

THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 591 of 1993(O&M)

National Insurance Co. Ltd. and another

.....Appellants

Versus

Smt. Gurmej Kaur and others

...Respondents

FAO No. 1327 of 1993(O&M)

Smt. Gurmej Kaur and others

.....Appellants

Versus

Bali Ram and others

...Respondents

Date of decision : 13.01.2015

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Neeraj Khanna, Advocate
for appellant No. 1 (in FAO No. 591 of 1993)

Mr. Jagdish Manchanda, Advocate
for the appellants (in FAO No. 1327of 1993)
for the respondent (in FAO No. 591 of 1993)

Mr. D.R. Bansal, Advocate
for respondent No. 3 (in FAO No. 1327of 1993)

ANITA CHAUDHRY, J.

These are two appeals directed against the award dated

24.10.1992 passed by Motor Accident Claims Tribunal, Kurukshetra.

One by the Insurance Company and other by the claimants. The Insurance Company is seeking discharge of its liability while the claimants are seeking enhancement.

An accident took place on 12.01.1991 when Randhir Singh was proceeding from village Jharoli to Shahabad on his motor cycle. Mohinder Singh was on the pillion. As the motor cycle approached the National Highway, one Truck bearing registration No. HRS 8557 driven by respondent No. 1 came from Shahbad side and while crossing the Thol road, struck against the motor cycle. Both the motor cyclists suffered injuries and the motor cycle was damaged. Two claim petitions were filed seeking compensation.

The respondents took the plea that it was a case of contributory negligence on the part of Randhir Singh deceased. The Insurance Company took the plea that the fault was entirely of the motor cyclist and the position in which the bodies were found on the kachha portion of the right hand side did show that deceased had entered the G.T. Road without care and caution.

The Tribunal gave a finding that the Truck was at a high speed and Randhir Singh was also to be blamed for contributing and he got distracted and the liability was placed upon the truck driver and Randhir Singh (deceased) equally.

Since the appeal filed by the Insurance Company as well as the complainant only relates to the death of Mohinder Singh only those facts are being referred to. The Tribunal had noted that Mohinder Singh was 45 years old but had noted that he had five major sons and some minor children from two wives and he could not

be 45 years old and the marriage between him and the claimant had taken place 25 years old. It took the age of Mohinder Singh to be 50 years. His income was taken at ₹ 8000/- per annum. Applying the multiplier of 12, the compensation was calculated at ₹ 96,000/- and ₹ 4000/- was added as funeral expenses.

FAO No. 591 of 1993

The submission made on behalf of the Insurance Company is that the Tribunal had found that the motor cycle driver was also at fault and his liability was placed at 50% but the responsibility of payment of entire compensation had been placed upon them and they were seeking recovery rights from the owner of the motor cycle to the extent of 50%.

Per contra the submission made on behalf of the claimant was that the finding needs to be reversed so far as contributory negligence was concerned and it was the truck driver who was entirely at fault.

The submission made on behalf of the claimants can not be accepted. The Tribunal had noted in detail its findings and the reasons for arriving at that conclusion are correct. It had noted that the bodies were found on the Kachha portion of the road. It noted that Randhir Singh got distracted possibly because his son was on the other side of the road and he did not see the truck coming on the highway. It is well established rule that vehicles coming from a side road must slow down and stop before entering the main road and they must give way to traffic on the main road. It is apparent from the evidence that the deceased did not observe such caution before

entering the main road. There is evidence on record that the truck was on the main road and the accident occurred when the motor cycle came on it from the side road. The negligence on the part of the deceased is, thus, writ large and there is no infirmity in the findings recorded by the Tribunal. Since the liability of payment of compensation had been held to be 50-50 the Insurance Company should be given the right to recover 50% of the compensation from the owner of the motor cycle or his legal heirs from the estate left behind by the owner.

The appeal is partly allowed.

FAO No. 1327 of 1993(O&M)

The submission made on behalf of the appellants/claimants was that the deceased was 45 years old but his age was considered to be 50 years without there being any evidence. It was urged that the deceased used to cultivate 3 ½ acres of land which he had taken on lease besides maintaining cows and buffaloes and the agricultural income was ₹ 60,000/- per annum but the Tribunal had assessed the income at ₹ 4000/- per month. It was urged that the annual loss was assessed at ₹ 8000/- per annum as a finding was given that the land was still with the family and could be cultivated by the sons who are major and compensation of ₹ 1,00,000/- was awarded. It was urged that in the year 1991 the minimum wages were over ₹ 2,000/- per month and the income should be taken at ₹ 5,000/- per month and an increase of 30% should be made towards future prospects and then calculation should be made.

The submission on the other hand was that Tribunal had

noted that the widow who had appeared in the witness box appeared much older than the age she was giving and specific query had been put to the witness in the cross examination. It was urged that the deceased had five major sons and he had married again and from that marriage he had four children and his age would not be less than 60 years. It was contended that there was no evidence that the deceased was maintaining any milch cattle and the jamabandi produced on record only showed that Mohinder was cultivating land belonging to Smt. Jawali and inflated income was pleaded.

No evidence had been led to show that the deceased was running a diary or was maintaining milch cattle. There was no evidence that he owned land. He had not even taken land on batai. He was not maintaining any accounts. The deceased had 11 children from two wives. The deceased could only be taken as agricultural worker. The wages in Haryana were not more than ₹ 1500/- in the year 1991. The Tribunal had taken the age of the deceased to be 50 years, I will make no addition towards future prospects as the evidence throws up certain facts and it is difficult to accept that the deceased was under 50 years of age. Considering the large family a deduction of 1/5th is being made. The annual contribution would come to ₹ 1200 x 12 = ₹ 14,400/-. Applying the multiplier of 11 the compensation would work out to ₹ 1,58,400/-. To this ₹ 5000/- should be added as loss of consortium, ₹ 5000/- for loss of love and affection and ₹ 2500/- as funeral expenses, raising the total to be ₹ 1,70,900/-. Out of this amount, the amount allowed by the Tribunal i.e. a sum of ₹ 1,00,000/- shall be deducted. The

remaining amount would be paid to the appellants within two months failing which the appellants would be entitled to this amount with interest @ 6% from the date of filing of the appeal till its realization.

Resultantly, FAO Nos. 591 and 1327 of 1993 are partly allowed.

13.01.2015

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(ANITA CHAUDHRY)
JUDGE