

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

FAO No.1128 of 2013.

Date of Decision: 23.02.2016.

Mamta and others

....Appellants.

VERSUS

Kabul Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. B.K. Bagri, Advocate for the appellants.

None for respondents No.1 and 2.

Ms. Vandana Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

Appellants Mamta and others filed this appeal seeking modification in the award dated 27.11.2012 passed by Motor Accident Claims Tribunal, Rewari (for short, “the Tribunal”) in MACT Petition No.126 of 2011.

The relevant facts are as under:-

On 08.06.2011 at about 9:30 p.m., Karambir (since deceased) driving his motorcycle was going towards village Bolni. When he reached near the bus stand of the village, his motorcycle struck into a tralla bearing registration No.RJ-32GA-7746 (hereinafter referred to as “the offending

tralla”) which was standing in the middle of the road without putting on the indicators etc. As a result of accident, Karambir suffered grievous injuries. He was taken to General Hospital, Rewari but he died on the way.

The claimants-legal heirs of deceased Karambir filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 claiming compensation from driver, owner and insurer (respondents) of the offending tralla.

The petition was contested by the respondents. In their written reply, respondents No.1 and 2 (driver and owner) denied the factum of accident whereas respondent No.3-insurance company besides denying other averments of the claimants raised a preliminary objection that the driver (respondent No.1) of the offending tralla was not holding a valid and effective driving licence on the date of accident and that the said tralla was being driven in violation of the terms and conditions of the insurance policy, therefore, the insurance company was not liable to indemnify the insured.

On the basis of the pleadings of the parties, following issues were framed:-

- (1) Whether Karambir died in the accident occurred on 08.06.2011 due to rash and negligent driving of offending vehicle No.RJ-32GA-7746 by its driver respondent No.1? OPP
- (2) Whether the petitioners are entitled to compensation, if so to what amount and from whom? OPP
- (3) Whether the respondent No.1 was not holding a valid

and effective driving licence on the date of alleged accident?

OPR

(4) Relief.

Analyzing the evidence led by the appellants-claimants for proving the cause of accident, learned Tribunal observed that the accident could have been avoided by the deceased had he been vigilant and concluded that the accident was result of composite negligence of the deceased himself and the driver of the offending tralla and assessed their liability in the ratio of 50:50. The claim petition was partly allowed with costs and an amount of Rs.13,15,500/- was awarded as compensation vide award dated 27.11.2012 with interest at the rate of 9% per annum from the date of petition till realization. The respondents were held liable for payment of 50% of the compensation amount alongwith interest.

Feeling unsatisfied with the award, the claimants-appellants have preferred the instant appeal.

The submissions made by Mr. B.K. Bagri, learned counsel for the appellants and Ms. Vandana Malhotra, learned counsel for respondent No.3-insurance company have been heard and record perused.

To begin with, learned counsel for the appellants argued that learned Tribunal erred in holding that the accident occurred due to contributory negligence of the deceased himself. PW1 Shish Ram was an eyewitness of the accident. It was on his statement that First Information Report Ex.PA was registered in respect of the accident at Police Station Kasola, Rewari. He deposed that the offending tralla had been stopped in

the middle of the road without its indicators and the back lights on and also no obstruction had been put up by way of fire etc. because of which the tralla could be seen only on reaching very near to it. He stated that the motorcycle of Karambir son of his paternal uncle struck into the stationary tralla and he suffered serious injuries. Learned counsel asserted that driver of the offending tralla did not step into the witness box. No evidence could be produced by the respondents to controvert the testimony of PW1 Shish Ram. The facts stated by him during his deposition were consistent to his statement which formed the basis of First Information Report Ex.PA. As such, there was no reason for learned Tribunal to arrive at the conclusion that the accident occurred due to contributory negligence of the deceased. To support his argument, learned counsel relied upon **Ashinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma and another, (2015) 2 Supreme Court Cases 180.**

Learned counsel further contended that no amount was added by the Tribunal to the income of the deceased computing future prospects and no amount was awarded towards loss of love and affection to the claimants. The amount awarded towards loss of estate, funeral expenses and loss of consortium is on the lower side and the multiplier of '18' should have been applied as the age of the deceased was 26 years.

Learned counsel for respondent-insurance company controverted the arguments of learned counsel for the appellants. She submitted that the testimony of PW1 Shish Ram was not trustworthy as it was not consistent with the statement made by him at the time of lodging of

the First Information Report. In the statement made at the first instance, he did not state that the offending tralla was standing in the middle of the road whereas during his statement made through affidavit Ex.PW1/A he stated that the tralla was standing in the middle of the road without the indicators on. Learned counsel contended that it was an after thought version and therefore, did not deserve to be relied upon. To support her arguments, she relied upon *Kashmiri Devi, widow of Shri Mohan Lal vs. Vikram Singh son of Sh. Prithi Singh, 2008(2) R.C.R. (Civil) 37* and *Subhash Chand vs. Satya Rani, 2013(4) P.L.R. 329*. As regards, the quantum of compensation, learned counsel asserted that the appellants have been duly compensated on all counts and the compensation awarded is just and adequate.

