

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

**F.A.O No. 3212 of 2010**

**Date of decision:- 28.10.2015**

Shashi Bala and others ...Appellants

Versus

Reeta Sharma and others ...Respondents

***CORAM: HON'BLE MS. JUSTICE RITU BAHRI***

Present:- Mr. Ashwani Arora, Advocate  
for the appellants

Mr. Rohit Goswami, Advocate  
for respondent No. 2-Insurance Company

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RITU BAHRI J. (Oral)**

1. The present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against order dated 16.12.2009 passed by the learned Motor Accident Claims Tribunal, Rupnagar (for short, 'the Tribunal') whereby the claim petition filed by the appellants under Section 166 of the Motor Vehicles Act, 1988, has been dismissed

**FACTS NOT IN DISPUTE**

2. On 30.11.2006, Jiwan Kumar along with Ram Pal, Kishan Kumar and deceased Mahesh Kumar Mehar were returning from Delhi to Nangal on the Maruti Car bearing registration No. PB-16-B-5031.

Jiwan Kumar was driving the said Maruti Car and his car struck against

the standing vehicle. Due to this, the riders of the car received multiple and grievous injuries, Ram Pal, Mahesh Kumar Mehar and Jiwan died on the spot and Krishan Kumar was referred to PGI Chandigarh.

3. Upon notice, respondent No. 1 owner of the Maruti Car appeared and filed a written statement admitting that the accident took place on 30.11.2006 but the driver of Alto car Jeewan Kumar was not at fault. She has also admitted that F.I.R has been registered in this case. She further stated that Jeewan Kumar was driving the car carefully, when the same struck with the standing car which was wrongly parked on the road. Jeewan Kumar also died in the accident.

4. Respondent No. 2-United India Insurance Company Insurer of Maruti Car filed its separate written statement alleging therein that the driver of the car was not holding a valid and effective driving licence, at the time of alleged accident. F.I.R No. 443 dated 30.11.2006 has been registered against an un-known driver.

5. From the pleading of the parties, the Tribunal framed the following issues:-

1. *Whether the accident that occurred at 3.30 A.M on 30.11.2006 near Bus Stand Sahoran due to rash and negligent driving of Maruti Alto Car bearing registration No. PB-16-B-5031 by its driver? OPP*

2. *Whether Mahesh Kumar Mehar son of Satpal Mehar received injuries in the said accident and died due to them?*  
*OPP*
3. *Whether the claimants are entitled to recover Rs.20 lacs from the respondents as compensation along with interest at the rate of 18% per annum for the said death of Mahesh Kumar Mehar? OPP*
4. *Whether the claim petition is not maintainable on account of the preliminary objections as taken in the written statement? OPR*
5. *Relief.”*
6. Issue Nos. 1 and 2 were taken up together, being interconnected. P.W.1 Shashi Bala (wife of the deceased Mahesh Kumar Mehar) deposed that her husband met with an accident and died on the spot and the accident took place due to sole, rash and negligent driving of the above mentioned car. F.I.R No. 443 dated 30.11.2006 under Sections 279/338/304-A IPC had been registered at P.S. Kharar. P.W.2 Shadi Lal stated that Mahesh Kumar Mehar met with an accident and died on the spot. P.W.3 Harparkash Singh, the alleged eye witness of the occurrence, stated in his examination in chief that on 30.11.2006, he was coming from Chandigarh towards his village Passiwal in his car, then a car bearing No. PB-16-B-5031 which was

going ahead from his car at a very high speed and in a rash and negligent manner struck against the standing vehicle as there was a sharp light from the other vehicle from the front side and the driver of the Alto Car was unable to see the standing car. Due to the above said accident, Mahesh Kumar Mehar received multiple injuries and died on the spot. The accident took place due to rash and negligent driving of Jeewan Kumar. He has further proved on record F.I.R lodged by him as Ex PW3/B. Claimants have also tendered into evidence the copy of PMR of Mahesh Kumar Mehar as Ex P46 and certified copy of judgment passed in MACT case as Ex P47.

