IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1487 of 1995 (O&M)
Date of decision : September 09, 2015

Krishna Devi and others .....Appellants
Versus
Balak Ram and others ....Respondents

FAO No. 1488 of 1995 (O&M)

Rajesh Kumar .....Appellant
Versus
Balak Ram and others ....Respondents

FAO No. 1489 of 1995 (O&M)

Lekh Ram and others .....Appellants
Versus
Balak Ram and others ....Respondents

FAO No. 915 of 1995 (O&M)

Nahar Singh (deceased) through LRs. .....Appellant

Versus

Lekh Ram and others ....Respondents

FAO No. 916 of 1995 (O&M)

Nahar Singh (deceased) through LRs. .....Appellant

Versus

Krishna Devi and others ....Respondents

FAO No. 1298 of 1995 (O&M)

Nahar Singh (deceased) through LRs. .....Appellant

Versus

Rajesh Kumar and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ramesh Hooda, Advocate
for the appellants(in FAO Nos.1487, 1488 &1489 of 1995)
for respondents No. 1 to 4 (in FAO No. 916 of 1995)
for respondents No. 1 and 2 (in FAO No. 915 of 1995)
for respondent No. 1 (in FAO No. 1298 of 1995)

Mr. D.D. Gupta, Advocate
for respondents No. 3 and 4(in FAO Nos.1487, 1488 &1489 of 1995)
for the appellants (in FAO Nos. 915, 916 & 1298 of 1995)

LISA GILL, J.

This order shall dispose of six appeals arising out of the award dated 19.12.2014 decided by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal').

FAO No. 1487 of 1995 has been filed by legal heirs of the deceased Subhash Chander. Appellant No. 1 - Smt. Krishna Devi is wife of the deceased, appellant No. 2 is a minor child and appellants No. 3 and 4 are parents of the deceased.

FAO No. 1489 of 1995 has been filed by legal heirs of the deceased Harish i.e. parents of the deceased.

FAO No. 1488 of 1995 has been filed by appellant Rajesh, who was injured in the accident.

FAO Nos. 915, 916 and 1298 have been filed by the owner and driver of the offending vehicles.

Brief facts of the case are that a three wheeler/tempo bearing MHP 14-265 in which the deceased Subhash Chander, Harish as well as the injured Rajesh and Sri Kishan were travelling alongwith others was proceeding from the side of Delhi towards village Bahinsru Kalan Tehsil and District Rohtak at about 7.30 p.m. on 01.02.1992. Four wheeler No. DDL 1403 was coming from the opposite side.

Case of the claimants is that both the vehicles were rash and negligent. PW3 Sri Krishan, an injured in the accident (not an appellant before this Court) has deposed that he alongwith deceased and injured Rajesh-appellant in FAO 1488 of 1995 were travelling in the three wheeler tempo alongwith 15/20 other boys. Though being driven on the left side, it was being driven fast. When they reached near the bridge of the Naya Bass, offending four wheeler was seen coming in a zig-zag manner from the opposite side. All the occupants of the three wheeler tempo asked the driver to stop the vehicle as other vehicle was being driven rashly and negligently. The vehicle slowed down but the four wheeler coming from the opposite side struck into them causing the accident wherein Harish and Subhash lost their lives. Sri Kishan and Rajesh were injured. Hence, giving rise to the claim petitions before the Tribunal.

Factum of the accident was not disputed by the respondents. A joint written statement was filed by the driver and the owner of three wheeler tempo alleging that their vehicle was being driven on the left side of the road at moderate speed and the accident took place due to rash and negligent driving of the four wheeler. Said four wheeler coming towards extreme wrong side of its road dashed into the tempo in the hind portion on the right side. The driver of the four wheeler fled from the spot. However, driver of the four wheeler pleaded that he was driving at a normal speed, it was the three wheeler tempo which was at fault. It was overloaded and being driven rashly and negligently by its driver. Respondent – Om Parkash owner of the four wheeler pleaded lack of knowledge of the accident for the reason that he had sold the four wheeler prior to the accident on 01.01.1992 in favour of Nirmala Devi, who is wife of Balak Ram i.e. the driver of the four wheeler. He, therefore, prayed to be exonerated of any liability.

