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

FAO No.2257 of 2011 (O&M)
Date of decision : 26.02.2016

Smt. Luxmi and others

.... Appellants

Vs.

Lajpat Singh and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present : Mr. Sunil Kumar Sharma, Advocate,
for the applicants-appellants.

Respondent No. 2 *ex pate.*

Mr. Dinesh K. Parjapati, Advocate, for
Mr. R.S. Madan, Advocate,
for respondent No. 3.

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AMOL RATTAN SINGH, J.

CM No. 7608-CII-2011

Heard.

For the reasons stated in the application, the delay of 235 days in filing the appeal, is condoned.

Application stands disposed of, accordingly.

FAO No. 2257 of 2011

The four appellants were claimants before the learned

Motor Accidents Claims Tribunal, Ambala, to claim compensation for the death of Hari Parshad who unfortunately died in a motor vehicle accident that took place on 29.04.2008.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988.

2. As per the claim petition, Hari Parshad was going from Ambala Cantt. to Ambala City on a bicycle, followed by his son Shiv Prashad (appellant No. 3), between 8:00-9:00 a.m. Hari Prashad crossed the lanes of the GT Road and when he was standing at the place earmarked for pedestrians, a Maruti Car bearing registration No. HR-10-J-5013 came from the side of Ambala Cantt, driven rashly and negligently by respondent No. 1, which hit Hari Parshads' cycle. Hari Parshad fell down on the road, suffering multiple injuries including a head injury. Respondent No. 1 is stated to have stopped the car but on seeing the condition of Hari Parshad, fled the spot with the car.

Appellant No. 3 is stated to have taken his father to the Civil Hospital, Ambala Cantt, from where he was referred to the PGI, Chandigarh, but died on the way and was declared so at the PGI. He is stated to have been 42 years old at that time.

The Tribunal apportioned the negligence to the extent of 75% upon the deceased and 25% upon respondent No. 1.

No appeal filed by the respondents against the impugned award has been brought to the notice of this Court.

3. The appellants have challenged the finding of 75% negligence attributed to Hari Parshad and are also seeking

enhancement of the compensation of Rs. 52,500/- awarded by the Tribunal.

The issue of the compensation awarded will be considered after the issue of 75% contributory negligence attributed to the deceased by the Tribunal.

Mr. Sunil Kumar Sharma, learned counsel appearing for the appellants, submitted that the finding of 75% negligence at the hands of the deceased, by the Tribunal, is based on a mis-appreciation of the evidence because the respondents led no evidence whatsoever to refute the manner in which the accident took place.

4. It is seen that appellant No. 3, Shiv Parshad, stepped in the witness box and stated that when his father and he were going on their respective bicycles, between 08:00 .– 09:00 a.m., and were standing on the zebra crossing near the divider, the 'offending vehicle' came from behind and the driver lost control over it and hit his father, on account of the vehicle being driven rashly, upon which his father received injuries and later died.

He also proved the FIR registered in respect of the accident.

The Tribunal found that what the witness had stated to be a zebra crossing, was actually a group of painted arrows near the dividers on the highway, indicating forks in the road, which is described in the Award to be an express highway. Hence, holding that the deceased was trying to cross the main highway, crossing over at a point that was not a zebra crossing, he could not be absolved of responsibility.

On the other hand, Rules 8 and 9 of the Rules of the Road Regulations, 1989, were also noticed by the Tribunal, as follows:-

> "8. **Caution at road junction.**- The driver of a motor vehicle shall slow down when approaching a road inter-section, a road junction, pedestrian crossing or a road corner, and shall not enter any such inter-section, junction or crossing until he has become aware that he may do so without endangering the safety of persons thereon.
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> 9. **Giving way to traffic at road junction**.- The driver of a motor vehicle shall, on entering a road inter-section, at which traffic is not being regulated, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the inter-section on his right hand."

Thus, from a reading of Rule 8 of the Rules of the Road Regulations, 1989, it is obvious that a motor vehicle driver, while approaching a road intersection, a road junction, pedestrian crossing or a road corner, is prohibited from entering such intersection etc. without slowing down and ensuring that he would do so without endangering the safety of any person.

However, at the same time, it is also, naturally, the duty of a pedestrian to ensure that he crosses a highway/road only at the place designated for such crossing.

It needs to be noticed that in the absence of pedestrian crossings over highways, pedestrians/bicycles are not left with much choice in crossing highways and as such, in such cases, correctly, the authority concerned that is responsible for non-provision of proper places for crossing highways, either by way of over-bridges or underpasses, needs to be equally foisted the liability to pay compensation to the victims of motor accidents, which occur in such circumstances. However, at this stage, to implead the National Highways Authority of India or other such authority, would obviously mean huge delay in payment to the family of the victim and as such nothing further is being stated in that regard.

Factually, the deceased having mistaken the arrows on the road to be a zebra crossing, obviously did not cross the highway at the correct point. At the same time, respondent No. 1 had abdicated his duty to ensure that nobody at the intersection was endangered.

In view of the above, it is held that the deceased and respondent No. 1 were equally negligent in observing road safety rules. Consequently, the finding of the Tribunal is modified to the extent that the deceased and respondent No. 1 are each held guilty of 50% contributory negligence in causing the accident.

5. Coming next to the amount of compensation awarded, very strangely, what the learned Tribunal did, was to hold that since the first appellant (widow of the deceased), was getting

Rs. 8,790/- as *ex gratia* compensation which would continue till the date when her husband was to retire, i.e. on 29.07.2020, the claimants were not entitled to anything else apart from Rs. 50,000/- on account of no fault liability, and to Rs. 2,500/- as funeral expenses (as 25% of Rs. 10,000/- awarded), the deceased being responsible for the accident to the extent of 75%.

