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

**FAO No.2180 of 2013 (O&M)**
Decided on: 30.3.2015.

New India Assurance Company Limited

... Appellant

Versus

Reeta Devi and others ... Respondents

**CORAM : HON'BLE MR. JUSTICE K. C. PURI**

Present : Mr. Vinod Gupta, Advocate,
for the appellant.

Mr. K.S. Kahlon, Advocate,
for the respondents.

**K.C.PURI.J.**

This is an appeal directed by the insurance company against the Award dated 30.1.2013 passed by Ms. Rajwinder Kaur, Motor Accident Claims Tribunal, Hoshiarpur (for short "the Tribunal") vide which the claim petition was accepted and compensation of Rs.5,14,000/- was awarded to the claimants along with interest @ 7% per annum.

Learned counsel for the appellant insurance company has challenged the Award on the ground that deceased Kulwant Singh has struck his motor cycle No. PB-54-C-7201 on the back side of truck No. PB-06-2567 and as such, it is a case of contributory negligence so, 50% amount should be deducted in respect of contributory negligence.

Learned counsel for the claimants-respondents has submitted that amount of compensation is already on lower side. The income of deceased has been taken as Rs.4500/- per month only. Deduction of 1/3rd has been made in respect of personal expenses and monthly dependency has been assessed as Rs.3000/-. The yearly dependency has been assessed as Rs.36000/-. The deceased was 46 years. Future prospects have not been taken into account. No amount in respect of loss of love and affection has been granted. A sum of Rs.5000/- in respect of funeral expenses is on lower side. The sum of Rs.5000/- for loss of consortium is also on lower side. It is submitted that the truck was parked on the road and as such the driver of truck was the only negligent person.

I have considered the said submissions made by learned counsel for both the parties and have gone through the record of the case.

The facts of the case are that Kulwant Singh while overtaking the truck struck against the standing truck which is offending vehicle. The negligence of offending vehicle has also not been disputed by learned counsel for the appellant. The only point which has been argued is that it is a case of contributory negligence. No doubt, it was the duty of Kulwant Singh to drive the vehicle in such a manner that it does not strike against the back side of the offending vehicle. However, the truck driver was also at fault as he has parked the truck on the busy road. The accident took place at about 4 PM i.e about day time and as such on the facts and circumstances of the case, I have no hesitation in holding that Kulwant Singh was also negligent in driving the motor cycle as he has struck the vehicle from back side. However, negligence of truck driver is more grave than the negligence of Kulwant Singh. So, offending vehicle is held contributory negligent to the extent of 70% and Kulwant Singh is held liable for contributory negligence to the extent of 30%.

Now, the question arises whether a case for reduction of compensation is made out. The answer to that question is in negative. No addition to the income of the deceased has been given on account of future prospects as envisaged in authority **Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403**. The Tribunal should have taken into account the future prospects of the deceased and granted addition of 30% to his income on that account. The monthly income of the deceased was taken as Rs.4500/-. After giving addition of 30% on account of future prospects, the income should have been assessed as Rs.5850/- per month (4500+1350=5850). The claimants are more than four so, deduction of 1/4th should have been made in respect of personal expenses of the deceased. The amount of dependency comes to Rs.4387.50. The yearly dependency comes to Rs.52,650/-. The deceased was 46 years old so, multiplier applicable at this age is 13 so, the loss of dependency comes to Rs.6,84,450/-. A sum of Rs.1 lac should have been allowed in respect of loss of consortium and Rs.1 lac in respect of loss of love and affection. A sum of Rs.25,000/- should have been allowed in respect of funeral expenses. In this manner, the amount would have been calculated at Rs.9,09,450/-. So, even if 30% amount is deducted in respect of contributory negligence, the amount of compensation required to be awarded is more than the compensation actually awarded and such no case for reducing the amount of compensation is made out. Since the claimants are not in appeal, so, the amount of compensation is not being enhanced.

Consequently, the appeal filed by the insurance company for reduction of compensation is dismissed. In view of the peculiar circumstances of the case, the parties are left to bear their own costs.

30.3.2015. **(K.C.PURI)**
SN **JUDGE**