

FAO No. 2191 of 2014

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:23.8.2016

FAO No. 2191 of 2014

Banwari Lal and another

---Appellants

vs.

Ran Singh and others

---Respondents

FAO No.4666 of 2014

Smt. Swati and another

---Appellants

vs.

Ran Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Chander Shekhar, Advocate for
Mr. R.K.Sharma, Advocate
for the appellants in FAO-2191 of 2014
Mr. Kul Bhushan Sharma, Advocate
for the appellants in FAO No. 4666 of 2014
Mr. Sonu Giri, Advocate
for respondent Nos. 1 and 2 in FAO No. 4666 of 2014
Mr. Rajbir Singh, Advocate

for the insurance company in both the appeals

Rekha Mittal, J.

This order will dispose of FAO Nos. 2191 and 4666 of 2014 as these have emerged out of the same award dated 12.11.2013 passed by the Motor Accident Claims Tribunal, Palwal (in short “the Tribunal”) whereby compensation has been awarded in favour of the appellants in respect of death of Rahul in a motor vehicular accident on 21.8.2011.

FAO No. 2191 of 2014 has been preferred by Banwari Lal and another, parents of the deceased and the other appeal has been preferred by the widow and minor child of Rahul (since deceased). For the sake of convenience, facts are taken from FAO No. 2191 of 2014.

Counsel for the appellants has submitted that findings of the Tribunal attributing 50% negligence to the deceased are erroneous and liable to be set aside. It is argued that as per evidence on record, deceased was driving motor cycle on which Manish Datta and Nirottam (PW4) were travelling as pillion riders and the said motor cycle was hit from behind by car bearing No. HR-26 BH-4656 driven by Ran Singh respondent No. 1. It is argued that the mere fact that three persons were travelling on the motor

cycle is not sufficient to attribute any negligence to the deceased much less to the extent of 50%. In support of his contention, he has referred to judgment of this Court ***Karnail Singh and others vs. Balwinder Singh and another 2013(1) Vol. 169 PLR 774.***

The learned Tribunal has assessed income of the deceased at Rs. 8000/- per month, deducted 1/3rd for personal expenses, adopted multiplier of 16 to compute loss of dependency to the tune of Rs. 10,24,000/-. Under conventional heads, a sum of Rs. 20,000/- has been awarded on account of loss of consortium and Rs. 5000/- each on account of loss of estate and funeral expenses making total compensation to the tune of Rs. 10,54,000/-.

Counsel has submitted that the claimants examined V.S.Chauhan, Manager (HR&IR), M/s Jayashree Polymers Private Limited PW1 to prove that the deceased was working as Executive “Mixing and Lab” in the aforesaid company and his gross salary was more than Rs. 19,000/- per month and in this regard, salary slips Exs. P1 to P5 were produced on record. It is vehemently argued that in view of extent of salary, loss of dependency is liable to be enhanced. Another submission

made by counsel is that compensation awarded under conventional heads needs re-look and enhancement in the light of judgments ***Rajesh and others vs. Rajbir Singh and others (2013)3 RCR (Civil) 170*** and ***Vimal Kanwar and others vs. Kishore Dan and others 2013(2) RCE (Civil) 945***.

Counsel for the insurance company has submitted that as the deceased was travelling on a motor cycle with two persons on its pillion, he was driving the motor cycle in clear violation of the safety measures for drivers and pillion riders provided for in Section 128 of the Motor Vehicles Act, 1988 (in short “the Act”). It is further argued that as the deceased was working in a private company and his employment was not of permanent nature, the learned Tribunal has rightly assessed his income at Rs. 8000/- per month.

Counsel representing the remaining respondents have echoed the arguments advanced by counsel for the insurance company.

I have heard counsel for the parties, perused the paper book particularly the award passed by the learned Tribunal.

The learned Tribunal after referring to the provisions of Section 128 of the Act has held in para 18 and a relevant extract therefrom reads as

follows:-

“In view of the above provision, I find force in the contention of learned counsel for the respondent No. 3 that the impugned accident had taken place due to contributory negligence of motor-cyclist and respondent No. 1 both, because Rahul deceased was driving the ill-fated motor-cycle designed for riding of two persons in violation of Section 128 of the Motor Vehicles Act, with two passengers on the pillion seat. Hence, there was every likelihood of his losing control over the motor-cycle due to overload on seeing other vehicle coming from opposite side, because if used by more than two persons than the driver will have to share rest of his seat and consequently, he would not be able to control the vehicle effectively. Moreover, weight of second and third passenger will affect its stability. Accidents occur in a fraction of seconds and on slightest miscalculation of judgment. Although respondent No. 1 while appearing as RW-1 has deposed that the accident in question had not taken place due to his negligence and he was falsely implicated in this case, but his admission that he was facing a criminal trial in respect of this accident and had not moved any complaint to higher authorities of police for his false implication, is sufficient to arrive at the

conclusion by drawing an adverse inference against him that he was equally responsible in causing the impugned accident, because the police after collecting the evidence, filed final report against him in the court and he was charge sheeted accordingly as is clear from the statement of Bhudev, Ahlmad PW-3. Reference can be had to **Angrejo Devi and others versus Jai Parkash and others 2013 (2) RCR(Civil)2** and **Managing Director, Tamil Nadu State Transport Corporation Limited versus Andul Salam and others, 2009 ACJ 1827.**”