Learned Tribunal on taking into account the facts and circumstances and the evidence on record concluded that both the vehicles in question were at fault. Owner of the four wheeler - Om Parkash was exonerated of the liability to pay as it was proved that he had transferred the vehicle before the date of the accident. Claimants were held entitled to realize 50% of the compensation from the driver of the four wheeler Balak Ram and the remaining 50% from the driver and owner of the three wheeler tempo. None of the vehicles were insured.

Following amount was awarded to the claimants:-

Petitioners	***Amount awarded***
Krishna Devi etc. (on account of death of Subhash Chander)	₹1,72,800/-
Rajesh Kumar (on account of injuries)	₹40,000/-
Lekh Ram and another (on account of death of Harish)	₹72,000/-
Sri Kishan (on account of injuries)	₹5,000/-

Interest at the rate of 12% per annum from date of filing of the petition till realization was also awarded.

Nahar Singh and Darshan Singh - owner and driver of the three wheeler tempo have preferred FAOs No. 915, 916 and 1298 of 1995 in respect to the compensation awarded to the claimants i.e. parents of the deceased Harish, widow, child and parents of deceased Subhash and injured Rajesh.

Learned counsel for the owner and driver of the three wheeler vehemently argues that the learned tribunal has wrongly concluded presence of contributory negligence on the part of three wheeler. It is submitted that a criminal case was registered against Balak Ram i.e. driver of the four wheeler and not against the driver of the three wheeler. FIR, in any case, is prima facie evidence of guilt.

Reference is made to the statement of Sri Kishan PW3 that the four wheeler was also being driven in a zig-zag manner, therefore, no fault can be fixed upon the driver of the three wheeler tempo who was driving on the left side of the road and in any case it is a lighter vehicle and the fault in such cases is necessarily of the four wheeler which is a heavier vehicle. It is submitted in the alternate that the quantum of compensation awarded to the claimants is on the higher side.

Learned counsel for the owner and driver of the four wheeler submits that three wheeler vehicle was overloaded, therefore, the driver could not control the vehicle which led to the accident. Furthermore the four wheeler had turned turtle and fallen in the drain on the correct side of its road. Thus, no negligence should be attributed to him.

Claimants prays for enhancement of the compensation awarded to them.

I have heard learned counsel for the parties and gone through the file.

Undoubtedly, FIR No. 20 dated 01.02.1992 was registered against Balak Ram driver of the four wheeler. On investigation, report under Section 173 Cr.P.C. was also filed against Balak Ram driver of the four wheeler. However, this by itself does not mean that Darshan Singh driver of the three wheeler was not guilty of contributory negligence. It is a matter of record that as per Registration Certificate Ex. R4 seating capacity of three wheeler vehicle was seven whereas 15/20 boys were being ferried therein.

It has been rightly held by the learned Tribunal that the Act casts a specific duty on the person driving/incharge of the vehicle to ensure that no one is permitted to travel on the running board, bonnet or mudguard etc. of the vehicle and except within the body of the vehicle. In the instant case, the injured witnesses have specifically deposed that the injured and deceased were travelling with 15/20 other persons. Three wheeler was being driven at a high speed. PW3 Sri Kishan injured was sitting on the backside (outside the body of vehicle) and injured Ramesh was standing behind him. Darshan Singh RW2, driver of the three wheeler was audacious enough to depose that he was carrying only seven persons in the said vehicle and was going at a sedate speed.

Therefore, it is clear that the driver and the owner of the three wheeler cannot be absolved of their liability. Mere fact that it was on the left side of the road does not prove absence of negligence and rash driving on his part. Despite all the occupants asking the driver to stop on seeing the four wheeler coming in a rash manner, he did not do so. It is apparent that such an overloaded vehicle could not be controlled by the driver. Persons apart from eight were sitting/standing on the mudguard or the backside of the three wheeler tempo.

Similarly contention that the fault is entirely of four wheeler because it is a heavier vehicle is misconceived and not acceptable. Evidence on record does not point to absence of any negligence on the part of the three wheeler's driver. Quantum of compensation granted to the claimants has also been challenged which is being dealt with separately. There is, thus, no merit in the contention of the learned counsel for the owner and the driver of three wheeler tempo pleading lack of contributory negligence. There is no infirmity or illegality in the said finding returned by the Tribunal, which is based on proper appreciation of the evidence on record.

