

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

(1)

**FAO No.463 of 2012 (O&M)
Date of Decision: August 23, 2016.**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Rajni and others

.....RESPONDENT(s).

(2)

FAO No.464 of 2012 (O&M)

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Santosh Devi and others

.....RESPONDENT(s).

(3)

FAO No.1018 of 2012 (O&M)

Rajni and others

.....APPELLANT(s).

VERSUS

Paras Ram and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod Gupta, Advocate
for the appellant in FAO Nos.463 and 464 of 2012
and for respondent No.3 in FAO No.1018 of 2012.

Mr. Rakesh Nagpal, Advocate
for respondents No.1 to 3 in FAO No.463 of 2012
and for appellants in FAO No.1018 of 2012.

Mr. M.S. Saini, Advocate for
Mr. Saurabh Garg, Advocate
for respondent No.4 in FAO No.463 of 2012,
for respondent No.7 in FAO No.464 of 2012 and
for respondent No.1 in FAO No.1018 of 2012.

SURINDER GUPTA, J.

The appeals captioned above have been taken up together for disposal as these arise from the common award passed by Motor Accident Claims Tribunal, Kaithal relating to death of Devender Kumar and Sohan Lal in a motor vehicle accident on 19.11.2008 at 10.30 p.m. when canter bearing registration No.HR-64-1278 (later referred to as 'the canter') going from Fatehpur to Delhi, hit the stationary truck bearing registration No.PB-02H-9927 (later referred to as 'the offending vehicle') which had been parked in the middle of the road without any indicator, warning or sign.

Two appeal bearing FAO Nos.463 and 464 of 2012 have been filed by the insurer of the offending vehicle and the third appeal bearing FAO No.1018 of 2012 has been filed by the claimants i.e. wife and minor children of Devender Singh (later referred to as 'the deceased').

The case of the claimants, in brief, is that on 19.11.2008 at about 10.30 p.m., the deceased was driving the canter and was going from Fatehpur to Delhi and when reached near Apollo School on G.T. Road in the area of Police Station Ganour, the canter hit the offending vehicle which had been parked in the middle of the road without any indication. While Sohan Singh, who was sitting in the canter received multiple injuries and taken to the hospital, the deceased (Devender Kumar) died at the spot.

In the later part of the judgment, counsel for the parties will be referred as counsel for the insurance company and counsel for the claimants respectively.

Learned counsel for the insurance company while drawing the

attention of this Court towards the observations of the Tribunal in para 28 of the award that the driver of both vehicles were equally responsible for causing the accident, has argued that despite this observation, the Tribunal did not apportioned the compensation awarded in the ratio in which the responsibility of the driver of the offending vehicle was held.

Learned counsel for the claimants has argued that the Tribunal committed error while attributing contributory negligence to the driver of the canter. It was night time and there is unrebutted evidence on record that the offending vehicle had been parked in the middle of the road. The canter was coming on the national highway at a reasonable speed and could not notice the offending vehicle for want of any indicator, light or sign placed on the road by its driver and by the time, driver of canter noticed the parked vehicle, it was too late to avoid wrongly parked truck in the middle of the road and both the occupants of the canter lost their lives. The Tribunal committed error while holding the driver of the canter as equally liable for the accident. This proposition will cause a havoc as during night time, the vehicles ply on the road under the impression that if there is any obstruction on the road, some indicator or sign will be placed to safeguard the life of the other users of the road. For the mere fact that a moving vehicle on the road had hit a stationary vehicle parked in the middle of the road during night time, cannot be a reason to draw inference that driver of the moving vehicle was also negligent.

On giving a careful thought to the submissions of learned counsel for the parties, I find that similar point came for consideration in FAO No.1667 of 1997, decided on 26.07.2016, it was held as follows:-

“If a vehicle is parked in the middle of the road during night time and some vehicle coming on road ram in it, no inference can be drawn that driver of vehicle coming on road was negligent. If a person is driving vehicle at a reasonable speed during night hours, he may notice stationary vehicle or any other substance lying in the middle of the road only when he reaches very near and by that time, despite applying full brakes, it may not be possible to stop that vehicle and to avoid hitting the stationary vehicle or substance lying on the road. In such circumstances, attributing negligence or contributory negligence to the driver of moving vehicle in causing the accident will be very harsh conclusion.”

