F.O. No. 14 of 1979**

Kuldip Singh Kohli

APPELLANT

Vs

Gurmail Singh and Others

RESPONDENT

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**Date of Decision :** 27-04-1984

**Acts Referred:**

Central Motor Vehicles Rules, 1989 — Regulation 6 , 7

**Citation :** AIR 1985 P&H 208

**Hon'ble Judges :** S.S. Sodhi, J

**Bench :** Single Bench

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## Judgement

1. The claimant Kuldip Singh Kohli sustained multiple injuries when, while driving his motor cycle, he was involved in an accident with a truck. This happened at Jalandhar on June 27, 1975. The accident here occurred at the road inter-section of Rainbow Road and the Road from the market to the Gurudwara in Model Town, Jalandhar. The claimant had come on to this crossing from the Rainbow Road and it was his version that he had almost gone across it when the truck came from the side of the market at a very fast speed and hit into his motor cycle. The respondents, however, denied any negligence on the part of the truck driver.

2. The tribunal came to the finding that this was a case of contributory negligence with the claimant being largely to blame for it. The liability of the truck driver was consequently assessed at only ten per cent. On this basis a sum of Rs. 800/- was awarded as compensation to the claimant for the injuries suffered by him in this accident.

3. There can be no manner of doubt that this was indeed a case of contributory negligence. The accident here had occurred at a road intersection. A reading of the evidence of the claimant Kuldip Kohli and his witnesses P.W. 1. Mohinder Kumar, P.W. 2 Parmod Kumar and P.W. 3 Paramjit Singh with that of the truck driver R. W. 1 Gurmail Singh would show that in the situation the provisions of both Regulations 6 and 7 of the 10th Schedule of the Motor Vehicles Act were clearly attracted. Regulation 6 casts a duty upon the driver of a motor vehicle to

slow down while approaching a road inter-section and to proceed to enter it only when he can do so with safety. The evidence on record in this case would suggest that neither vehicle slowed down while approaching this inter-section and at any rate neither the claimant nor the truck driver cared to see whether it was safe to go on to the crossing before actually proceeding to do so. The requirements of this Regulation were thus wholly disregarded by both the drivers. As regards the claimant, it must also be held that he disregarded the requirements of Regulation 7 too which required him to give way to the traffic approaching him from his right hand side. The truck here admittedly came from that side and it was thus incumbent upon him to give right of way, to the truck. These being the circumstances there is no escape from the conclusion that the major share of the blame for the accident must lie with the claimant himself which in the circumstances deserves to be assessed at two third. The truck driver being partly responsible to the extent of remaining one third on account of the non observance by him of requirements of Regulation 6. The finding of the Tribunal on the issue of negligence is consequently modified to this extent.

4. The next and main question which arises in this appeal is with regard to the amount payable to the claimant as compensation for the injuries suffered by him. The evidence to note in this behalf is that of P.W. 4. Dr. Vijay Pal Singh, who not only examined the claimant on the day of the accident, but also treated him thereafter. A reading of the testimony of Dr. Vijay Pal Singh would show that the claimant had multiple injuries which included fracture of the shaft of the femur, right thigh and a compound comminuted fracture of both bones of the right leg. A nail had to be put into the thigh bone for union of the broken bones and five or six operations have already been performed on the lower leg and it was said that some more operations would also be required. The leg of the claimant had to be put under plaster which was not removed till towards the end of February, 1977, that is, over a year and half after the accident.

5. Dr. Vijay Pal Singh further deposed that the claimant had suffered a permanent disability on account of his injuries as his leg had been shortened by about an inch, with the result that he cannot run or play normally and in case he were to take on a standing job, he would feel pain in his leg. He could not, he stated, join the Army or the Police. It was also said that he could not resume his normal duties for over six months after his discharge from hospital. The claimant remained hospitalised from June 27, 1975 to August 13, 1975.

6. The claimant in his statement as P.W. 8 deposed that he had not only been treated by Dr. Vijay Pal Singh, but also by Dr. Nirmal Singh for skin grafting. Dr. Hardas Singh of V. J. Hospital, Amritsar and Dr. H. C. Gupta of the Civil Hospital, Nakodar besides Dr. Mangat. He also deposed to the expenses incurred by him on his treatment which he assessed at Rs. 25,000/- besides stating that he had lost Rs. 68,000/- profit from his shop on account of this accident.