7. The learned Tribunal perused the judgment Ex P47, which was filed by the legal heirs of Ram Pal, who died in the same accident and held that in the said claim petition, the rash and negligent driving of Jeewan Kumar was not pleaded, as the claim petition was filed under Section 163-A of the Motor Vehicles Act. In the instant petition, the appellants were required to plead and establish the rash and negligent driving of Jeewan Kumar, which they failed to do so. The appellants however proved on record that Mahesh Kumar Mehar died in the said accident. Thus, issue No. 1 was decided against them and issue No. 2 was decided in their favour. Issue No. 3 has become redundant. Issue No. 4 was decided against the respondents. Accordingly, the claim petition of the appellants was dismissed.

8. Learned counsel for the appellants contends that the learned Tribunal had wrongly dismissed the claim petition filed by them only on the ground that the appellants had not established the rash and negligent driving of Jeewan Kumar and F.I.R had been registered against an unknown driver of another vehicle and the appellants have not impleaded the driver and the insurance company of unknown vehicle.

9. Learned counsel for the appellants has referred to an award passed by the Tribunal dated 07.11.1994 in a case of **Pawan Kumar and another vs. M/s Harkishan Dass-Mohan Lal Hissaria Bazar, Sirsa and another** and other connected cases, whereby deceased Yogesh (12 years) and one Parshotam D. Gupta and injured Salochana were travelling in a jeep to Vaishno Devi. Jeep was owned by respondent No. 1 and driven by respondent No. 2 met with an accident with a truck coming from opposite direction, resulting into on the spot death of Yogesh and Parshotam, while Salochana sustained injuries. Claim petitions were filed by parents of Yogesh and LRS of deceased Parshotam, including Salochana who is wife. Salochana also filed separate claim for the injuries suffered by her. The Tribunal had awarded only a sum of Rs.25,000/- on account of death of Yogesh Kumar and Parshotam Dass and Rs.12,000/- was held payable under Section 140 of the Motor Vehicles Act on account of no fault liability.

The claim petitions were dismissed on the ground that the truck alone was responsible for the accident and in the absence of the driver/owner or Insurer of the said vehicle, no compensation can be awarded.

10. The appeals were filed against the award passed by the Tribunal whereby High Court after noting that both the vehicles were responsible for the accident, apportioned the liability in the ratio of 70:30 between driver and owner of respective vehicles. In respect of death of Yogesh Kumar, compensation of Rs. 2,00,000/- was awarded, 30% of this amount was to be paid by the driver/owner/Insurer of the jeep. Similarly, in respect of death of Parshotam, Rs.5,76,000/- was awarded and 30% of this amount was to be paid by respondent Nos. 1, 2 and 3 (Insurer). Salochana was awarded Rs.2,00,000/- and 30% of this amount was to be paid by respondent Nos. 1, 2 and 3 (Insurer). Driver/Owners of both the vehicles held jointly and severally liable to pay compensation and it is open to claimants to enforce the award against both or any of them.

11. Thereafter, the claimants filed appeal before Hon'ble the Supreme Court in a case titled as ***Pawan Kumar and another etc vs. Harkishan Dass Mohan Lal and others, 2014(2) RCR (Civil) (SC) 764***. While allowing the appeal, Hon'ble the Supreme Court in para 7 of its judgment had observed as under:-

*“7. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in T.O. Anthony (supra) followed in K. Hemlatha & Ors. (supra). Paras 6 and 7 of T.O. Anthony (supra) which are relevant may be extracted hereinbelow:*

*“6. “Composite negligence” refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a*

*person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.*

*7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of “composite negligence” will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory*

*negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence.*

*The High Court has failed to correct the said error.*

12. Thus, the Hon'ble Supreme Court has modified the order of the High Court and held that High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles. It was held that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to claimants to enforce the award against both or any of them.

13. Reference has further been made to a judgment of Hon'ble the Supreme Court in a case of ***Khenyei vs. New India Insurance Co. Ltd. And others, 2015 ACJ 1441*** wherein Hon'ble the Supreme Court had discussed the case-law on the question of liability of joint tortfeasors and formulated the principles, which reads as under:-

*“(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.*

*(ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his*

*option whole damages from any of them.*

*(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.*

*(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award. “*

14. In the present case, the factum of accident is not disputed.

GAURAV ARORA  
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integrity of this document

The only finding given by the Tribunal while dismissing the claim petitions of the appellants that they have not arrayed the owner/driver/insurer of the unknown vehicle, which fled away from the spot and against whom F.I.R had been registered. This finding of the Tribunal is required to be modified, as per the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments.

