

335 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1165 of 1996 (O&M)
Date of Decision: 28.04.2015

Mrs. Sarita Bhayana and others

...Appellants

Versus

State of Haryana through its Secretary and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Sandeep Singh Jattan, Advocate
for the appellant.

Mr. Gaurav Bansal, AAG, Haryana.

K.C. PURI, J., (ORAL)

This is an appeal directed by claimant against the award dated 13.10.1995 passed by Sh. Dhani Ram, Motor Accident Claims Tribunal, Kurukshetra vide which the claim petition was partly accepted.

Briefly stated, Mrs. Sarita Bhayana widow, Sagon minor Son, Sonam- minor Daughter and Sheela-mother of Sanjeev Bhayana filed claim petition under Section 166 of the Motor Vehicles Act, for claiming compensation on account of death of Sanjeev Bhayana in a motor vehicular accident.

Shorn of unnecessary details of the case of the claimants is that on 27.05.1994, the deceased along with Jagdish Lal was driving Maruti Car No.DAC-5431 and was coming from Ambala side on GT Road and was going towards Delhi on its correct side at a normal speed

and when he reached near Shahabad at about 1.15 PM at that time a Haryana Roadways bus bearing registration No.HRU-3293, being driven by Gian Chand-respondent No.3, in a very rash speed, came from opposite side and while going on the wrong side the bus struck against the car and caused the accident. Sanjeev Bhayana (deceased) and Jagdish Lal sustained multiple and grievous injuries and the former succumbed to his injuries at the spot. The accident has taken place due to rash and negligent driving of the bus driver i.e. respondent No.3.

The claim petition was resisted by respondent No.1 and 2 by filing their joint written statement and respondent No.3-Gian Chand vide his separate written statement. In both the set of written statement, it is pleaded that respondent No.3- Gian Chand was driving the bus No.HR-45-450 and was going from Rohtak to Chandigarh at a normal speed on its correct side of the road and when it reached Ladwa road, in the area of Shahabad, at that time a Rickshaw puller was coming from the opposite side on the road and he turned his rickshaw to the side of bus without giving any signal and to save the rickshaw puller the bus driver applied brakes and tried to control the bus and in that process, he turned the bus towards the right side of the road but the brakes suddenly failed subsequently despite the fact that respondent No.3 gave signal to the vehicles which were coming from the opposite direction i.e. Ambala side, to get aside, a maruti car was coming from Ambala side being driven at a high speed in a rash and negligent manner struck against the bus and the accident occurred.

From the pleadings of the parties, following issues were framed:-

- 1. Whether the accident in question resulting into death of Sanjeev Bhayana was caused due to rash and negligent driving of Bus No.HR-45-450 by its driver Gian Chand respondent No.3. OPP.*
- 2. Whether the claimants are entitled to compensation, if so how much and from whom. OPP.*
- 3. Whether the claim petition is bad for non-joinder of necessary parties and misjoinder of parties. OPR.*
- 4. Relief.*

While deciding issue No.1, the learned Tribunal has held that the accident took place due to contributory negligence of deceased as well as Gian Chand Driver of offending vehicle. The negligence on the part of the deceased has been contributed to the extent of $1/3^{\text{rd}}$ whereas negligence on the part of the Driver – Gian Chand is contributed to the extent of $2/3^{\text{rd}}$.

Relying upon the Income Tax Return, the income of the deceased has been taken as Rs.75,000/-. $1/3^{\text{rd}}$ has been deducted in respect of personal expenses of the deceased and the dependency has been taken as Rs.50,000/- per annum. The age of the deceased has been taken as 36 years and multiplier of 12 has been applied. So, the amount of compensation was calculated as Rs.6,00,000/- (50,000X12).

However, in view of the negligence to the extent of $1/3^{\text{rd}}$, the amount granted to the claimant was Rs.4,00,000/-. Further, a sum of Rs.5,000/- was allowed in respect of cremation of dead body, i.e.

total of Rs.4,05,000/- was allowed.

Feeling dissatisfied with the abovesaid award, the claimants have preferred the present appeal.

Learned counsel for the appellants has challenged the award on two grounds, firstly, the finding regarding contributory negligence has been challenged and the second is for enhancement of compensation.

Regarding contributory negligence, counsel for the appellant has submitted that the deceased Sanjeev Bhayana was going on his left side. The driver of the bus has turned the bus towards wrong side of the road and thereafter, struck the bus against the car. It is submitted that the Tribunal has wrongly assessed negligence on the part of Sanjeev Bhayana.

Regarding the said issue, counsel for the State has supported the finding of the Tribunal and submits that it is a case of head on collision and learned Tribunal has rightly reached to the conclusion that it is a case of contributory negligence.

I have considered the submission made by learned counsel for the parties. The difficulty in the present case is that record of the trial Court is stated to be burnt in a fire incident occurred in this Court, however evidence has been produced by the counsel for the appellant which has not been disputed by the State counsel. It can be made part of the file.

In this case the evidence of PW-4 witness of the occurrence

and statement of RW-1 Gian Chand-driver of the offending vehicle are relevant. PW-4 Gulshan Kumar witnessed the accident which was caused by bus bearing No.HRU-2593 with Maruti car bearing No.DAC-5431. He has stated that on 27.05.1994, the accident was caused due to negligent and rash driving of the bus by its driver Gian Chand. He has further stated that the car was going from Ambala side to Delhi side on its left hand side and at that time bus in question was coming from its opposite direction on its left side. The bus was at high speed. At the place of accident the road is double one and the bus being at high speed crossed the footpath and hit the car by coming on wrong hand side.