A general conclusion cannot be drawn that in every case where a vehicle during night time hits a stationary vehicle wrongly parked in the middle of the road, it is a case of contributory negligence or negligence of driver of either vehicle. This conclusion can be drawn only on the basis of evidence on record.

In this case, claimants examined Baljeet Singh PW3, an eyewitness of the accident. He was also in the canter which was being driven by the deceased. He has stated that the offending vehicle was wrongly parked in the middle of the road without any light, indicator or warning sign. As a result of which canter hit the offending vehicle, resulting in death of the driver of the canter at the spot and injuries to Sohan Singh, who also died later on. The accident had taken place due to fault of driver of the offending vehicle. He had narrated all the facts to the police on the basis of which FIR No.331 dated 20.11.2008 was registered at Police Station, Ganour, District Sonipat. In cross-examination of this witness, his statement is unrebutted. No suggestion was put that driver of the canter

was, in any manner, negligent or that the offending vehicle which had been

parked in the middle of the road, was visible. It was winter night and the accident had taken place at about 10.30 p.m. when it is pitch dark. In these circumstances, to hold driver of a moving vehicle as negligent will not only be irrational conclusion but also a view which is not supported by any evidence on file. Respondent No.1 has not turned up to depose. The testimony of the only eyewitness is unrebutted and in these circumstances to reach the conclusion, that the accident had taken place due to rash and negligent driver of the offending vehicle who was negligent to the extent that he did not take any care to realise that during night time, the moving traffic on the road require some indication, light or signal to notice a vehicle parked on the road is evident, natural, safe and equitable. Reference may be made to *Amarjit Kaur Vs. State of Punjab 1999(4) R.C.R. (Civil) 92*, wherein a Co-ordinate Bench of this Court held as follows:-

“10. In the case of *Premlata Nilamchand Sharma & others v. Hirbhai Ranchhodbhai Patel & others, reported in 1982(2) G.L.R. 203*, a truck & trailer was parked in the middle of the road without any light on dark night and it was held that it was the duty of the driver to park his vehicle entirely off the asphalt road and keep road open and unobstructed. The driver was, therefore, liable for his rash and negligent act. The case of *British India Insurance Co. Ltd. Vs. Minor Khagesh Devendraprasad Jani 1977 A.C.J. 416*, was also considered and it was held that although the tractor-cum-trailer was parked on the left side of the asphalt road, it would still not exonerate its driver from the negligence as it was his duty under the circumstances of the case to park his tractor and trailer absolutely off the asphalt road and on the Kuchha strip. It was also found in that case that the

tractor and trailer were without efficient back lights and reflectors. Section 81 of the Motor Vehicles Act was also considered in that case. The provisions of the Bombay Motor Vehicles Rules, 1959 regarding lamps and rear lamps were considered and the Division Bench came to the conclusion that the scooter driver who dashed against the tractor trailer was not guilty of negligence.

11. In the present case also the tractor was not completely off the road. Nothing has been shown to me from which I can hold that the tractor driver had taken precautions of having red lights and reflectors which are required so that the other vehicle driver could locate the parked vehicle in the night time. The present case is, therefore, directly covered by the principles laid down in the case of **Premlata Nilamchand Sharma (supra)**. Therefore, I do not hold that there was contributory negligence.”

Another Co-ordinate Bench of this Court in case of **Smt. Ginni**

Devi and others Vs. Union of India and others 2007 (3) R.C.R. (Civil) 70,

held as follows:-

“14. The contention of the learned counsel appearing on behalf of Union of India was that the photographs produced on record clearly showed that the military vehicle was parked on katcha berm and further that the deceased Sunil Kumar had hit the said vehicle from behind. The contention of the learned counsel for the UOI was that in view of this fact, it was a case of contributory negligence and, therefore, the findings recorded by the learned Tribunal on issue No. 1 deserved to be reversed. By placing reliance on a judgment of the Karnataka High Court in **Smt. Shrimanti v. Krishna Dev Madipal, 2005 (1) RCR(Civil) 124**, it was contended that as the military truck was hit from the behind by the driver of the Maruti

car, it was a case of contributory negligence. This contention of the learned counsel for the UOI cannot be accepted as in the said authority the bus going at a high speed ahead of the motorcyclist which stopped suddenly and, therefore, the motorcyclist who hit the bus from behind was also held to be negligent as he was required to keep some distance between his vehicle and the vehicle going ahead to him. It is pertinent to notice here that the learned Tribunal has taken a note of the fact that the military truck was parked by its driver without any indication and it was on account of his negligence of not giving proper indication that the accident had taken place and, therefore, the learned Tribunal was right in coming to the conclusion that the accident had taken place due to negligence on the part of the driver of the military truck.....”