7. The claim for compensation in this case can be put under two broad heads, one which is capable of precise calculation namely the amount that the claimant

actually spent upon his medical treatment or the financial loss that he suffered in his business on account of the accident, and the other which is not so capable of computation which would fall under the head of general damages. As regards the claim for medical expenses what stands established on record is that the claimant was hospitalised from June 27, 1975 to August 13, 1975, a period of 47 days. The room rent for this period was, according to the claimant Rs. 6/- to Rs. 8/- per day. Taking this rate to be Rs. 8/- per day, the room rent would work out to Rs. 376/-. The claimant then states that he had to get a large number of X-rays taken, 30 to 40 X-rays were taken in the hospital and 20 to 25 after his discharge from the hospital. The charge of an X-ray, he stated was Rs. 14/- per X-ray in hospital and Rs. 16/- to Rs. 20/- per X-ray at other places. The claimant has also produced some X-rays on record and their total number is 23. There is no corroborative evidence to show the precise number of X-rays on record at Rs. 14/- each would work out to Rs. 322/-.

8. Next is the claim for medicines and injections purchased for the treatment of the claimant. According to P.W. 4 Dr. Vijay Pal Singh the claimant was given 60 injections of garramycin, 20 to 30 injections of icannamycin besides about 50 injections as also capsules of chloromycetin. He was also given ante gas gangrene serum 40,000/- units. There is no detailed account of what the claimant had to spend for these medicines and injections. Some cash memos and bills are, however, on record: the total thereof works out to Rs. 346/78 p.

9. The claimant remained under the treatment of number of doctors who he named in his statement but there was no mention by him of the amount, if any, that he paid them for his treatment.

10. Finally, it would be reasonable to assume that place as the claimant was, some special diet must indeed have been administered to him during the period of his treatment. Keeping in view the amounts actually found to have been spent by the claimant as also his likely expenditure under various heads as referred to above. It would be fair assumption that a sum of Rs. 6000/- would cover his expenses on these accounts.

11. Coming now to the claim for loss of earning, counsel for the claimant could point to no evidence on record on which any such claim could be sustained. On his own showing the claimant was an Income Tax assessee. No documentary evidence either in the form of Income Tax returns or orders or even the accounts of the business that he was running had been produced to show the loss, if any, that he suffered in his business on account of this accident. No amount can thus be awarded under this head.

12. Turning now to the claim for general damages which would comprise the pain and sufferings caused to the claimant on account of the accident, the permanent disability that he is now left with as also the loss for amenities of life particularly his inability to lead a normal life as he was used to prior to this accident, it will be seen here that he suffered a fracture of the shaft of the femur and there was

also a fracture of both bones of the right leg. There has been a shortening of right leg by one inch and he had also to undergo a long period of hospitalisation with his leg being under plaster for almost for a year and half. There can by its very nature be no precise measurement in monetary terms of what an injured claimant suffers on account of the injured claimant suffers on account of the injuries sustained by him and the disabilities that he is left with on account thereof. The yardstick that the courts follow in such matters is that provided by awards in comparable cases.

13. It would be relevant here to advert to the judgment of the High Court of Karnataka in *M. Subba Raju v. Syed Mahaboob* 1984 ACJ 130. This was a case of fracture and dislocation of the hip bone which resulted in the shortening of the right leg by an inch and half with the result that the injured could not sit with crossed legs and needed a stick for walking. A sum of Rs. 45,000/- was awarded as general damages. The court here noticed the judgment of our High Court in *State of Haryana and Another Vs. Lt. Col. Balbir Singh Hooda*, where the injured was a Lt. Colonel in the Army, who had suffered a fracture of both legs and dislocation of both the hip joints. He had to undergo nine major operations and his whole body except his arms and face remained under plaster for five months, sum of Rs. 57,472/- was awarded as compensation for medical treatment, loss of pay, re-employment, mental agony and permanent disability.

14. Considered in the totality of the circumstances of the case, a sum of Rs. 45,000/- deserves to be awarded to the claimant as general damages in this case.

15. The claimant is accordingly awarded a sum of Rs. 17,000/- as compensation after making due allowance for his contributory negligence in this accident. The claimant shall be entitled to the amount awarded along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded. The liability for the payment of the amount awarded shall be joint and several of respondents driver, truck owner as also the Insurance Company.

16. This appeal is consequently accepted with costs. Counsel's fee Rs. 300/-.

17. Appeal allowed.