RW-1 Gian Chand has stated that on 27.05.1994 he was driving the offending vehicle bearing No.HRU-3293 (Later on its Number changed to HR-45-450 belonging to Haryana Roadways) and was going from Rohtak to Chandigarh at a normal speed on its correct side of road and when it reached near Ladwa road, in the area of Shahabad, at that time a Rickshaw puller coming from the opposite side on the road turned his rickshaw to the side of bus without giving signal and to save the rickshaw puller the bus driver applied brakes and tried to control the bus and in that process turned the bus towards the right side of the road but the brakes suddenly failed and despite the fact that respondent No.3 gave signal to the vehicles which were coming from the opposite direction i.e. Ambala side to get aside, a Maruti car coming from Ambala side driven at a high speed in a rash and

negligent manner struck against the bus. He has also deposed that he should be prosecuted for causing the accident. He has also admitted that there was four laning and about 6 feet wide there is a divider in between two roads and plants were also there on the divided portion. He has further admitted that the bus had crossed the entire portion of the side and then jumped from over the divider and then stopped at the extreme left of the road from which side the Maruti car was coming.

It is a case of *res ipsa loquitur* i.e. the thing speaks itself, as in the present case, the accident has taken place due to rash and negligent driving of the driver of bus. The driver of the bus has crossed the divider and has gone on the wrong side and thereafter struck the Maruti car. It is strange that in spite of that evidence available on the file, the learned Tribunal has reached to the conclusion that the driver of the Maruti car is also negligent. So, that finding is perverse and against the law. Have, the learned Tribunal applied its mind properly and scrutinized the statement of driver of the offending vehicle in that case the learned Tribunal should have reached to the conclusion that the driver of offending vehicle is negligent and not the driver of the Maruti car. So, the finding of the Tribunal stands modified regarding the Issue No.3 and stands determined in favour of the claimants and it is held that accident had taken place due to rash and negligent driving of driver of the offending vehicle.

The other question raised by the counsel for the appellant is regarding quantum of compensation. It is submitted that the Income tax

returns Ex.P-7 has been wrongly discarded by the Tribunal. It is submitted that the said income-tax returns was for the Financial Year 1993-94 (Assessment Year 1992-93), which is the relevant piece of evidence for determining the income of the deceased. The income of the deceased has been shown as Rs. 1,33,743/- as on 31.03.1994.

However, that contention is meritless, In this case, the accident has taken place on 27.05.1994 and the income tax returns for the Assessment Year 1994-95 (Financial Year 1993-94) Ex.P-7 has been submitted on 30.03.1994 i.e. after the death of the deceased. So, the said returns seems to have been submitted in order to get more compensation. Therefore, the previous returns has to be taken into account.

The income of Sanjeev Bhayana was Rs.47,110/- and as per Financial Year 1992-93, his income has been shown as Rs.59,120/-. Keeping in view the increasing trend, the learned Tribunal has taken the income of the deceased as Rs.75,000/-. So, the future prospects have also been considered by the Tribunal. Therefore, the income of the deceased has been rightly taken as Rs.75,000/- for the purpose of calculation of compensation.

The other argument raised by the counsel for the appellant is that claimant are four in number and as such deduction in respect of personal expenses should have been 1/4th in view of authority “**Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**” reported in 2009(3) R.C.R. (Civil) 77. It is further argued

that the multiplier applicable according to the said authority in the age group of 36-40 is 15, whereas the Tribunal has applied the multiplier of 12 only. It is further contended that no amount in respect of loss of consortium, love and affection has been allowed. Rs.5,000/- in respect of last rite is on lower side.

The learned State counsel has supported the judgment of Trial Court and has submitted that adequate compensation has been awarded according to the price index of the year 1994-95.

I have considered the rival contentions raised by learned counsel for both the parties and have gone through the case file and record with their able assistance.

In Sarla Verma's case (supra) it has been held that where the claimants are 4-6, in that case $\frac{1}{4}$ th amount should be deducted in respect of personal expenses of deceased. The multiplier applicable according to the said authority in the age group of 36-40 is 15. So, the award is required to be amended to that extent.

Income of the deceased is taken as Rs.75,000/- per annum. The dependents are six in number, so $\frac{1}{4}$ th amount is deducted in respect of personal expenses of the deceased and in this manner the dependency comes to Rs.56,250/- per annum. By applying the multiplier of 15, the amount of compensation comes to Rs.8,43,750/- (56,250 x 15).

The amount in respect of loss of consortium and loss of love and affection has to be calculated keeping in view the price index

for the year 1994-95. So, the claimants are held entitled to claim Rs.10,000/- in respect of expenses on transportation, funeral etc. Another sum of Rs.25,000/- stands allowed in respect of loss of consortium. The minor claimants are also held entitled to claim Rs.25,000/- in respect of loss of love and affection due to untimely death of Sanjeev Bhayana in motor vehicular accident. In this manner, the claimants are held entitled to claim Rs.9,03,750/- say Rs.9,04,000/- by rounding off.

The said enhanced amount shall carry interest @ 7.5% per annum from the date of application till payment. Out of the enhanced amount, the widow shall be entitled to claim Rs.1,99,000/- along with interest. The remaining enhanced amount shall be shared by the remaining claimants in equal share. Learned counsel for the parties are unable to say about, whether Sheela Bhayana is alive or not. In case, if she is not alive, in that case the enhanced amount shall be shared by the remaining claimants in equal share. The liability to pay the amount shall be the same as ordered by the Tribunal.

Appeal stands partly accepted to the extent mentioned above.

Disposed of, accordingly.

April 28, 2015

ps-I

(K.C. PURI)
JUDGE