Claimants in their appeals have challenged exoneration of the owner of the four wheeler Om Parkash from the liability to pay compensation. It is submitted that evidence on record does not reflect such a transfer in the name of Smt. Nirmala Devi wife of Balak Ram i.e. the driver of the four wheeler. Alleged agreement of sale dated 01.01.1992 is a forged document. Furthermore, Smt. Nirmala Devi was never produced to prove the factum of the sale neither she has been impleaded as a party. Om Parkash was the registered owner, therefore, is liable to discharge his liability. It is submitted that manifest injustice shall be caused to the appellants in case the finding qua Om Parkash is upheld.

In case it is proved on record that the registered owner has parted possession with the offending vehicle having sold it, prior to the accident, no liability can be fixed upon the said previous owner even though the vehicle may not have been transferred in the name of the subsequent purchaser before the registration authority. Agreement Ex. 2/A dated 01.01.1992 as well as the receipt depicting the delivery of possession reveals that the said four wheeler had been transferred in the name of Nirmala Devi wife of Balak Ram before the accident which occurred on 01.02.1992. Hon'ble Supreme Court in **HDFC Bank Ltd. versus Kumari Reshma and others** 2015 (1) RCR (Civil) has held that when the motor vehicle is not in the control and possession of the registered owner, he cannot be held liable.

Non-examination of Nirmala Devi is not of any consequence, neither learned counsel can gain much from a reference to the cross examination of Balak Ram wherein he could not identify the signatures of his wife on the agreement and the delivery receipt or his denial of having any knowledge about purchase of four wheeler by his wife Nirmala Devi. It is pertinent to note that Nirmala Devi has not been impleaded as a party either before the Tribunal or before this Court. Balak Ram - driver of the four wheeler has since passed away. Claimants have not impleaded the legal representatives of Balak Ram, though they stand impleaded in the appeals filed by the owner and driver of the three wheeler tempo. Said legal representatives of the deceased Balak Ram were proceeded against exparte as reflected in order 23.01.2015 in FAO

Nos. 915, 916 and 1298 of 1995 i.e. the appeals filed by the owner and driver of the three wheeler.

There is, thus, no merit in the contention of learned counsel for the claimants that liability should be fixed upon Om Parkash, previous registered owner of the four wheeler in question. There is no infirmity in the finding of the Tribunal exonerating Om Parkash of his liability in this case.

Individual claims of the appellant/claimants are being dealt with separately as under:

FAO No. 1487 of 1995 :

This appeal has been filed by the widow, son and parents of the deceased Subhash Chander. Said claimants raised a claim of ₹10 lakhs as compensation on account of death of Subhash Chander aged 27-28 years. He was allegedly earning ₹2000/- per month, working in a private job. As per the Post Mortem Report, age of the deceased Subhash Chander is 25 years. In the absence of any evidence to prove the income of the deceased or of the nature of his employment if any, minimum wages of a labourer were taken by the Tribunal. 1/3rd was deducted. His age was taken as 27-28 years and a multiplier of 18 was applied and a sum of ₹1,72,800/- was awarded.

Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and a nother**, ***2009(3) RCR (Civil) 77*** has crystalized the position as regards the deduction to be made and the choice of multiplier amongst other things. In respect to deduction towards personal and living expenses of the deceased it has been specifically observed:-

"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth ($1/5^{th}$) where the number of dependant family members exceed six."

Hon'ble Supreme Court in **Jitendra Khimshankar Trivedi and others v. K ASAM DAUD KUMBHAR and others**, ***(2015) 4 SCC 237*** has reiterated its earlier dictum in **Rajesh and others v. Rajbir Singh and others, *2013(3) RCR(Civil)170(SC)*** that a sum of ₹1,00,000/- be awarded on account of loss of consortium.

Learned counsel for the claimants is unable to point out any evidence on record to show income higher than assessed by the Tribunal, being earned by the deceased i.e. ₹1200/- p.m. Age of the deceased has been rightly taken to be 27-28 years on the basis of Matriculation certificate Mark 'G'.

