

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

FAO No.5045 of 2012.

Date of Decision: 05.05.2016.

Gurjit Kaur and others

....Appellants.

VERSUS

Joginder Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Hardip Singh, Advocate for the appellants.

Respondent No.1 exparte vide order dated 15.01.2015.

Mr. N.S. Dandiwal, Advocate for
Mr. G.S. Chahal, Advocate for respondent No.2.

Mr. D.R. Bansal, Advocate for respondent No.3.

Mr. H.S. Sullar, Advocate for respondents No.4 and 5.

SNEH PRASHAR, J.

By way of this appeal, appellants-Gurjit Kaur and others seek enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Patiala (for short, “the Tribunal”) vide award dated 10.05.2012 passed in MACT Case No.33-T of 11.08.2010/14.09.2011 on account of death of Buta Singh @ Bhutta @ Sodhi (husband of appellant No.1, son of appellants No.2 and 3 and father of appellant No.4), who lost his life in a vehicular accident.

Precisely, the facts are that on 18.06.2010 Buta Singh @ Bhutta Singh @ Sodhi (since deceased) alongwith his brother-in-law Devinderpal Singh and sister-in-law Manjit Kaur was heading towards his village Chak Amritsarian on motorcycle No.HR-41A-1524 and they were being followed by his brother Gurjant Singh on a separate motorcycle. At about 11:30 a.m., when they reached on Patran road, opposite Gill Palace, respondent No.1-Joginder Singh, driver of truck bearing registration No.PB-11W-8517 (hereinafter referred to as the “offending truck”), who was going ahead of them and was driving his truck in a rash and negligent manner, abruptly applied brakes without noticing that a motorcycle was behind his truck. Resultantly, Buta Singh could not control his motorcycle and dashed into the offending truck from the backside. All the three occupants of the motorcycle suffered injuries. Buta Singh died on the way to the hospital. Manjit Kaur also succumbed to the injuries whereas Devinderpal Singh survived the injuries. A First Information Report No.216 dated 18.06.2010 under Sections 279 and 304-A of the Indian Penal Code was registered at Police Station City Samana in respect of the accident in question against respondent-Joginder Singh.

A petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, the Act of 1988”) was filed by the claimants-appellants impleading the driver, owner and insurer of the offending truck (respondents No.1 to 3). The respondents contested the petition denying the allegations levelled in the petition. Respondent No.3 pleaded that the driver of the offending truck as well as of the motorcycle were not holding a valid

and effective driving licence at the time of accident and the offending truck was being driven in violation of the terms and conditions of the insurance policy.

On the rival pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, learned Tribunal held that the deceased was guilty of contributory negligence which led to the incident and partly allowed the petition awarding compensation of Rs.4,91,000/- + Rs.5000/- (compensation on account loss of consortium to claimant No.1) i.e. half of the total computed amount, alongwith interest at the rate of 9% per annum from the date of filing the petition till realization.

Feeling unsatisfied with the Award dated 10.05.2012 passed by learned Tribunal, the appellants preferred the instant appeal.

The submissions made by learned counsel for the parties have been heard and record perused.

At the very outset, learned counsel for the appellants argued that learned Tribunal held Buta Singh, driver of the motorcycle liable of contributory negligence in causing the accident in question. The negligence of the deceased and of the driver of the offending truck was held in the ratio of 50:50. The motorcycle had rammed into the offending truck from the backside because the driver (respondent No.1) of the offending truck, which was going ahead of the motorcycle, had suddenly applied brakes without any indication. Due to sudden halt of the offending truck Buta Singh had no

time to apply brakes. He lost control on his motorcycle and dashed into the truck from behind. Learned counsel contended that it was not in the pleadings of respondents No.1 and 2 nor was so stated by Jeet Singh (respondent No.2) when he stepped into the witness box that the accident had taken place due to contributory/composite negligence of deceased-motorcyclist Buta Singh and driver of the offending truck. When it was not the case of the respondents that there was any fault on part of the deceased-motorcyclist, he could not be held liable for contributory negligence in causing the accident.