15. On the other hand, the learned counsel for the respondent-Insurance has vehemently opposed the present appeal and argued that the vehicle which is standing on the road is at fault and F.I.R had been registered against the driver of that vehicle, who had fled away from the spot. The tribunal has rightly dismissed the claim petitions on the ground that the claimants have not impleaded the owner/driver/insurer of the vehicle, which was standing on the road and against whom the F.I.R had been registered.

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

17. The Insurance Company filed its written statement and took a plea that the driver of the car was not holding a valid and effective driving licence, at the time of alleged accident and hence Insurance Company is not liable to make the compensation.

18. Reference at this stage can be made to deposition of P.W.3

Harparkash Singh, the alleged eye witness who stated that the driver of the above mentioned car was driving his vehicle in a rash and negligent manner and struck against the standing vehicle, as there was sharp light from the other vehicle from front side and the driver of the car was unable to see the standing car. However, in his cross examination, he stated that the driver of the car was driving his car at a speed of 50/60 kms. One thing which is clear that the deceased had died due to the accident caused by the driver of the car and as per the ratio of law laid down in the above mentioned Supreme Court judgments, the liability of joint tort-feasors is joint and several. The case of the appellants is covered by principle No. (iv) as laid down in ***Kheneye case (supra)*** and both the Insurance Companies of both the vehicles i.e vehicle of the deceased and the vehicle against whom the F.I.R had been registered, are held liable to make the compensation to the extent of 50:50. Respondent No. 2 is liable to make the compensation and thereafter is at liberty to sue the other joint tort feisor in independent proceedings after passing of the judgment.

18. To assess the compensation, reference can be made to a numerous judgments i.e "***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77'***, '***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54'*** and '***Munna Lal Jain and another vs. Vipin Kumar Sharma and***

**others, 2015(3) Recent Apex Judgments 459', Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520, Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193, New India Assurance Co. Ltd vs. Gopali and others, 2012(12) SCC 198.** The salary of the deceased can be taken to be that of a skilled daily wager as the deceased was working as photographer and was earning Rs.15,000/- per month as per the bills produced by the appellants before the Tribunal that the deceased was running a photo studio. So, his income can be taken at Rs.3000/- per month and he was 41 years of age, as per PMR, so multiplier of 14 would be applied.

20. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

| Sr. No. | Heads                                                                               | Calculations                       |
|---------|-------------------------------------------------------------------------------------|------------------------------------|
| (i)     | Salary                                                                              | Rs.3000/- per month                |
| (ii)    | 30% of (i) above to be added as future prospects=<br>(Age of the deceased-41 years) | Rs.3000+Rs.900=Rs.3900/- per month |
| (iii)   | 1/3 of (ii) deducted as personal expenses of the deceased=                          | Rs.3900-Rs.1300=Rs.2600 per month  |
| (iv)    | Compensation after multiplier of 14 is applied                                      | Rs.2600 X 12 X 14= Rs.4,36,800/-   |
| (v)     | Loss of estate                                                                      | Rs.1,00,000/-                      |
| (vi)    | Loss of consortium                                                                  | Rs.1,00,000/-                      |
| (vii)   | Loss of love and affection to two children                                          | Rs.2,00,000/- (Rs.1 lac each)      |
| (vii)   | Funeral charges                                                                     | Rs.25,000/-                        |
| (viii)  | Total Compensation awarded                                                          | 8,61,800/-                         |

21. Resultantly, the appellants are held entitled to compensation of Rs.8,61,800/-, which shall be payable by respondent No. 2-Insurance Company 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.***

Respondent No. 2 is at liberty to sue the other joint tortfeasor in independent proceedings after passing of the judgment.

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

28.10.2015

**G Arora**

**(RITU BAHRI)**

**JUDGE**