

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

FAO No.6006 of 2012

Date of decision : 09.08.2016

Harjinder Kaur and others

.....Appellants

Versus

Zirmal Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vivek Suri, Advocate for appellants.

Mr. P.M. Goyal, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 10.09.2012, passed by the learned Motor Accidents Claims Tribunal, Patiala (hereinafter called the “Tribunal”) vide which the appellants-claimants have been awarded a sum of ₹ 4,87,688/- as compensation on account of death of Gurmeet Singh as a result of injuries suffered by him in the motor vehicular accident, which took place on 20.08.2010.

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

3. Learned counsel for the appellants-claimants contended that deceased Gurmeet Singh was just a passenger in jeep Tawera bearing registration No.PB-11AB-4311 which was being driven by one Jaswinder

Singh but the learned Tribunal has deducted half of the amount of the compensation on the ground that the accident has taken place due to contributory negligence of both the drivers of the truck tralla bearing registration No.HR-58-3983 as well as Tawera jeep. He contended that the case qua the deceased was of composite negligence and not of the contributory negligence. So, the learned Tribunal was not justified to deduct half of the amount of compensation. He further contended that the learned Tribunal has not awarded any future prospects to the income of the deceased. Less amount has been awarded towards loss of consortium and funeral expenses. No amount has been awarded at all towards loss of love and affection to the children. Thus, he contended that the amount of compensation awarded by the learned Tribunal is not just compensation.

4. On the other hand, learned counsel for the respondent No.3- Insurance Company contended that it was a case of contributory negligence of the driver of both the vehicles *i.e.* truck tralla bearing registration No. HR-58-3983 and Tawera jeep bearing registration No.PB-11AB-4311. So, the learned Tribunal was justified to deduct half of the amount of compensation. He further contended that the claimants should have implead the driver, owner and insurer of Tawera jeep bearing registration No.PB-11AB-4311 as a party to the claim petition. He further contended that the deceased was more than 50 years of age, so he was not entitled for 30% future prospects.

5. I have duly considered the aforesaid contentions.

6. It is an admitted fact that deceased Gurmeet Singh at the

time of the accident was travelling in Tavera Jeep bearing registration No.PB-11AB 4311. The said jeep was being driven by one Jaswinder Singh. Truck No.HR-58-3983 was lying wrongly parked on the road without observing any traffic rules, as a result of which the said jeep rammed into the truck from the backside, resultantly Gurmeet Singh received the fatal injuries. Thus, admittedly Gurmeet Singh was not driving the jeep in question at the time of the accident. The jeep was being driven by Jaswinder Singh who also died in this accident. So, deceased Gurmeet Singh cannot be held contributory negligent for this accident. The driver of the vehicles may be contributory negligent. It will be a case of composite negligence and not the contributory negligence on the part of the deceased. So, the learned Tribunal was not justified to deduct half of the amount of the compensation towards the contributory negligence. Further, it is the settled principle of law that in case of composite negligence, the claimants can choose to sue any of the tort-feasors. Thus, it was not necessary for the claimants to implead the driver, owner and insurer of the Tavera Jeep bearing registration No.PB-11AB 431.

7. The Division Bench of this Court in case ***Oriental Insurance Company Ltd. Vs. Smt. Parveen Juneja 2002(1) RCR (Civil) 18*** has laid down that where the victims were admittedly not driving the car even if there was negligence of the driver of the vehicle, it will be a case of composite negligence and not the contributory negligence and claimant can choose to sue any of the tort-feasors. Again in case ***Oriental Insurance***

Company Ltd. Vs. Monika Verma and others 2008(3) RCR (Civil) 693, the accident has occurred due to negligence of both the truck driver and the car driver. This Court held that it is a case of composite negligence and not of the contributory negligence. There was no illegality in the claimant's claim of compensation from the owner, driver of the truck and the Insurance Company of the truck without impleading the driver, owner or Insurance Company of the second vehicle. The same principle of law has been laid down in case ***A.P.S.R.T.C. & Anr. Vs. K. Hemalatha & Ors. 2008(3) RCR (Civil) 589***.

8. Again in a recent judgment delivered by three Judges Bench of Hon'ble Apex Court in case ***Khenyei Vs. New India Assurance Company Ltd. 2015(2) RCR (Civil) 1019***, it has been laid down that in case of composite negligence the claimant is entitled to sue both or any of the joint tort-feasors to recover the entire compensation as the liability of joint tort-freasors is joint and several.

9. The learned Tribunal has not awarded any future prospects towards the income of the deceased. The learned Tribunal on appreciation of the entire evidence determined the carry home salary of the deceased to be ₹10,057/- per month. As per statement of PW-3 Gobinder Verma, Executive, working in Glaxo Smith, Nabha and as per the service record, the date of birth of deceased Gurmeet Singh was 06.01.1962. This accident has taken place on 20.08.2010. Thus, the deceased was about 48 years of age at the time of his death. In view of the nature of job of the deceased, his

income was bound to increase with the passage of time. But the learned Tribunal has erroneously not taken into consideration the question of granting future prospects to the income of the deceased. As per the age of the deceased, 30% of his income shall be added towards the future prospects. The total income of the deceased comes to ₹ 13,074.10/- (10057 + 3017.10) per month. To make it a round figure, we can take ₹ 13,074/-. The annual income of the deceased comes to ₹ 1,56,888/-. **There were five dependents, so 1/4th of the income of the deceased shall be deducted towards his personal and living expenses.** The remainder comes to ₹ 1,17,666/- (1,56,888 - 39,222). In view of the age of the deceased, the **multiplier of 13** shall be applicable. So, the loss of dependency comes to ₹ 15,29,658/-. In addition to that appellant-claimant No.1 Smt. Harjinder Kaur, the widow of deceased Gurmeet Singh shall be entitled to ₹ 1,00,000/- towards loss of consortium. Appellants-claimants No.2 to 3 the minor children of the deceased shall also be entitled to ₹ 1,00,000/- on account of loss of love, care and guidance. The appellants-claimants shall also be entitled to ₹ 25,000/- towards funeral expenses. The total amount of compensation payable to the claimants comes to ₹ 17,54,658/-.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellants-claimants is enhanced to ₹ 17,54,658/- from ₹ 4,87,688/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount from the date of filing the petition till

realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

09.08.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No