Nirottam, one of the pillion riders on the motor cycle driven by Rahul (since deceased) was examined and he tendered into evidence his duly sworn affidavit Ex. PW4/A. He has deposed that when they reached near Behrola petrol pump, NH-2, car bearing registration No. HR 26 BH-4656 driven by Ran Singh in a rash and negligent manner and at a fast speed came from Delhi side and hit their motor cycle from behind. Due to impact, they fell down and sustained grievous and multiple injuries. After the accident, the driver stopped the car for sometime and thereafter fled alongwith the car. Rahul died at the spot. The witness was cross examined at length but nothing tangible and material has been elicited to disbelieve

his version and impeach his credibility. He has emphatically denied that Rahul was wrong doer in causing accident as he lost control over the motor cycle as there were two pillion riders and Rahul was not comfortable to drive his motor cycle. To rebut testimony of Nirottam, Ran Singh appeared in the witness box and tendered into evidence his affidavit Ex. RW1/A and denied his having caused accident on 21.8.2011 while driving car bearing registration No. HR 26 BH-4656. He has admitted that a criminal case was registered against him regarding the occurrence and he is facing criminal trial. He has further admitted that he did not file any complaint before any authority regarding his false implication in the case. He has not alleged any ill will or enmity by author of FIR to get him falsely implicated in criminal proceedings. As Ran Singh is facing criminal proceedings for causing the accident, he has every reason to deny his liability to have caused the accident resulting in death of Rahul. The statement of Ran Singh is no rebuttal to the testimony of Nirottam whereby he has given a detailed description as to how the accident took place. The mere fact that Rahul was driving a motor cycle with two persons on its pillion, may be a traffic offence, but not sufficient to hold that negligence in causing the accident is

attributable to Rahul deceased to any extent whatever. This Court in *Karnail Singh and others' case (Supra)* has held that three persons travelling on a motor cycle may have been guilty of traffic offence but there is no reason for the court to make inference regarding negligence as contributory by the only fact that three persons were going on a motor cycle. In view of the above, findings recorded by the learned Tribunal that Rahul is guilty of contributory negligence to the extent of 50% are unfounded and illegal, thus, liable to be set aside and ordered accordingly.

This brings the Court to assessment of compensation made by the learned Tribunal. The Tribunal has not doubted testimony of V.S.Chauhan, a representative of Jayashree Polymers Private Limited and the documents produced by him. However, it has been held that income of the deceased cannot be taken as permanent because he could be removed from service at any moment as multi national companies count their expenditure and profits on day to day basis and act sharply in removing their staff etc. Another factor taken into consideration is that as per salary slips Exs. P1 to P5, basic salary of the deceased was Rs.7684/- per month and rest of the amount was being paid towards HRA, special medical,

conveyance and education allowance etc. and the same cannot be calculated towards his salary. Perusal of the documents Exs. P1 to P5 would indicate that the deceased was getting a gross salary of more than Rs.19000/- per month. His basic salary was Rs. 7684/-. As the allowances paid to the deceased were also available to the family for use, it is difficult to accept reasoning adopted by the Tribunal that the allowances are to be kept out of consideration for the purpose of assessment of compensation. V.S.Chauhan in his cross examination has deposed that the deceased had done three years' diploma course in Chemical Technology (Rubber and Plastic Tech.) and he brought photo copy of mark sheet issued in the year 2006. Keeping in view qualification of the deceased coupled with his carry home salary at the time of death when examined in the light of facts noticed by the Tribunal that income of the deceased cannot be taken as permanent, interests of justice would be served if income of the deceased is assessed at Rs. 12,000/- per month. The learned Tribunal has not allowed benefit of increase in income for future prospects. As the deceased was 26 years old, the appellants are awarded future prospects to the extent of 50%. Keeping in view age of the deceased, a multiplier of 17 is admissible in place of 16. The Tribunal has

rightly deducted 1/3rd towards personal expenses of the deceased. In this manner, loss of dependency comes to Rs. 18000 x 17 x 12 =Rs 36,72,000/- minus 1/3rd (Rs. 12,24,000/-) = Rs.24,48,000/-.

The widow shall be entitled to an amount of Rs. 1,00,000/- for loss of consortium. Ms. Harshita minor daughter is awarded Rs. 1,00,000/- and Smt. Savitri mother is allowed Rs. 50,000/- for loss of love and affection. The appellants shall be entitled to an amount of Rs, 25,000/- each for expenditure on funeral and loss of estate. The total compensation payable to the appellants comes to Rs. 27,48,000/- and the enhanced compensation is Rs. 16,94,000/-(Rs. 27,48,000/- minus Rs. 10,54,000/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization. Out of enhanced compensation, 30% shall be payable to the widow, 60% to minor daughter and 10% to mother of the deceased. The share of minor shall be deposited in a fixed deposit receipt in a nationalized bank payable on her attaining the age of majority. Interest accrued on the FDR shall be payable to the mother of the minor for meeting expense of her education and living. The enhanced compensation payable to the widow and mother of the

deceased shall be deposited in FDRs for a period of two years.

Both the appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

23.8.2016
paramjit

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No