

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

FAO No.2330 of 2014(O&M)

Date of decision:20.10.2016

National Insurance Company Ltd.

....Appellant

VERSUS

Gurjinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Abhinandan Pandhi, Advocate for
Ms. Manjari Nehru Kaul, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for respondents No.1 to 4.

Mr. S.K. Biriwal, Advocate for respondent No.5.

REKHA MITTAL, J.

The present appeal has been directed against the award dated 29.01.2014 passed by the Motor Accident Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been awarded in favour of Smt. Gurjinder Kaur and others in regard to death of Harbans Singh in a motor vehicular accident that took place on 17.01.2013.

The Tribunal assessed income of the deceased at Rs.6050/- per month, allowed benefit of future prospects to the extent of 50%, deducted 1/4th for personal expenses, adopted a multiplier of 16 to compute loss of dependency at Rs.13,06,800/-. In addition, compensation under conventional heads was allowed making total compensation to the tune of Rs.15,41,800/- payable with interest at the rate of 7.5% per annum from the date of petition till realization.

Counsel for the appellant has assailed the award by making three-fold submissions. The first submission made by counsel is that the deceased was solely responsible for causing the accident, therefore, the legal representatives of the tortfeasor are not entitled to get compensation. To bring home his contention, he has referred to statement of Amarjit Singh PW-2, an eye-witness to the occurrence and the site plan Ex.R4. It is further argued that as per statement of Amarjit Singh, Harbans Singh and the witness entered Dosarka-Sadhoura road from village Sadhoura which is situated on Jafarpur road. Respondent No.1 (driver of the alleged offending vehicle) came from the Dosarka side while driving his motorcycle in a rash and negligent manner. According to counsel, as the deceased entered Dosarka-Sadhoura road from Jafarpur road when examined in the light of the place where the motorcycle driven by deceased Harbans Singh and the one driven by respondent No.1 have been shown in the site plan Ex.R4, it can be safely concluded that the deceased was on the wrong side i.e. extreme right side of the road whereas the offending vehicle was on the correct side i.e. extreme left side, sufficient to establish that the accident took place due to sole negligence of the deceased.

Another submission made by counsel is that the Tribunal has allowed benefit of future prospects to the extent of 50% despite the fact that the matter with regard to grant of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court of India in view of the reference made in **National Insurance Company Ltd. vs. Pushpa, SLP (C) No.16735 of 2014, decided on 02.07.2014.**

Counsel has urged that the claim application was filed by the widow, minor child and parents of the deceased. One of the claimants Smt. Gurjinder Kaur (widow) appeared in the witness box and tendered

into evidence her affidavit Ex.PW1/A. In her cross-examination, she has deposed that her father-in-law owns six acres of land. Further argued that as father of the deceased owns six acres of land, he was not dependent upon income of the deceased who rather did not own any land, therefore, the deduction should be $\frac{1}{3}^{\text{rd}}$ in place of $\frac{1}{4}^{\text{th}}$.

Counsel for the contesting respondents/claimants would urge that in the site plan Ex.R4, it has nowhere been mentioned in the remarks that the accident in question took place at a particular point or at point A or B where the motorcycles were shown to be lying at the time of preparation of the site plan. It is further argued that the Tribunal has rightly appreciated that point A and B cannot be taken as the points of accident in order to accept contention of the appellant that the deceased was on the right side of the road, therefore, responsible for causing the accident.

Counsel has supported the assessment made by the Tribunal with the submission that father of the deceased was 65 years old at the time of death of the victim, therefore, he has rightly been considered as dependent upon the deceased.

I have heard counsel for the parties, perused the paper-book and the records.

Amarjeet Singh, an eye-witness to the occurrence and author of the First Information Report, tendered into evidence his affidavit Ex.PW2/A. A relevant extract therefrom with regard to the manner of occurrence reads as follows:-

“1.....Harbans Singh, since deceased, along with his wife Smt. Gurjinder Kaur and minor son Dharampreet was going ahead of the deponent. Harbans Singh, since deceased was driving his motor-cycle on a normal speed, correct side of the road and observing with all traffic rules. At about 2.00 P.M., when they reached near Jafarpur Peer, on Dosarka-Sadhoura Road, in the meanwhile, the offending motor-cycle bearing

registration No.HR-71B-6078, being driven by respondent No.1 Pardeep Kumar at a very fast speed, in a rash and negligent manner, and without blowing any horn, came from opposite side. On seeing the offending Motor-cycle, Harbans Singh, since deceased, lowered down the speed of his motor-cycle and took on the Kacha portion of the road; but the offending motor-cycle, after coming on wrong side of the road, hit against the motor-cycle of Harbans Singh. As a result of the impact, Harbans Singh received multiple, serious and grievous injuries, including fatal injuries on various parts of his body and he became unconscious.”

His testimony finds corroboration from the statement of Gurjinder Kaur PW-1 who was travelling on the pillion seat of motorcycle driven by Sh. Harbans Singh. A perusal of cross examination of both these witnesses would make it evident that the witnesses were not confronted with site plan Ex.R4 much less that the accident took place on the extreme right of the road leading from Dosarka to Sadhoura. The appellant did not examine any witness to rebut the statement of Gurjinder Kaur and Amarjeet Singh, eye-witnesses to the occurrence. Keeping in view the unrebutted and unchallenged testimony of Gurjinder Kaur and Amarjeet Singh, it is difficult to accept contention of the appellant by relying upon site plan Ex.R4 that negligence in causing the accident can be attributed to the deceased much less solely. As has been rightly pointed out by counsel for the claimants, in the site plan Ex.R4 point A is the place where motorcycle No.HR07-N-5068 of the deceased is shown to be lying and at point B motorcycle No.HR71B-6078 has been shown. There is no material on record as to after how much time of the occurrence, the site plan Ex.R4 was prepared by a police official from Police Station Mullana or since the occurrence till preparation of the site plan, no one had tampered with the site of the accident or the vehicles involved in the accident were not

removed from the site of accident in order to make the road clear for traffic. In this view of the matter, the appellant cannot derive advantage to his contention from the site plan Ex.R4 in order to draw a conclusion that deceased himself was responsible for causing the accident or in other words, he was a tortfeasor.

The plea with regard to grant of benefit of future prospects to the extent of 50% is not tenable as the benefit cannot be denied merely because a reference is pending before a Larger Bench till the judgment **Rajesh and others Vs. Rajbir Singh and others, 2013 ACJ 1403** is set aside or varied.

Indisputably, the application for compensation was filed by the widow, minor child and parents of the deceased. There is no dispute between the parties with regard to the widow, minor child and mother of the deceased being entitled to compensation. However, counsel for the appellant has rightly invited attention towards facts elicited in cross examination of Gurjinder Kaur wherein she has admitted that her father in law owns six acres of land whereas her husband did not own any land. In view of the fact that father of the deceased is owner of six acres of land, I find merit in contention of the appellant that he cannot be held to be dependent upon earnings of the deceased. As the father was not dependent upon the deceased, in view of number of dependents being three, permissible deduction would be 1/3rd in place of 1/4th. In this context, reference can be made to landmark judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, reiterated in **Reshma Kumari and others Vs. Madan Mohan and another, 2013 ACJ 1253**.

After reducing deduction from 1/4th to 1/3rd, compensation for loss of dependency would be Rs.11,61,600/- (Rs.6050/- x 12 x 16). The compensation awarded by the Tribunal is reduced to the extent of Rs.1,45,200/-. The appellant shall be entitled to recover Rs.1,45,200/-, if already paid to the claimants.

The appeal is partly allowed in the aforesaid terms.

OCTOBER 20, 2016

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no