

SARITA RANI
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Chandigarh

Present: Mr. N.S. Sitta, Advocate for the appellant(s).

Ms. Jasleen Kaur Sidhu,
Asstt. Advocate General, Punjab.

Kuldip Singh J.

By this single judgment, I shall dispose of FAO Nos.1740 and 1744 to 1747 of 2000, arising out of the same Award dated 22.10.1998 passed by the Motor Accident Claims Tribunal, Rupnagar (for brevity 'the Tribunal').

The brief facts of the case are that on 20.09.1996, Onkar Singh while driving the scooter bearing registration No.PB-12B-3393 was going from Ropar to village Bhowal. His wife Sudesh Rani (aged about 34 years), three minor children, namely Minu @ Monika (aged about 6 years), Ekta (aged about 3 years), Priti (aged about 2 years) along with Kamaljeet Kaur wife of Onkar Singh were riding the same scooter. The scooter was being driven with due care and caution. At about 12.000 noon, when the scooter reached near village Siana at Balachaur-Garshankar road, a bus bearing registration No.PB-12A-8424 being driven by respondent No.3-Karam Singh at a high speed and in rash and negligent manner came from Garshankar side and while coming on the wrong side of the road struck against the scooter. As a result of the accident, Sudesh Rani and Priti died at the spot whereas other pillion riders received multiple injuries.

On account of death of Sudesh Rani, Ashok Kumar and on account of death of Priti, Onkar Singh filed a claim petition whereas the injured also filed their separate claim petitions.

Respondent Nos.1 and 2 in the written statement admitted the accident but denied that it took place due to negligence of the driver of the bus. It was stated that bus was being driven at normal speed and the accident took place when the scooter coming from the rear side had struck the bus. It was pleaded that the accident took place due to negligence of the driver of the scooter, namely, Onkar Singh.

Respondent No.3 in his support by filing separate written statement, took the similar stand and stated that the scooter was carrying more than six persons apart from the driver. The scooterist was unable to control the scooter and struck the back portion of the bus.

From the pleadings, the following issues were framed:

- “1. Whether the accident took place on 20.09.1996 in the area of Balachaur between scooter No.PB12B-3393 and bus No.PB-12A-8424 driven by respondent Karam Singh rashly and negligently, causing the death of Sudesh Rani and Priti and causing injuries to Ekta, Pankaj, Onkar Singh, Minu @ Monika and Kamaljit Kaur as alleged?OPP.*
- 2. To what amount of compensation are the claimants entitled and if so, from which of the respondents?OPP.*
- 3. Relief.”*

After recording the evidence, the Tribunal held that there was a contributory negligence and Onkar Singh was held 50% responsible for the accident. Therefore, 50% cut was imposed upon the compensation awarded to the claimants. The Tribunal calculated

the income of Sudesh Rani @ ₹2,000/- per month and while applying the multiplier of 12, calculated the compensation at ₹2,88,000/-. ₹50,000/- were awarded to the heirs of Priti on account of no fault liability. After considering the disability certificates of Minu @ Monika and Ekta, showing the disability at 10%, compensation of ₹3,000/- each were awarded to them whereas it was held that no injuries were shown to have been sustained to Kamaljeet Kaur. Therefore, no compensation was awarded to her. From the awarded amount a cut of 50% was applied.

Aggrieved with the said order, the claimants have come up in the present appeal.

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

Case of Sudesh Rani

It is not disputed that Sudesh Rani was working with Dr. Hem Kiran. Dr. Hem Kiran, had admitted that he was paying ₹2,000/- per month to Sudesh Rani. The age of Sudesh Rani was 34 years. In case of the age of 34 years, the multiplier of 16 was to be applied. In this case, the future prospects of Sudesh Rani have not been calculated. 30% of the monthly income of ₹2,000/- i.e. ₹600/- are added on account of future prospects. The total income of the deceased comes to ₹2,600/-. 1/3rd is deducted as personal expenses. Thus the dependancy of the claimants comes to ₹1,734/-. Therefore, after applying the multiplier of 16, the total amount of compensation comes to ₹3,32,928/- (₹1734x12x16). The Tribunal did

not award any compensation on account of loss of consortium, love and affection for the minor children, funeral expenses and loss of estate. As such, ₹1,00,000/- on account of consortium to the husband are allowed. ₹50,000/- are allowed to the children for loss of love and affection, guidance and care. ₹25,000/- are allowed on account of funeral expenses. Another ₹25,000/- on account of loss of estate are allowed. The total amount of compensation comes to ₹5,32,928/-. From the total compensation, a cut of 50% on account of contributory negligence is applied. Thus, the amount of compensation comes to ₹2,66,464/-. The same is to be paid as per the share determined by the Tribunal.

Case of Priti

It is not disputed that Priti was two years old and a sum of ₹50,000/- on account of no fault liability was assessed. I am of the view that Priti was to grow up and provide emotional and moral support to the parents. She was also to look after her father in the old age. Therefore, a consolidated sum of ₹2,00,000/- as compensation on account of death of Priti is allowed. ₹50,000/- on account of funeral expenses and last rites are also allowed. The total compensation comes to ₹2,50,000/-. After applying the cut of 50%, the amount of compensation on account of death of Priti comes to ₹1,25,000/-.

Case of Minu @ Monika and Ekta

Minu @ Monika and Ekta were six years and three years old respectively. The Tribunal awarded a partly sum of ₹3,000/- each

of them on which a cut of 50% was applied. Only ₹1,500/- each were allowed to them. The Tribunal noticed the disability certificates Exs.P-6 and P-7. However, a perusal of disability certificates shows that they had suffered fracture of left femur. In case of Minu @ Monika, there are shortenings of $\frac{3}{4}$ inch and in case of Ekta, there are shortenings of $\frac{1}{2}$ inch. It was treated as temporary disability.

I am of the view that on account of shortenings of left femur, the disability is likely to be permanent. Therefore, the Tribunal was not justified in allowing a partly sum of ₹3,000/- each to Minu @ Monika and Ekta. Though, there is no medical certificate on the file, however, keeping in view the disability, ₹25,000/- each without any cut is allowed to them.

Case of Kamaljeet Kaur

The Tribunal noticed that no medical certificate of Kamaljeet Kaur was produced. The statement of Kamaljeet Kaur shows that in the accident, in which two persons died and other received injuries, she had also received injuries. However, she failed to produce the medical record regarding the injuries. Though, she had examined one Dr. Surjit Singh, PW4, who had treated Kamaljeet kaur on 19.01.1997 for old fracture of pelvic bone and left cleical bone. However, this is not connected with the accident, which occurred much earlier on 20.09.1996. In any case, in the accident, when all the occupants received the injuries, she is also likely to have received injuries. However, even if there is no medical record on the file, on the basis of guess ₹20,000/- on account of simple injuries and

shock on account of accident are allowed. By applying the cut of 50%, the amount of compensation to Kamaljeet Kaur comes to ₹10,000/-.

Thus, the compensation awarded in case of Sudesh Rani is enhanced from ₹1,44,000 to ₹2,66,464/-, in case of Priti is enhanced from ₹25,000/- to ₹1,25,000/-, in cases of Minu @ Monika and Ekta is enhanced from ₹1,500/- each to ₹25,000/- each. In case of Kamaljeet Kaur, ₹10,000/- are allowed. The enhanced amount of compensation shall be paid along with the interest as awarded by the Tribunal from the date of filing of the claim petition till its realization.

All the appeals are allowed to the aforesaid extent.

March 11, 2015
sarita

(KULDIP SINGH)
JUDGE