

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

FAO No.503 of 2003 (O&M)

Date of decision: 03.09.2015

Tara Chand

... Appellant

versus

Rajbala and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kulvir Narwal, Advocate for the appellant.

K.Kannan, J.

The appeal is at the instance of the owner challenging the liability cast on him for the death caused by a driver in the motor accident. The accident took place on 08.03.2000 when the deceased was coming in a scooter which dashed against the vehicle driven by the appellant-driver. The MLR revealed smell of liquor from the mouth of the deceased just before his death. The defence, therefore, was that the deceased invited death upon himself by his careless driving and no negligence could be attributed to the driver. The Court rejected the plea and proceeded to determine compensation at Rs. 6,91,000/-. The appeal is filed contending that no amount should have been awarded and if it all it should have been less than what was assessed.

So long as there is no policy of prohibition in the State of Haryana, consumption of liquor itself cannot be taken as a matter for

punishing the deceased or the members of his family. Drunken driving is a bane and India which has the highest incidence of per capita accident where one person dies on the road every four minutes. Policy considerations for strict check of persons who hold licences and patrolling of highways and roads ought to be done with greater vigour. However, if a death does take place, it is impossible to make an inference that yet another vehicle which was involved in the accident would be rendered wholly exculpatory. Yet another person driving on the road ought to exercise such care and caution that he does not cause any harm to even the most negligent person coming from the opposite side I can never take an argument that the death on road occurs by a careful driving of some person if he had collided with a scooter but even if drunk must mean that the driver of the vehicle should cause such a collision had contributed to the accident for sure. It was not a case of drunken driver coming and dashing against the appellant's vehicle when it was stationary. Both the vehicles were in motion and struck head on coming from the opposite directions.

I examined the adequacy of compensation to see whether assessment had been made correctly but I find that the assessment has been grossly low. He did not provide for a sure prospect of increase in salary for a person who is working in ESI Hospital. The scales of compensation on conventional heads which were nominal have obtained different judicial approaches providing for more liberal consideration for loss of consortium to a wife, loss of love and affection to the children and for a parent. The amounts assessed now are in the range of Rs. 1,00,000/-

under each one of these heads, funeral expenses are also assessed high for they are bound to be that even for casting a person in flames for cremation costs money. While attempting to make assessment by applying the scales which are now provided, I find the amount of compensation should have been Rs. 15,00,000/-. I will assume the worst against the deceased in the manner canvassed by the counsel for the appellant forcefully in his argument and even if it a partial abatement to the tune of Rs. 15,00,000/- were to be made by 50%, the compensation assessed was still fall short of what would be appropriate and just. Unfortunately the respondents are not before this Court but the overall compensation cannot suffer any reduction even while applying principle of contributory negligence and taking the deceased to have contributed to the accident by 50% and the appellant driver contributed to 50%.

I make no modification of the award for the amount of Rs. 6,91,000/- is still not high even if contributory negligence could be attributed to the deceased. I confirm the award and dismiss the appeal filed by the owner.

(K.KANNAN)
JUDGE

03.09.2015
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