

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

FAO No.4887 of 2013

Date of decision: 19th February, 2015

Anil Yadav and another

... Appellants

Versus

Seema Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sanjeev K. Bawa, Advocate
for the appellants.

Service of respondents No.1 and 2 – dispensed with.

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

FATEH DEEP SINGH, J.

Claimant/appellants have made a dual attack on the impugned Award of learned Motor Accident Claims Tribunal, Gurgaon dated 19.03.2013, one on the basis of the fact that it was a case of contributory negligence and have secondly challenged the quantum of compensation flowing out of it.

Heard Mr. Sanjeev Kumar Bawa, Advocate for the claimant/appellants, Ms. Monika Jangra, Advocate appearing on

behalf of Ms. Vandana Malhotra, Advocate – Standing Counsel for the insurer/respondent No.3 and on perusal of the records.

Though it is the stand of the owner respondent Ms.Seema Devi and driver respondent Vikram Singh that no accident took place between their offending car make Maruti Alto bearing registration No.DL-9CM-7416 and the vehicle Scooty bearing No.HR-26-BH-2718 being driven by the claimant husband Anil Yadav on which claimant wife Smt.Maya Devi was on the pillion. However, in the light of eye-witness account of both claimants Anil Yadav and Smt. Maya Devi as PW5 and PW6 respectively and the failure of the respondent driver to step into the witness box and rebut the case of the claimants, learned Tribunal has rightly drawn an adverse presumption. The contentions of learned counsel for the appellants that merely because the vehicles have struck from the front side, learned Tribunal has drawn conclusions that it was a case of contributory negligence.

It is well writ large on the record that criminal case brought out by PW4 Updesh Pandey by way of FIR Ex.P23 which was registered against the driver and in view of the ratio laid down in **‘Keshub Mahindra v. State of Madhya Pradesh’ II (1996) ACC 292 (SC)** was prima facie evidence that the driver was at fault. However, the Tribunal has wrongly appreciated this aspect and failed to take cognizance of this unrebutted evidence. Even by taking adverse presumption against the driver in terms of Section 114 of Indian Evidence Act, 1872, the conclusions ought to tilt in favour of the claimants. Since both the eye witnesses are the injured and being

stamp witnesses their testimonies need to be taken on the face of it and having remained unblemished further adds to the woes of the claimants. Thus, the conclusions drawn by the Tribunal needs to be set aside holding that it was an accident as a consequence of rash and negligent driving of the offending car by its driver and therefore, the findings qua issue No.1 are modified accordingly.

Mr. Sanjeev Kumar Bawa in his arguments accepts that it is not proved as to the avocation of the claimant Anil Yadav, who is only shown to be working with HDFC Bank whereas the wife Smt.Maya Devi is shown to be a housewife and therefore, must be contributing her worth to the running of the household. It is nowhere evident that Anil Yadav has suffered any permanent disability and has remained hospitalized only for three days which is brought out by the deposition of PW1 Dr.Vijay Diwakar, PW2 Puran Chand from Shivam Hospital and the expenses incurred on the treatment are elicited by PW4 Bipul from Ganger Medicine as well as PW7 R.D. Sharma from Apex Health Care.

The learned Tribunal has given a well reasoned order for these injuries to the pubic region and there is nothing suggestive as to the extent of damage and has correctly awarded a sum of ₹96,750. Wife Smt.Maya Devi has certainly suffered a fracture of the left tibia and an implant has been affixed to rectify the same and her own testimony along with that of PW1 Dr.Vijay Diwakar from Shivam Hospital, Gurgaon stating that claimant wife has been operated to rectify this fracture on 06.04.2012 and the medical expenses have

been brought about by PW2 Puran Chand by way of Ex.P4, Ex.P5 and Ex.P6 as well as from the deposition of PW4 Bipul by way of Ex.P10 to P15 and Ex.P21.

Though claimant wife has herself testified that she has incurred ₹3.00 lacs but the Tribunal has considered all the expenses and has taken deep concern for the loss of earnings as a housewife, on account of transportation, nutritious diet, services of the attendant and has rightly awarded a sum of ₹1,08,150. Learned counsel for the respondent-insurer could not show how the same was inconsistent with the evidence led on the record and appears to be just and fair compensation.

In the light of this discussion and findings, the instant appeal is allowed to the aforesaid extent holding that the claimant Anil Yadav shall be entitled to this ₹96,750 (rupees ninety six thousand seven hundred fifty) and claimant Smt.Maya Devi shall be entitled to ₹1,08,150 (rupees one lac eight thousand one hundred fifty), and that the driver of the offending car was responsible for causing this accident by his rash and negligent driving. The impugned award is thus modified in those terms by allowing the appeal. Rest of the stipulations including the rate of interest laid down by the Tribunal need not be disturbed.

(FATEH DEEP SINGH)
JUDGE

February 19, 2015
rps