

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

**FAO No.1736 of 2012 (O&M)
Date of Decision: 16.08.2016**

Smt. Rekha Devi & others

.....Appellants

Versus

Ashok Kumar (since deceased) through his LRs & others

....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Atul Yadav, Advocate for the appellants.

Mr. M.B.Jain, Advocate for respondent No.3.

DARSHAN SINGH, J (ORAL)

The present appeal has been preferred by the appellants-claimants against the award dated 02.12.2011 passed by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as "the Tribunal"), whereby the appellants-claimants have been awarded compensation to the tune of Rs.5,64,068/- on account of death of Vikram Singh in the motor vehicular accident which took place on 25.10.2010.

2. The present appeal has been preferred by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard Mr.Atul Yadav, Advocate, learned counsel for the appellants, Mr. M.B.Jain, Advocate, learned counsel for respondent No.3-Insurance Company and have meticulously examined the record of the case.

4. Initiating the arguments, learned counsel for the appellants

contended that the learned Tribunal has wrongly held the deceased to be contributory negligent without any such evidence on record. He contended that mere this fact that the accident was head-on collusion is no ground to hold the deceased contributory negligent. He relied upon the case **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh & ors., 2014(4) RCR Civil 362.**

5. He further contended that the learned Tribunal has wrongly deducted 1/3rd of the income of the deceased towards his personal and living expenses though the deceased has six dependants. The learned Tribunal has also not awarded any compensation on account of loss of love and affection and less amount has been awarded towards other conventional heads. No future prospects have been added towards the income of the deceased. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

6. On the other hand, Mr.M.B.Jain, Advocate, learned counsel for respondent No.3-Insurance Company contended that it is an admitted fact that the accident was head-on collusion. So, the deceased himself was contributory negligent for this accident. The learned Tribunal has rightly held the deceased to be contributory negligent. He relied upon case **Sukhbir Singh & anr. Vs. Ram Mehar & ors., 2011(2) PLR 97.**

7. He further contended that the deceased was not holding any permanent job. So, no future prospects were required to be added towards the income of the deceased. The learned Tribunal has rightly deducted 1/3rd of his income towards personal and

living expenses as the parents of the deceased and his sister were not dependant upon him. He further contended that the appropriate compensation has been awarded under other conventional heads.

8. I have duly considered the aforesaid contentions.

9. The learned Tribunal has held deceased Vikram Singh to be contributory negligent simply on the ground that the motorcycle bearing registration No.HR-72-1754 being driven by him and car No.HR-26S-0879 being driven by respondent No.1-Ashok Kumar, had head-on collusion but the sole fact that vehicles had head-on collusion is no ground to hold the deceased contributory negligent. The claimants have examined PW5-Vikram Singh, the witness of the occurrence who has categorically deposed that the deceased was driving the motorcycle at a moderate speed on the correct side of the road. When they reached near village Jodi Khurd on Gurgaon-Pataudi Road, the offending vehicle bearing registration No.HR-26S-0879 WagonR car came from Pataudi side, which was being driven by Ashok Kumar, respondent No.1 in a rash and negligent manner at a high speed. He struck his car against the motorcycle No.HR-72-1754 on which deceased Vikram Singh was riding. A criminal case was also registered against respondent No.1 for causing this accident. No doubt in the cross-examination PW5-Vikram Singh has admitted that it was a head-on collusion but the respondents have not led any evidence to establish as to what was the width of the road at the place of the occurrence, on which side of the road the accident as taken place, in which manner the motorcycle was being driven by the deceased and in which

circumstances the head-on collusion has taken place. The Hon'ble Apex Court in **Kumari Kiran's case (supra)** has laid down that the contributory negligence cannot be assumed on the ground that collusion has occurred in the middle of the road between two vehicles approaching from opposite directions of the road in the absence of any negligence on the part of other driver. In the instant case, also as already discussed, no evidence at all has been led by the respondents in rebuttal to the evidence adduced by the claimants on the mode of the accident to show any negligence on the part of deceased Vikram Singh. Thus, in these circumstances, the findings of the learned Tribunal that the deceased was equally contributory negligent, cannot be sustained and respondent No.1, the driver of the offending car bearing registration No.HR-26S-0879 is proved to be the sole negligent for causing this accident.

10. The learned Tribunal has taken the income of the deceased to be Rs.8,000/- per month. The claimants have successfully proved that the deceased was working as a Supervisor with Jyoti Associates, Palam Vihar, Gurgaon and was getting the salary @ Rs.8,676/- per month. The learned Tribunal has deducted personal allowances payable to the deceased from his salary and rightly arrived at the conclusion that the income of the deceased shall be taken to be Rs.8,000/- per month.

11. The learned Tribunal has not awarded any future prospects towards the income of the deceased. The deceased was working as a Supervisor with Jyoti Associates. He was holding a responsible post. His salary was bound to increase with the passage

of time. So, the learned Tribunal was required to add future prospects to the income of the deceased. The deceased was in the age group of 26 to 30 years. So, 50% of the income of the deceased shall be added towards future prospects. The total income of the deceased comes to Rs.12,000/- per month i.e. Rs.1,44,000/- per annum.

12. The learned Tribunal has rightly deducted 1/3rd of his income towards personal and living expenses of the deceased as the father of the deceased was only 49 years of age and was an agriculturist by profession. So, his father, mother and unmarried sister cannot be considered to be dependant upon the income of the deceased. After deducting 1/3rd of the total income of the deceased towards personal and living expenses, the remainder comes to Rs.96,000/-. In view of the age of the deceased, multiplier of 17 shall be applicable. Thus, the loss of dependency comes to Rs.16,32,000/-.

13. In addition to the aforesaid amount, claimant-appellant No.1-Smt. Rekha Devi, widow of the deceased Vikram Singh, shall be entitled to Rs.1,00,000/- towards loss of consortium. Claimants-appellants No.2 and 3, the minor children of the deceased shall also be entitled to Rs.1,00,000/- on account of loss of love, care and guidance of their father. Smt.Reshma, claimant-appellant No.5, the mother of the deceased shall also be entitled to Rs.1,00,000/- towards loss of love and affection of her son. The claimants shall also be entitled to a sum of Rs.25,000/- towards funeral and transportation expenses. Thus, the total amount of

compensation payable to the claimants comes to Rs.19,57,000/-.

14. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of the compensation is enhanced from Rs.5,64,068/- to Rs.19,57,000/- (Rs.Nineteen Lacs Fifty Seven Thousand only).

15. The claimants shall also be entitled to the interest on the enhanced amount of compensation from the date of filing the claim petition till realisation at the rate of interest already determined by the learned Tribunal in the impugned award. The liability to pay the amount of the compensation and apportionment thereof shall also be as per the award passed by the learned Tribunal.

16. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case *National Insurance Company Vs. Pushpa, (2015) 9 SCC 166*, in order to safeguard the interest of respondent No.3-Insurance Company, the amount of compensation under the head of future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court.

[DARSHAN SINGH]
JUDGE

16.08.2016

Vinay

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No