

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 8365 of 2015 (O&M)
Date of Decision : 14.12.2015**

Pritam Bus Service and anotherAppellants

Versus

Ranjan Devi and othersRespondents

2. FAO No. 8369 of 2015 (O&M)

Pritam Bus Service and anotherAppellants

Versus

Ram Kumari and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vishal Sodhi, Advocate
for the appellants.

Surinder Gupta, J.

The above captioned appeals have been filed against award dated 04.05.2015 passed by Motor Accident Claims Tribunal, Ludhiana (later referred to as 'the Tribunal') whereby compensation of ₹ 10,83,000/- was allowed for the death of Rohit Dass in MACT Case No. 21 of 21.02.2014 and ₹ 9,07,500/- for the death of Santosh Dass in MACT Case No. 25 of 24.07.2013.

2. The case of claimants, in brief, is that on 17.05.2013, Rohit Dass, Santosh Dass alongwith Birju were coming from village Gharkhana towards Samrala on motorcycle bearing registration no. PB-43-D-5321. The motorcycle was being driven by Santosh Dass. Dinesh Dass, brother of Santosh Dass, was also coming behind them on separate motorcycle. At about 07.30 p.m., when deceased alongwith Birju were about to cross village Ottalan, a bus no. PB-10-CN-9727 (later referred to as 'the offending

vehicle') came from opposite side. It was being driven by respondent no. 1-Gurmail Singh (appellant no. 2 herein) in a rash and negligent manner. The bus came on wrong side of the road and hit the motorcycle as a result of which the occupants of motorcycle fell down and sustained multiple grievous injuries resulting in death of Rohit Dass and Santosh Dass at the spot. The matter was reported to the police vide FIR No. 90 dated 18.05.2013, registered at Police Station Samrala for offences punishable under Sections 279, 304-A and 427 of Indian Penal Code (IPC).

3. In the written statement filed by driver and owner of the offending vehicle, they have admitted registration of FIR No. 90 dated 18.05.2013 but described the same as false *inter alia* pleading that no accident had taken place with the offending vehicle resulting in death of Rohit Dass and Santosh Dass.

4. The Tribunal on the basis of evidence on record recorded the finding that the accident had taken place due to rash and negligent driving of bus by respondent no. 1-Gurmail Singh and allowed compensation as mentioned in para 1 above.

5. Learned counsel for appellants has assailed the award on following counts:-

- (i) that deceased were going on motorcycle in triple riding;
- (ii) that Santosh Dass, driver of the motorcycle, was not possessing driving licence to drive the motorcycle;
- (iii) that occupants of the motorcycle were without helmets;
- (iv) that the motorcycle was on wrong side of the road

which is evident from the site plan of the place of accident prepared by the police;

- (v) that it was a case of contributory negligence; and
- (vi) that the Tribunal has allowed compensation towards future prospects despite the fact that the matter is still pending adjudication before the larger Bench of Hon'ble Supreme Court.

6. On perusal of award and statements of witnesses supplied by learned counsel for the appellants during course of the arguments, I find no substance in the argument that the deceased Santosh Dass was not having any licence for driving the motorcycle or the deceased were without helmets or were going on wrong side of the road. PW-2 Dinesh Dass has categorically stated that Santosh Dass was having a driving licence. Claimants were not required to produce the driving licence of Santosh Dass on file and the respondent-appellants have not moved any application calling for production of driving licence of Santosh Dass. This submission that the deceased were going without helmets is also not supported by any evidence on record. It is correct that the deceased were going in triple riding on the motorcycle which is not permissible under the law. This has made them liable for penal action under the Motor Vehicle Act, 1988 but in no manner exonerate the appellants from their liability to pay the compensation for the accident which was caused due to rash and negligent driving of bus by respondent no. 1-Gurmail Singh. It is specific case of claimants that bus came on wrong side of the road and hit the motorcycle. PW-2 Dinesh Dass is the eye-witness of the accident who has deposed about the manner in which the accident had taken place. There is no rebuttal to his statement.

FIR was also got registered by him in which the police after investigation has presented the challan against respondent no.1-Gurmail Singh for causing the accident by driving the bus (offending vehicle) in a rash and negligent manner. Admittedly, respondent no. 1-Gurmail Singh has been charge-sheeted and is facing trial.