No compensation was awarded for loss of consortium to appellant No. 1, or to appellants No. 2 to 4, i.e. the children of the deceased, for the loss of love and affection of their father.

Learned counsel for the appellants submitted that the Tribunal had again erred in holding that since appellant No. 1 is receiving *ex gratia* grant-in-aid under the relevant compassionate compensation rules for deceased employees in the State of Haryana, no amount for compensation of loss of income is payable to the legal heirs of the motor accident victim. In this regard, he cited a judgment of the hon'ble Supreme Court in **Vimal Kanwar and others** vs. **Kishore Dan and others** (AIR 2013 SC 3830).

In that judgment it was held as follows:-

> *"20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction.*
>
> *"Compassionate appointment" can*

be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accident death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accident death. An employee who dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

6. Thus, though in my opinion, if a dependent of a deceased employee is receiving similar salary as was being paid to the deceased at the time of his death, only the loss of future prospects of income, to the extent of loss of increments, pay enhancements etc. need to be factored in while calculating

compensation for loss of income to the dependents, however, in view of the authoritative pronouncement by the Supreme Court, holding that compensation for the death of a person in a motor vehicle accident and any compassionate assistance given to him by his employer, are based on two wholly different considerations, obviously, the contention of learned counsel for the appellants is correct. Therefore, compensation to the appellants is to be calculated under the head of loss of income, without taking into consideration any benefit granted to the family of the deceased by the employer of the deceased.

7. It is seen that before the Tribunal, it had been proved by a witness from the office of the Municipal Committee, Ambala Cantt, where deceased Hari Parshad was an employee, that on account of the revision of pay scales w.e.f. 01.01.2006, Hari Parshad was to draw a total salary of Rs. 9,402/- per month. Thus, his gross annual income would be Rs. 9402x12= Rs.1,12,824/-. In the financial year 2008-09, the income tax payable on that income would have been nil, as is not refuted by learned counsel for the respondent-Insurance company. Therefore, to the aforesaid income is to be added 30% by way of loss of prospects of future income, in terms of the judgment of the Supreme Court in **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another** (2009) 6 SCC 121 and **Rajesh and others** vs. **Rajbir Singh and othes** (2013) 9 SCC 54, wherein it was held where the deceased was between 40 to 50 years of age, 30% of his last income is to be added by way of

loss of future prospects of income. Thus, adding the same, the total income, to which a multiplier of 14 is to be applied, would be Rs. 1,46,671. After applying the aforesaid multiplier, again as per the ratio of **Smt. Sarla Verma** (supra), the total income of the deceased, calculated in the aforesaid manner, comes to Rs. 20,53,397.

From that, a deduction is to be made towards the personal expenses of the deceased, had he remained alive which again in terms of the aforesaid judgment, with the number of dependents/appellants being four, is 1/4th of the income. Thus calculated, the loss of dependent income to the appellants, is Rs. 15,40,048/-. However, since the deceased was guilty of 50% contributory negligence, what would be payable to the appellants would be Rs. 7,70,024/- under this head, rounded off to Rs. 7,70,000/-. Of this amount, Rs. 3,85,000/- shall be paid to appellant No. 1. Appellants No. 2, 3 and 4 shall be paid Rs. 1,28,333/- each under this head.

8. Coming next to the compensation to be awarded for loss of consortium to appellant No. 1 and loss of love and of their father to appellants No. 2 to 4, again as per the ratio of the judgments in **Rajesh's** and **Vimal Kanwar's** cases (supra), the loss of consortium payable to appellant No. 1 would be Rs. 1,00,000/-, but is to be again halved to Rs. 50,000/-, on account of the 50% contributory negligence.

In **Vimal Kanwar's** case, Rs. 2,00,000/- was awarded for loss of love and affection to the daughter of the deceased.

However, conventionally Rs. 1,00,000/- is awarded under that head at least to a minor child. In the present case, appellant No. 4 was a minor child of 15 years at the time of her fathers' death and accordingly, a sum of Rs. 1,00,000/- is awarded to her, but of which only Rs. 50,000/- is payable.

Since the second and third appellants were also only young men at the time of their fathers' death, a sum of Rs. 1,00,000/- each, halved to Rs. 50,000/- each, for loss of love and affection is awarded.

9. Towards funeral expenses and last rites, a sum of Rs. 25,000/- has been fixed as compensation in the aforesaid judgments and is accordingly awarded, but halved to Rs. 12,500/-

Thus, under these 'conventional heads' a sum of Rs. 2,12,500/-is awarded, after deducting 50% for contributory negligence.

10. Hence, the total compensation awarded now by this Court, to the appellants, is Rs. 9,82,500/- which is Rs. 9,30,000/- more than what was awarded by the Tribunal (Rs. 52,500/-).

The enhanced amount of compensation would carry interest @ 7% per annum, in each case, running from the date of filing of the claim petition to the date of actual realization thereof.

11. The aforesaid enhanced amount of Rs. 9,30,000/- along with interest thereupon, shall be apportioned among the appellants as follows:-

Appellant No. 1 (widow) Rs. 4,65,000/-

Appellants No. 2, 3 and 4
(children of the deceased) Rs. 1,55,000/- each

The appeal is accordingly partly allowed as above, with no orders as to costs.

(AMOL RATTAN SINGH)
26.02.2016 **JUDGE**
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