

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1670 of 2012

Date of decision:- 06.10.2015

Champa Devi and others

...Appellants

Versus

Jarnail Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Nitin Goyal, Advocate for
Mr. Sanjeev Gupta, Advocate
for the appellants

Mr. Eklavya Gupta, Advocate
for respondent No. 2

Mr. Amit Kundra, Advocate
for respondent No. 3

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

1. The present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 24.09.2001 passed by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') to the tune of Rs.3,36,000/-. However the claimants were awarded half of the amount i.e Rs.1,68,000/-, as they had not impleaded the other vehicle which was involved in the accident.

FACTS NOT IN DISPUTE

2. On 17.08.1997, husband of Champa Devi i.e Bhagam Ram (35 years) along with other passengers was travelling in a bus No. PB-11-C-9345, which was going to village Sandharsi Tehsil Rajpura. The bus was being driven by Daljit Singh on the correct side. Thereafter, a truck/tipper bearing No. PCX-1680 came from the opposite side, which was being driven by respondent No. 1 rashly and negligently, struck against the above said bus, as a result of which the said bus became out of control and fell into pits (Khatans) on the left side of the road. All the passengers received injuries. F.I.R No. 123 dated 17.08.1997 u/ss 279/337/338/304-A IPC was registered against the driver of the truck/tipper.

3. Two claim petitions were filed before the learned Tribunal i.e one by the present appellants on account of death of Bhagat Ram and second by Jasbir Kaur on account of the injuries suffered by her in the above mentioned accident.

4.. The learned counsel for the claimants-appellants contends that the award passed by the learned Tribunal be modified on two grounds. Firstly, the compensation awarded by the Tribunal is on the lower side in view of the judgment "***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77***", "***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54***" and "***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent***

*Apex Judgments 459', Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520, Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193, New India Assurance Co. Ltd vs. Gopali and others, 2012(12) SCC 198. Secondly, the appellants were entitled to whole of the compensation amount, in view of the judgments of Hon'ble the Supreme Court in a case of **Pawan Kumar and another etc. vs/ M./s Harkishan Dass Mohan Lal and others, 2014 (2) RCR (Civil) 764 and judgments passed by this Court in cases of Mrs. Poonam Paul and others vs. State of Uttarakhand through Secretary Transport Department Government of Uttarakhand, Dehradun and another, 2011(5) Law Herald 710 and Gurmej Singh vs. Vijay Kumar and others, 2011(5) Law Herald 551***

5. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal.

6. I have heard learned counsel for the parties and perused the record.

COMPENSATION ASSESSED BY MACT

7. The learned Tribunal while passing the impugned award held that it is a case of contributory negligence and the driver of both the vehicles i.e bus and truck/tipper are at fault of causing the accident, as the witnesses in their statements had clearly stated that the truck was coming on its correct side and 2/3 vehicles can pass easily at a time. Had the drivers of

both the vehicles been careful then the accident could be avoided. Both the drivers and their insurance companies were held liable to the extent of ½ share. Thereafter, the learned Tribunal took the salary of the deceased at Rs.2000/- per month and Rs.1000/- was deducted, which he must be spending on himself. Thereafter, multiplier of 14 was applied. The compensation came out to be Rs.3,36,000/- but only Rs.1,68,000/- was awarded to the appellants, in view of the contributory negligence.

RE-ASSESSED COMPENSATION

8. The award of the Tribunal deserves to be modified in view of **Mrs. Poonam Paul's case (supra)**, whereby in a case of fatal accident, it was held to be a case of composite negligence and the compensation was awarded to the claimants. Thereafter, the claimants as well as State came up in appeal before this Court. This Court dismissed the appeal filed by the State and allowed the appeal filed by the claimants. It was held that the claimants are entitled to sue any one of the joint tortfeasors. They did not implead driver, owner and insurer of the car. It was held Corporation against whom award was passed could have sought relief of contribution, if joint tortfeasor had been impleaded by filing petition before the Tribunal. It is an inter se dispute between the parties and if there was contributory negligence, Corporation can seek impleadment of the car owner etc and seek apportionment of liability in a separate suit.

9. Further in **Gurmej's case (supra)**, this Court in a case of

composite negligence where there is head on collision between an army jeep and roadways bus resulting in injuries to passenger travelling in the jeep. The tribunal assessed compensation at Rs.5,60,000/- but awarded 60% of the same and deduction of 40% was made towards an abatement for the negligence of jeep driver. It was held that the owner of the vehicle and the insurance company of Roadways are liable to pay the entire amount of compensation. However, it shall be open to them to file an independent suit for contribution against the owner of the jeep.

10. Recently, before Hon'ble the Supreme Court in **Pawan Kumar's case (supra)** where an accident had occurred and it was held to be a case of contributory negligence. Hon'ble the Supreme Court held that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to claimants to enforce the award against both or any of them. In paragraph 6 and 7, it has been held as under:-

6. The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:-

“WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage.

Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

.....

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous

acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous.”

7. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in T.O. Anthony (supra) followed in K. Hemlatha & Ors. (supra). Paras 6 and 7 of T.O. Anthony (supra) which are relevant may be extracted herein below:

“6. “Composite negligence” refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of

responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of “composite negligence” will not

apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

11. In the present case, the appellants have impleaded the owner of the truck along with insurance company. Applying the ration of the above said judgment to the facts of the present case, it was not necessary for the appellants to implead the owner of the bus along with its insurance company. The whole amount of compensation should be awarded to them by the Tribunal and thereafter, the insurance company of truck can file an independent suit for contribution against the owner of the bus.
12. Keeping in view the above mentioned judgments, the compensation has to be re-assessed as follows :-

Sr. No.	Heads	Calculations
(i)	Salary	Rs.3000/- per month
(ii)	50% of (i) above to be added as future prospects= Age of the deceased 35 years	Rs.3000+Rs.1500=Rs.4,500 per month
(iii)	1/10 th of (ii) deducted as personal expenses of the deceased=	Rs.4500-Rs.450=Rs.4050 per month
(iv)	Compensation after multiplier of 16 is applied	Rs.4050 X 12 X 16= Rs.7,77,600/-
(v)	Conventional head	Rs.1,25,000/-

Sr. No.	Heads	Calculations
(vi)	Total Compensation awarded	Rs.9,02,600
	Enhanced amount of compensation	Rs.9,02,600-Rs.1,68,000=Rs.7,34,600/-

13. Resultantly, the enhanced amount of compensation of Rs.7,34,600/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. The liability shall therefore be on the respondents for the entire amount as determined above and it shall be open for the insured and the insurer to file an independent suit for contribution against the owner of the bus, if they are so advised.

14. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

October 06, 2015

G Arora

(**RITU BAHRI**)
JUDGE