7. So far as argument of learned counsel for the appellants that motorcyclists had come on wrong side of the road and caused the accident is concerned, the same is not supported by any evidence. During course of arguments, learned counsel for the appellants has referred to site plan prepared by the police after the accident showing the place where death of Rohit Dass and Santosh Dass took place and has argued that as per this site plan the motorcycle had come on wrong side of the road. He has argued that bus was coming from Samrala to Khanna side and motorcyclists were going from Khanna to Samrala side. The accident had taken place at point 'A', which is on the left side while coming from Samrala towards Khanna. This shows that motorcyclists have gone on wrong side of the road resulting in accident. I find no weight in the submission of learned counsel for the appellants as driver of the bus was not examined to state the manner in which accident had taken place. Secondly, it is no where the case of appellants that accident had taken place due to rash and negligent driving of the motorcycle by deceased Santosh Dass. They have not pleaded or proved the contributory negligence of deceased in causing the accident. No doubt, appellants can certainly make up a case from evidence produced by claimants but

from the statements of witnesses and documents placed on record by the claimants, learned counsel for the appellants could not make out a case of contributory negligence or negligence of Santosh Dass in causing the accident. So far as site plan (Ex. R-2) produced on record is concerned, the official who prepared this site plan was not examined. In case the accident had taken place due to negligence of driver of the motorcycle, appellants were required to come up with a specific plea in this regard. They have simply denied the accident.

8. The Apex Court in case of **National Insurance Co. Ltd. vs. Sinitha and others, 2012 (2) SCC 356**, has observed that negligence is a factual issue and can only be established through cogent evidence. In the instant case, the claimants by examining the eye-witnesses have been able to prove that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1-Gurmail Singh and I find no legal or factual infirmity in the findings recorded by the Tribunal in this regard.

9. The Tribunal has also taken into account the future prospects of deceased while calculating the amount of compensation awarded for the death of Rohit Dass and Santosh Dass.

10. Learned counsel for the appellant has argued that the Tribunal has wrongly allowed 30% addition towards the future prospects in the income of deceased, relying on the judgment in the case of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**, when the matter is under consideration before

the Hon'ble Apex Court in the reference made in case of **National Insurance Company Limited vs. Pushpa and others, Appeal (C) No.8058 of 2014**, decided on 02.07.2014 (MANU/SC/1246/2014) and **Shashikala and others vs. Gangalakshamma and another, 2015 (3) RCR (Civil) 510**.

11. In the case of **Pushpa (supra)**, while differing with the view taken in case of **Sarla Verma and others vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121**, it was observed as follows:-

“18. Therefore, we do not think that while making the observations in the last three lines of para 24 of **Sarla Verma** judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.”

12. In case of **Rajesh (supra)**, a three Judges Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

“11. Since, the Court in **Santosh Devi v. National Insurance Co. Limited and Ors. (2012) 6 SCC 421** actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case (supra)** and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those

groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In **Sarla Verma's case (supra)**, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”

13. Reference was made to a larger Bench of Hon'ble Apex Court in case of **Pushpa (supra)**, on 02.07.2014. In the recent judgment dated May 15, 2015 in case titled **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447**, a three Judges Bench of Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of **Rajesh (supra)**.

14. The concept of future prospects envisages chances or opportunities for success and further progress in life which is a normal course of event for every human being involved in any avocation. Even if, keeping in view his ability, capacity etc., one

may not be in a position to rise in life, there is another aspect that justifies the grant of addition in the income of the deceased, which is the 'inflationary trend' in which we all are living. For example, I take instance of a tailor. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequent increase in their income. This is because of high increase in the cost of living. The dependents of a deceased in accident have also to face the same situation. The amount of compensation is required to be just and reasonable keeping the inflationary trend in view, where the prices of the basic amenities of life are likely to increase further.

15. As the view taken in case of **Rajesh (supra)** has been followed by the Hon'ble Apex Court in **Munna Lal Jain's case (supra)**, the Tribunal committed no error while allowing 30% addition of the income towards future prospects while allowing the compensation to the claimants.

16. In view of my discussion above, I find no legal or factual infirmity in the award passed by the Tribunal calling for any interference.

17. This appeal has no merits. Dismissed.

December 14, 2015
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? *Yes/No*