

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3193 of 2012

Date of decision: 23.04.2015

Nirmala Devi and othersAppellants

Versus

Rajesh Kumar and othersRespondents

CR No.3193 of 2012

Sumeet @ KalaAppellant

Versus

Rajesh Kumar and othersRespondents

CORAM:-HON'BLE MR.JUSTICE SHEKHER DHAWAN

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Present: Mr. Sachin Gupta, Advocate
for the appellants-petitioner.

Ms. Monika Jangra, Advocate for
Ms. Vandana Malhotra, Advocate
for respondent No.3.

SHEKHER DHAWAN, J. (Oral)

This order will dispose off above detailed two cases i.e. appeal filed by appellants-Nirmala Devi and others and Civil Revision filed by petitioner-Sumeet @ Kala seeking enhancement of the compensation. Both having arisen out of the same award dated 15.12.2011 passed by Motor Accident Claims Tribunal, Kaithal.

The claimants have challenged the award dated

15.12.2011 passed by the Motor Claims Tribunal, Kaithal (hereinafter referred to as 'The Tribunal') whereby 'The Tribunal' awarded compensation of ₹2,88,500/- to claimant Smt. Nirmala Devi and others (in claim petition No.133 of 2010) and sum of ₹5,500/- to claimant Sumeet @ Kala (in claim petition No.141 of 2010).

Being dis-satisfied with the awarded amount of compensatgion, claimants Smt. Nirmal Devi and others filed the present appeal on the ground that 'The Tribunal' has not awarded 'just compensation' in this case.

Facts of the case which are not disputed that on 28.02.2010 Subhash Chand (since deceased) had gone to village Sikander Kheri along with Sumeet @ Kala on a Hero Honda motorcycle bearing registration No.HR-08F-0449 and at about 3.30 PM when they were going back to village Sikander Kheri on the same motorcycle, meanwhile, Krishan and Ramphool were also coming from village Rasina towards village Sikander Kheri. Subhash Chand was in front of them and when they reached near village Teontha, one Ford tractor along with trolley came from village Teontha side. The said tractor was being driven by its driver in a rash and negligent manner and struck against the motorcycle of Subhash Chand. Resultantly, Subhash Chand and Sumeet @ Kala fell down. They were shifted to Civil Hospital. Subhash

Chand died in the hospital and Sumeet was referred to P.G.I., Chandigarh. The driver of tractor fled away from the spot along with tractor trolley. Compensation to the tune of ₹15 lacs was claimed on account of death of Subhash Chand.

The respondents contested the claim petition on all accounts.

'The Tribunal' after considering the material and evidence available on file awarded compensation of ₹2,88,500/- on account of death of Subhash Chand.

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

Mr. Sachin Gupta, Advocate learned counsel for the appellants took the plea that 'The Tribunal' fell in error while accepting the plea of contributory negligence though no such plea was taken in the written statement by the respondents. Otherwise also, 'The Tribunal' has not awarded 'just compensation' as nothing was awarded on account of love and affection, consortium and future prospects of earning. The required funeral expenses were not awarded.

While arguing on this point, Ms. Monika Jangra, learned counsel for respondent No.3 took the plea that it was a case of contributory negligence. There are no grounds

to set aside the said findings. The income of the deceased has been rightly taken by 'The Tribunal'. The appeal is without any merit and the same be dismissed.

As regard to compensation awarded to petitioner Sumeet @ Kala, learned counsel for the petitioner took the plea that Sumeet @ Kala has suffered 2% permanent disability. He had to remain as indoor patient for eight days in Government Hospital. 'The Tribunal' has not awarded adequate amount of compensation for having suffered 2% disability and medical expenses and other expenses for 8 days indoor treatment. More so, nothing has been awarded on account of transportation charges.

Learned counsel for the respondents took the plea that 'just compensation has already been awarded in this case as well.

Having considered the rival contentions raised by learned counsel for both the parties, this Court is of the considered view that accident had taken place and on the statement of PW-2 FIR was recorded. It was a case of head on collusion. 'The Tribunal' had rightly come to the conclusion that it was a case of contributory negligence on the part of motorcyclist and the driver of tractor-trolley. On this point, reliance was placed upon judgment of Hon'ble Supreme Court in case of **Bijoy Kumar Dugar Vs.**

Bidyadhar Dutta and others, 2006(2) RCR (Civil) 590.

'The Tribunal' had recorded the finding that Subhash Chand as well as respondent No.1 were equally responsible for causing the accident. Had little care and caution been exercised by Subhash Chand himself, this accident could have been easily averted. So there are no grounds to interfere in the findings of 'The Tribunal' that the accident was caused because of rash and negligent driving of Subhash Chand (since deceased) himself as well as respondent No.1 and compensation is to be awarded in the ratio of 50-50.

As regards to the income of the deceased, the same has been rightly taken to be ₹3,500/- per month as there was no contrary evidence available on the file. 1/4th amount was deducted on account of self dependency as the age of the deceased in this case was 24 and multiplier of 18 was rightly taken. So, total amount of compensation worked out by 'The Tribunal' to be ₹5,77,000/- was rightly taken and on the basis of 50-50 liability on the plea of contributory negligence 'The Tribunal' had rightly awarded compensation to the tune of ₹2,88,500/-.

However, 'The Tribunal' has awarded meagre amount of ₹10,000/- on account of funeral expenses and nothing has been awarded on account of loss of consortium

though one of the claimants in this case is widow of Subhash Chand. Hence, the claimants are certainly entitled to receive a sum of ₹1 lac on account of loss of consortium and ₹15,000/- (₹25,000/- -- ₹10,000/- already awarded by the Tribunal) more on account of funeral expenses as per law laid down by Hon'ble the Supreme Court in **Rajesh and others Vs. Rajbir and others**, 2013(9) SCC 54. The enhanced amount of compensation of ₹1,15,000/- shall be payable by the Insurance Company within a period of one month from today, failing which the claimants shall be entitled to recover interest @ 7.5% per annum from today.

In case of Sumeet @ Kala, as per dis-ability certificate Ex.P-11, petitioner Sumeet @ Kala had suffered 2% disability and 'The Tribunal' had correctly awarded compensation of ₹4,000/- on account of disability and another sum of ₹5,000/- on account of pain and suffering and another sum of ₹2,000/- on account of medical expenses proved by the bills Exhibits P-14 to P-25. The total amount of compensation was ₹11,000/- and on the basis of liability in the ratio of 50-50, respondent No.3 rightly held liable to pay compensation to the extent of ₹5,500/- and there are no grounds for further enhancement in this case.

In view of the above, the appeal filed by appellants Nirmala Devi and others stands partly accepted

and amount of compensation enhanced to ₹1,15,000/-
whereas revision filed by petitioner-Sumeet @ Kala is
without any merit and the same stands dismissed.

April 23, 2015
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(SHEKHER DHAWAN)
JUDGE