Second arguments of learned counsel for the insurance company is that the Tribunal denied the right to recover the compensation amount from owner and driver of the offending vehicle despite the fact that the driving licence of driver and registration certificate of the offending vehicle have not come on record.

Above submission of learned counsel for the appellant has no merits. Respondents No.1 and 2 were ex parte before the Tribunal. The onus was on the insurance company to prove the defence available to it under Section 149 (2)(a) (ii) of Motor Vehicles Act. However, it took no steps to prove its defence.

While seeking enhancement of compensation as awarded by the Tribunal, learned counsel for the claimants has argued that deceased Devender was admittedly a driver and the Tribunal has taken his salary at

₹4000/- per month which is on lower side. The claimants are also entitled to 50% addition in the income of the deceased towards future prospects, who was aged 32 years, in view of ratio of law laid down in ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54***. They are also entitled to compensation for loss of love and affection, care and guidance for minor children and loss of consortium for the wife. Compensation for funeral expenses and last rites awarded by the Tribunal @ ₹10,000/- is also on lower side.

The deceased was 32 years of age and was a driver by profession. The driver is to be equated with a skilled worker. In FAO No.5563 of 2009, this Court assessed the salary of a driver as ₹7000/- in the year 2007 relying on the observations of Hon'ble Apex Court in case of ***Minu Rout and another vs. Satya Pradyumna Mohapatra and others, 2013 (10) SCC 695***, assessing income of a driver of a car as ₹6000/- per month in the year 2004. The Tribunal in this case has assessed the salary of the deceased Devender Kumar @ ₹4000/- per month, which is on lower side and is re-assessed as ₹7,000/- per month.

The matter of addition in the income of deceased towards future prospects has been discussed in detailed by this Court in cases bearing ***FAO No.4292 of 2015 decided on 01.09.2015, FAO No.4683 of 2011 decided on 18.12.2015, FAO No.2032 of 2014 decided on 06.04.2016 and FAO No.6595 of 2011 decided on 27.05.2016***. It has been observed that addition in the income of deceased is to be made keeping in view the inflationary trend in which we all are living. The prices of goods of daily need are increasing day by day. We have noticed that the prices of goods as well as

services have increased manifold. There are so many examples to notice hike in prices of daily needs like food-grains, cereals, milk, clothes, school tuition fee, books, school dresses, medicines etc. The claimants will also bear the burnt of the rising prices, as such, they are entitled to addition of 50% in income of the deceased as per the observations in case of ***Rajesh and others Vs. Rajbir and others (supra)*** followed in case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447.***

The claimants are also entitled to compensation for loss of consortium to the wife of the deceased which is assessed as ₹1 lac and a similar amount is allowed for loss of love and affection care and guidance for minor children of the deceased. The compensation allowed towards funeral expenses and last rites is enhanced to ₹25,000/-.

In view of my above discussion, the amount of compensation to which the claimants are entitled to, is re-assessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹7000 per month
(ii)	50% of (i) above to be added as future prospects	(₹7000 + ₹3500)= (₹10500 per month)
(iii)	1/3 rd of (ii) deducted as personal expenses of the deceased	(₹10500-₹3500)= ₹7000 per month
(v)	Compensation after multiplier of 16 is applied	(₹7000X12X16)= ₹1344000
(vi)	For loss of consortium for the wife	₹100000
(vii)	For loss of love and affection, care and guidance for minor children	₹100000
(viii)	Last rites and funeral expenses	₹25000
Total		₹15,69,000

As a sequel of my above discussion, both the appeals filed by the insurance company i.e. FAO Nos.463 and 464 of 2012 have no merits

and are dismissed. The appeal filed by the claimants has merits and is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹2,61,000/- to ₹15,69,000/- for death of Devender Kumar. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be apportioned between the claimants as per the award. Respondent No.3-insurance company will deposit the share of appellant-claimant No.1 in her bank account or pay the same through demand drafts. The share of minors Vansh son and Sunaina, daughter-claimants No.2 and 3, who as per their age given at the time of filing of the petition are still minor, will be deposited in some nationalized bank as fixed deposits in their names till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minor claimants as required at the time of deposit of the amount and the minor claimants shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹20,000/-.

August 23, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No