As per the dictum laid down in **Sarla Verma's** case (supra) multiplier of 17 should be applied. Deduction to be effected on account of personal and living expenses of the deceased should be $1/4^{th}$ i.e. dependency is worked out as ₹900/- p.m. and ₹10,800/- p.a. On account of loss of consortium ₹1,00,000/- is awarded and on account of loss of care and guidance for the minor child sum of

₹25,000/- is made out. For loss of love and affection in respect to the parents, a sum of ₹1,00,000/- and on account of funeral expenses to the tune of ₹10,000/- are awarded accident being of the year 1992. Amount of compensation works out as under:-

Loss of dependancy (900x12x17)	₹1,83,600/-
Loss of consortium	₹1,00,000/-
Loss of care and guidance for minor child	₹50,000/-
Funeral expenses	₹10,000/-
Loss of love and affection for the parents	₹1,00,000/-
Total	**₹4,43,600/-**

The amount of compensation already paid shall stand deducted from the amount calculated as above. The appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

FAO No. 1489 of 1995

This appeal has been filed the parents of the deceased Harish. Date of birth of Harish as per matriculation certificate Ex. P2 was 25.04.1973. Income of the deceased has been rightly taken to be ₹1200/- per month. However multiplier of only 10 has been applied by considering the age of the father and accordingly a sum of ₹72,000/- has been awarded after applying deduction of ½.

It is a settled position that multiplier to be applied depends on the age of the deceased and not on the age of the parents/dependents. Reference can gainfully be made to the judgment of the Hon'ble Supreme Court ***<u>Munna Lal Jain and</u>***

others versus Vipin Kumar Sharma and others 2015 (6) SCC 347.

Deduction at the rate of 50% on account of personal expenses is appropriate. Dependency, thus, working out to be ₹600/- p.m. and ₹72,000/- p.a. The compensation on account of death of Harish works out as under:-

Loss of dependency (600x12x18)	₹1,29,600/-
Loss of love and affection	₹1,00,000/-
Funeral expenses	₹25,000/-
Total	**₹2,54,600/-**

The amount of compensation already paid shall stand deducted from the amount calculated as above. The appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

FAO 1488 of 1995

This appeal has been preferred by Rajesh Kumar, who was injured in the accident which took place on 01.02.1992. He remained hospitalized from 01.02.1992 to 15.02.1992. Medical expenses of ₹1060/- were proved on record. A sum of ₹40,000/- has been awarded by the Tribunal. As per testimony of PW1 H.L.Chhabra, Associate Professor, Department of Surgery Medical College and Hospital, Rohtak, Rajesh Kumar remained admitted in the surgical ward for the aforementioned period. He was suffering from extra dural haemotoma left fronto parietal region and was operated on account of said injury. X-ray of skull reflected swelling of soft tissue on the left side over the front prietal regon, fracture parietal bone, nasal bone and right clavicle bone was seen. There was cerebral injury likely to effect the function of the brain. It is pertinent to note that no permanent disability has been proved on record. There is no evidence to prove that the injuries so suffered by him resulted in such impairment which would lead to loss of earning or effect his ability to earn his livelihood.

In this factual matrix, learned counsel for the claimant - Rajesh submits that the compensation on account of pain and suffering should be enhanced. Comprehensive sum of ₹40,000/- does not cover the entire expenses incurred on the hospital stay, medicines, attendant charges, special diet and transportation.

It is not in dispute that claimant indeed suffered serious head injury and was hospitalized for two weeks. There was fracture of the skull. Applying the rule of thumb, it is considered just and expedient to enhance the compensation awarded to Rajesh to ₹60,000/- instead of ₹40,000/-. Said amount shall comprehensively cover the compensation to be awarded to the appellant on account of pain and suffering, special diet, attendant charges etc.

Directions of the learned tribunal in respect to the liability of the respondents as well as apportionment of compensation granted shall enure.

With the abovesaid modification in the amount of compensation, appeals by the claimants are disposed of i.e. FAO No. 1487, 1488 and 1489 of 1995 and FAO Nos. 915, 916 and 1298 of 1995 filed by the owner and driver of the three wheeler/tempo are dismissed.

September 09, 2015 **(Lisa Gill)**

rts **Judge**