Undisputedly, arguments of counsel for the appellant regarding enhancement of compensation, the offending truck was going ahead of the motorcycle being driven by deceased Buta Singh. The allegation in the First Information Report was that the driver of the offending truck was driving in a rash and negligent manner. He abruptly applied brakes without noticing that a motorcycle was behind his truck, as a result of which Buta Singh could not control his motorcycle and dashed into the offending truck from the backside. There were two persons, namely Devinderpal Singh and Manjit Kaur travelling as pillion riders on the motorcycle of Buta Singh. Needless to say that as per traffic rules, there should be considerable distance between the two vehicles moving on the road. It is for the vehicle at the back to keep proper distance from the vehicle moving ahead of it so that in case the driver of the vehicle going ahead applies brakes, the driver of the vehicle at the back has sufficient time to apply brake and control his vehicle and save it from dashing into the vehicle ahead. From the very fact

that when the driver of the offending truck applied brakes, motorcyclist-Buta Singh lost control on his vehicle and rammed into the offending truck, proves that he was not maintaining proper and safe distance from the offending truck going ahead of him. Had there been proper distance between the two vehicles, in case of emergent brakes by the offending truck, the motorcyclist would have had sufficient time to apply brakes and control his vehicle.

There was another violation of traffic rules on part of Buta Singh. He was driving the motorcycle with two pillion rider sitting at his back when there is seat for only one pillion rider on a motorcycle. That could also be partly the reason for losing control over the motorcycle when the offending truck going head of him stopped on application of brakes. Needless to say that motorcyclist-Buta Singh was not driving cautiously observing traffic rules because of which he struck into the offending truck from behind.

On the other hand, driver of the offending truck while moving on the road should also not have abruptly applied brakes when he knew that there was a vehicle coming at its back. He should have given proper indication and should have taken his truck to the extreme left side and then applied brakes. In the said circumstances, the finding of learned Tribunal that contributory negligence in the ratio of 50:50 on part of motorcyclist-Buta Singh and driver of the offending truck (Joginder Singh) had led to the accident, calls for no intervention.

No substantive or reliable evidence was produced by the

appellants-claimants to prove the occupation and income of the deceased. In the absence of evidence, learned Tribunal assuming the deceased as an unskilled daily wager rightly assessed his income as Rs.6000/- per month. Perusal of the award shows that no amount was added to the income of the deceased computing future prospects. Following the ratio of **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170** since the deceased was 25 years aged when he died in the accident, there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which learned Tribunal failed to allow.

The deceased is survived by widow-Gurjit Kaur, mother-Raj Kaur, father-Gian Singh and minor daughter-Jaganpreet Kaur. There being four dependents, the deduction of 1/4th from the income of the deceased towards his personal and living expenses is not required to be disturbed. The age of the deceased being 25 years, the multiplier of '18' applied by learned Tribunal is appropriate. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income of the deceased (in Rupees)	Rs.6000/-
2.	Actual age of the deceased	25 years
3.	Increase in future income as per Rajesh and others' case (supra)	Rs.3000/-
4.	Annual dependency	3/4 of Rs.9000 x 12 = Rs.81,000/-
5.	Multiplier	18
6.	Total	Rs.14,58,000/-

In addition to the amount of Rs.14,58,000/- calculated towards dependency, the amount of Rs.5,000/- awarded under the head of funeral

expenses is enhanced to Rs.25,000/- and the amount of Rs.10,000/- awarded to appellant-claimant No.1 on account of loss of consortium is enhanced to Rs.1,00,000/-. A further amount of Rs.1,00,000/- to appellant No.2 (minor daughter of the deceased) and Rs.50,000/- to respondent No.4 (mother of the deceased) is awarded for loss of love and affection. Another amount of Rs.5,000/- is allowed to the appellants-claimants on account of transportation. The amount of Rs.5000/- awarded for loss of estate is just and adequate. Since, it is a case of contributory negligence of Buta Singh-driver of motorcycle and Joginder Singh-driver of the offending bus in the ratio of 50:50, therefore, appellants-claimants are entitled to half of Rs.3,75,500/- i.e. half of the enhanced amount.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 10.05.2012 passed by learned Tribunal is modified. The enhanced compensation shall be paid to the appellants-claimants within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

05.05.2016.
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