

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.2691 of 2002(O&M)
Date of Decision: 09.04.2015

Santosh and others

..... APPELLANTS

VERSUS

Ramesh Kumar and others

..... RESPONDENTS

PRESENT: - Mr. R.S. Mamli, Advocate
for the appellants.

Mr. R.S.Budhwar, Advocate
for respondents No.1 and 2.

Mr. Lalit Garg, Advocate
for respondent No.3.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

SHEKHER DHAWAN, J.

The appellants-claimants have filed the present appeal for seeking enhancement of compensation awarded by the Motor Accident Claims, Tribunal, Yamunanagar vide award dated 04.09.2001.

Taking the case from undisputed facts that

on 03.02.1999 Salochan was standing near railway crossing near Barib Basti Yamunanagar. Meanwhile, respondent No.2 while driving truck No.HR37-1514 in a rash and negligent manner hit the parked rickshaw. Resultantly, Salochan fell down and sustained injuries. Respondent No.2 fled away from the spot along with his vehicle. The claimant claimed compensation to the tune of ₹5.5 lacs.

The respondents contested the claim petition by filing separate written statements.

'The Tribunal' awarded compensation of ₹1,21,200/-.

The appellants being dis-satisfied with the awarded amount of compensation are in appeal before this Court.

Mr. RS Mamli, learned counsel for the appellants took the plea that 'The Tribunal' has fallen in error while returning the finding that it was a case of contributory negligence whereas contributory negligence to the extent of 50% was attributed to the deceased himself. Per contra learned counsel for the appellants, Salochan (since deceased), who was a rickshaw puller and was standing on the road side was absolutely not at fault and was not negligent and had not contributed to the cause of accident in any way rather it was a case of sheer rash and negligent

driving of respondent No.2 Babu Ram, which resulted into accident.

Learned counsel for the appellants also took the plea that 'The Tribunal' has wrongly deducted the amount on account of self dependency whereas the self dependency in this case should be 1/4th. More so, nothing has been awarded on account of consortium though the claimant is one of the spouse of the deceased. No amount has been awarded on account of funeral expenses.

While arguing on this point, Mr. Lalit Garg, learned counsel for respondent No.3-Insurance Company took the plea that 'The Tribunal' has rightly returned the findings that it was a case of contributory negligence. More so, FIR in this case was cancelled as so called eye witness was not present at the spot. The claimants are not entitled to receive the amount of consortium and funeral expenses as the accident had taken place in the year 1999 and at that time there was no such law laid down by Hon'ble Supreme Court in case of **Rajesh and others Vs. Rajbir and others**, 2013(9) SCC 54 that consortium is to be awarded @ ₹1 lac or funeral expenses are to be paid @ ₹25,000/- atleast. So, the appeal is without any merit and the same be dismissed.

Having considered the rival contentions raised by learned counsel for both the parties, this Court is of the

considered view that as per testimony of official witness i.e. RW-2 Rajiv Harit, Additional Ahlmed from the Court, cancellation report Ex.P-2 was submitted by the police in this case. More so, now it has come in the statements of RW-3 Ghansham and RW-4 Vijay Kumar Sharma that there used to remain rush on the road and if the rickshaw puller had not been negligent, the accident could have been averted. That was the basis for the Tribunal to come to the conclusion that the accident was result of because of rash and negligent driving of Babu Ram respondent No.2, who was driving the offending truck and rash and negligent act of Sulochan himself contributed to the cause of accident.

Similar matter had gone before Hon'ble Supreme Court of India in case of **Parmod Kumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak** 2002(3) RCR (Civil) 688 and Hon'ble Supreme Court while dealing with the concept of contributory negligence observed that finding of contributory negligence terms on a factual investigation and it is to be seen whether reasonable care was taken in the given circumstances. The circumstances have to be proved by evidence. The Tribunal in this case appreciated the oral evidence led in the case and documentary evidence available on file and returned the findings of fact that it was a case of contributory negligence on the part of respondent

No.2 Babu Ram, who was driving the truck and Salochan, who was going on rickshaw in the busy locality at the time of accident and if both of them had exercised little care and caution, this accident could have been averted and, as such, returned the findings that it was case of contributory negligence on the part of both of them to the extent of 50% and the said findings of fact do not call for any interference on this point.

However, the Tribunal has deducted 1/3rd on account of self dependency whereas in this case the claimants are widow of the deceased and three minor children so 1/4th was to be deducted on account of self dependency. The Tribunal has rightly taken the income of the deceased to be ₹1716/- per month in the year 1999 after deduction of 1/4th on account of self dependency. The monthly loss of income comes to ₹1287/- and annual loss of income comes to ₹15,444/-. However, the Tribunal has applied the correct multiplier i.e. of 17 and the amount comes to ₹2,62,548/-. Apart from that, the claimants were held entitled to a sum of ₹15,000/- on account of funeral expenses and ₹50,000/- on account of loss of consortium and the total amount of compensation comes to ₹3,27,548/- and rounded off to Rs.3,27,600/-. As per the case of contributory negligence to the extent of 50%, the claimants

are entitled to a sum of ₹1,63,800/- and enhanced compensation in this case shall be ₹42,600/-.

The appellants shall be entitled to enhanced amount of compensation of ₹42,600/- and the same amount be paid by the respondents within a period of one month failing which the appellants shall be entitled to interest @ 9% per annum. However, the remaining conditions regarding payment of interest, disbursal of amount shall remain unaltered.

The appeal is partly accepted.

(SHEKHER DHAWAN)
JUDGE

April 09, 2015
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