

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 1765 of 1998

Date of decision:- 28.10.2015

Sushma Devi and others

...Appellants

Versus

Har Pal Sharma and others

...
Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.S. Longia, Advocate
for the appellants

Mr. Vinod Chauhan, 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. (Oral)

The present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 30.05.1998 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') whereby the Tribunal only awarded Rs.50,000/- to the appellants on account of no-fault liability.

FACTS NOT IN DISPUTE

On 25.01.1997, Ramesh Kumar along with her wife Leela Devi aged 34 years (since deceased) and Ranjit Singh were going from

Unri to Pipli for domestic work in a three wheeler No. HR-37-0756, which was being driven by Chander Pal and at about 11.15 A.M, the three wheeler reached the crossing of Sector 2 and 3 of Kurukshetre of G.T Road, the tyre of one of the wheel was punctured and they left the three wheeler and while they were standing on their due left on katcha portion on the road, a car bearing registration No. DIG-9987 came from Delhi side, which was being driven by respondent No. 1 in a rash and negligent manner, struck against Leela Devi, causing fatal injuries to her. She was taken to Nagpal Nursing Home, Kurukshetra from where she was referred to PGI Chandigarh where she died on 29.01.1997 due to the injuries received by her.

The learned Tribunal admitted the factum of accident caused by the driver of the above mentioned car, which was being driven by respondent No. 1. The learned Tribunal while relying upon the site plan (Ex P2) held that the accident had taken place on extreme wrong side of the road, which is contradictory to the statement of P.W.1-Chander Pal (driver of the three wheeler) and P.W.2-Ramesh Kumar (husband of the deceased). Thus, the deceased was crossing the road when the accident took place. It was further held that if a person suddenly starts crossing the road without caring for fast traffic road on such a road like Delhi-Ambala G.T. Road, the

only alternative with the driver of the vehicle is to try to avoid the accident, which had been done by the driver of the car by taking the car to the extreme right side in order to avoid hitting the lady. The driver applied the brakes with full force, which turned the face of the car towards Delhi side.

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

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

Reference at this stage can be made to a judgment passed by this Court in a case of ***Mohindro Devi vs. Sukh Ram, passed in FAO No. 48 of 1991*** wherein one person died in an accident, while he was travelling in a cycle. He had turned from left to roadside of the road without minding a truck, which was coming from the opposite side and killed in the accident. In para 3 of the judgment, it has been observed as under:-

3. I am of the view that the approach of the Tribunal was wholly faulty. Learned counsel for the insurance company would argue that there was no negligence at all of the truck and the accident had taken place only by the negligence of the cyclist. Any driver of a motor cycle ought to know that a cyclist

or a pedestrian has just as much use for the road as they have. There shall be a greater degree of circumspection for a driver on a motor vehicle, than a pedestrian or a cyclist. The reasons are obvious. A pedestrian dashing against another pedestrian does not cause death nor a cyclist could cause death to a pedestrian. It is only a faster moving vehicle with heavier mass can cause death by its impact. A person that drives a truck ought to be prepared at any time for even a careless use of the road by a pedestrian or a cyclist. I will be loath to infer an element of negligence for a cyclist or a pedestrian ever. I would, on the other hand, hold a driver of the motor cycle to be always responsible if there results an impact with the cyclist and he comes to harm and in this case, a person was crushed to death. It will be wrong to assume that a driver, who could drive the vehicle FAO No.48 of 1991 -4- carefully, would cause death by the negligence of another. Even an issue of contributory negligence in such situations ought not to be easily inferred. I would, therefore, reverse the finding that the accident took place only by the negligence of the cyclist and that the driver of the truck was careful in his driving.

The claimants were awarded compensation of Rs.2,15,000/- by taking the monthly income of the deceased to be of Rs.2400/- and applied 1/4th cut towards personal expenses. Rs.5000 was awarded towards loss of consortium and Rs.2500/- for loss of love and affection and Rs.5000/- towards loss of estate and funeral expenses.

Further in ***Usha Rani and others v. Barejesh Kumar and***

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integrity of this document

others, RCR Civil 687, it has been held by a Co-ordinate Bench of this Court that in a situation of motor accident where a pedestrian got killed by a motor vehicle, a driver of the motor vehicle has to remain more careful to mind the safety of any pedestrian, even, in a situation where a pedestrian is prone to be careless. The claimants were awarded a compensation of Rs.15,80,000/-

In the present case as well, Leela Devi was travelling in a three wheeler along with her husband and when the tyre of one of the wheel was punctured, they left the three wheeler and while they were standing on their due left on katcha portion on the road, a car bearing registration No. DIG-9987 came from Delhi side and struck against Leela Devi, which resulted into her death. The Tribunal had declined the claim petition on the ground that it was G.T Road and the deceased was not standing on her left side and she was crossing the road, so she should be more careful while crossing the road. The driver of the car had tried its best to avoid the accident. This finding of the Tribunal requires to be modified as even if the driver of the car had applied full brakes, the element of negligence cannot be attributed to the deceased, as she was a pedestrian and the driver of the car thus was driving the car in a rash and negligent manner and he should also be more careful while driving the vehicle. Further no

negligence has been attributed to the deceased, as per deposition of P.W.1

Reference at this stage can further be made to a division Bench judgment of this Court in a case of *Pararmjit Singh and another vs. Dilbagh Singh alias Bagga and others, 2014(4) R.C.R (Civil) 895* wherein this Court had taken the monthly salary of a wife at Rs.3000/- per and no cut was imposed and applied the multiplier of 14.

9. Keeping in view the above mentioned judgments, the compensation has to be re-assessed as follows :-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.3000/- per month
(iv)	Compensation after multiplier of 16,is applied	Rs.3000X12X16= Rs.5,76,000/-
(v)	Funeral charges, loss of love and affection, loss of estate	Rs.1,25,000/-
(xii)	Total Compensation awarded	Rs.7,01,000/-
	Enhanced amount of compensation	7,01,000-50,000=Rs.6,51,000/-

9. Resultantly, the enhanced amount of compensation of Rs.6,51,000/- 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. Remaining conditions of disbursal of amount shall remain unaltered.

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

October 28, 2015

G Arora

(***RITU BAHRI***)
JUDGE