

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

FAO No.5046 of 2012.

Date of Decision: 05.05.2016.

Jasbir Kaur and another

....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.

SNEH PRASHAR, J.

By way of this appeal, appellants-Jasbir Kaur and another 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.50 of 29.09.2010 on account of death of Manjit Kaur (minor daughter of the appellants), who lost her life in a vehicular accident.

Precisely, the facts are that on 18.06.2010 Manjit Kaur (since deceased) alongwith her brother Devinderpal Singh and Buta Singh @

Bhutta Singh @ Sodhi was heading towards village Chak Amritsarian on motorcycle No.HR-41A-1524 driven by Buta Singh. Gurjant Singh, brother of Buta Singh was following them 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. Manjit Kaur succumbed to the injuries on 23.08.2010. 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 if 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 driver of the motorcycle was guilty of contributory negligence which led to the accident and partly allowed the petition awarding compensation of Rs.1,07,500/- i.e. half of the total computed amount to appellant-claimant No.1 only, 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.

Learned counsel for the appellants argued that deceased-Manjit Kaur was travelling as a pillion rider on the motorcycle being driven by Buta Singh. Due to the injuries sustained during the accident Buta Singh and Manjit Kaur died. While discussing the cause of accident, learned Tribunal held Buta Singh liable of contributory negligence. The liability of the driver of the offending truck and of Buta Singh was assessed in the ratio of 50:50. However, deceased Manjit Kaur was a minor girl aged 14 years and was a pillion rider. On account of her death, her mother was awarded compensation to the tune of Rs.2,15,000/- but was held entitled to the compensation amount only to the extent of 50% whereas the deceased had no role to play in the cause of the accident.

Learned counsel also submitted that learned Tribunal assessed the income of the deceased as Rs.15,000/- per annum and applied the multiplier of '14' as per age of her parents whereas '18' should have been the multiplier. The amount of Rs.5,000/- awarded towards funeral expenses as well as the amount of Rs.5,000/- awarded as loss of estate are on the lower side. Nothing was awarded towards transportation even when it has come in evidence that the deceased was taken from one hospital to the other for proper medical assistance to save her life during the period 18.06.2010 to 23.08.2010 i.e. the date on which she succumbed to the injuries.

Indeed, deceased Manjit Kaur was a pillion rider on the motorcycle. The liability of the motorcyclist Buta Singh and that of driver of the offending truck (respondent No.1) has been assessed in the ratio of 50:50. The owner and insurer of the motorcycle were not impleaded as party to the petition but that has no adverse effect on the right of Jasbir Kaur and her husband to claim compensation from the driver, owner and insurer of the offending truck as deceased Manjit Kaur was a third party and it was open to the claimants to claim compensation from the driver, owner and insurer of either of the vehicles involved in the accident. Accordingly, the appellant-claimant No.1 will be entitled to recover the total amount of compensation from the respondents.

The deceased was 14 years old girl and the claimants are her parents. Being a non earning member of the family, learned Tribunal rightly assessed her income as Rs.15,000/- per annum considering her age. The deceased was bachelor and was 14 years aged. Learned Tribunal applied the

multiplier of '14' according to the age of the parents, which is in contravention to the law laid down in *Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others 2012 ACJ 2002*, according to which, the multiplier should be chosen as per the age of the deceased and, as such, '18' was the appropriate multiplier. Accordingly, the compensation payable to the appellant-claimant No.1 for loss of dependency comes to Rs.2,70,000/- (15000 x 18). In addition to that, the amount of Rs.5,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/-. A further amount of Rs.50,000/- is awarded to appellant-claimant No.1 for loss of love and affection. The amount Rs.5000/- awarded for loss of estate is just and adequate.

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 of Rs.2,42,500/-, in addition to the amount of Rs.1,07,500/- already awarded by learned Tribunal, shall be paid to appellant-claimant No.1 within 45 days from the date of receipt of certified copy of this judgment failing which she 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.

(SNEH PRASHAR)
JUDGE

05.05.2016.
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