The facts in hand are distinguishable from the facts of *Kashmiri Devi's* case (supra) and *Subhash Chand's* case (supra). In the instant case, the conclusion arrived at by learned Tribunal with regard to the cause of accident is not justiciable. The only eyewitness account with regard to the accident available on record is the deposition of PW1 Shish Ram. The First Information Report in respect of the accident was also registered on his statement. Deposing through his affidavit Ex.PW1/A, he stated that the offending tralla was standing in the middle of the road without putting the indicators and the backlights on and also no provision for creating obstruction in the form of fire etc. had been made and for that reason the tralla could not be seen easily from appropriate distance by any person. It was for the said reason that Karambir (deceased) could not see the tralla and hit into the same.

In the First Information Report Ex.PA, it may not have been specifically mentioned by PW1 Shish Ram that the offending tralla was standing in the middle of the road but a perusal of his statement at that juncture clearly indicates that the tralla was standing in the middle of the road. He stated that the driver of the tralla had left the same on the road without putting on the indicators or the lights and also no obstruction in the form of fire etc. was there because of which the tralla was visible only on reaching very near to it. Neither in the pleadings nor while cross examining PW1, the respondents denied the existence of the tralla on the road. The stand taken by them was that the reflectors and indicators of the offending tralla were on. It was so suggested to PW1 Shish Ram which he outrightly denied. As observed above, it was specific version of PW1 Shish Ram when he lodged the First Information Report that the indicators, back lights etc. of the tralla were not on. It was 9:30 p.m. when the accident took place. Even though it was the month of June but at that hour of the day it becomes almost pitch dark and leaving the tralla on the road without putting on its indicators, reflectors or back light etc. was a show of utter negligence on part of the driver of the tralla. When the tralla could not be seen from a considerable distance its existence on the road, may be in the middle or on a side was extremely dangerous for the traffic and its driver only was to be blamed for the mishappening.

Neither Kabul Singh (respondent No.1) driver of the tralla nor any other eyewitness of the accident could be examined by the respondents to substantiate their defence that the tralla had been left on the road with

indicators and lights on. Absence of respondent Kabul Singh from the witness box is another factor vital for drawing an adverse inference against him. It is further important to note that the First Information Report was registered by the police under Sections 283 and 304-A of the Indian Penal Code (for short, "I.P.C."). Ex.PT is the final report submitted by the prosecution under Section 173 of the Code of Criminal Procedure before the Magistrate which also proves that respondent Kabul Singh, driver of the offending tralla, was challaned for commission of offence under Section 283 I.P.C. as well which reads as under:-

“Danger or obstruction in public way or line of navigation.-- Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees.”

In the above premise, I conclude that the finding of learned Tribunal that the accident was result of composite negligence on part of driver of the tralla and of the deceased is not judicious and is liable to be set aside. It is held that the accident occurred solely due to utter negligence on part of driver of the offending tralla.

Deceased Karambir was working as JBT Teacher and PW5 Manoj Kumar proved on record that he was getting salary of Rs.8508/- per month, therefore, the income of the deceased was rightly assessed by the Tribunal to be Rs.8500/- per month. The age of deceased Karambir, when he died in accident, was 26 years and the multiplier of '17' was rightly applied by the Tribunal. There is no evidence of the claimants/appellants

that claimant No.4 Basanta Ram was having no independent income of his own and that he was dependent on the income of the deceased. The father, being the head of the family, must be earning for himself and his family and was not a dependent of the deceased as was laid down in Smt. Sarla Verma vs. D.T.C. and another 2009(3) RCR (Civil) 77. Accordingly the total number of dependents are three i.e. widow, one son and mother, therefore, the deduction towards personal and living expenses of the deceased has to be 1/3rd of his income.

However, as per law laid down in Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170 there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)	Rs.8500/-
2.	Actual age of the deceased	26 years
3.	Increase in future income as per Rajesh and others' case (supra)	Rs.4250/-
4.	Annual dependency	2/3 of Rs.12750 x 12 = Rs102000/-
5.	Multiplier	17
6.	Total	Rs.17,34,000/-

In addition to the amount of Rs.17,34,000/- calculated towards dependency, the amount of Rs.5000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.5000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.1 lac is awarded to the appellant-claimant No.2 for loss of love and guidance and Rs.50,000/- is awarded to claimant No.4 (mother) for loss of love and

affection. The amount allowed under the head of loss of estate needs no intervention. In the above premise, the appellants-claimants are held entitled to compensation of Rs.20,09,000/- as indicated above.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 27.11.2012 passed by the learned Tribunal is modified. The appellants-claimants are held entitled to enhanced compensation of Rs.20,09,000/- including the amount already awarded by the Tribunal. The total amount of compensation shall be deposited by respondent No.3- insurance company 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. 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

23.02.2016.

jitender