

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

FAO No.4105 of 2014

Date of decision : 08.09.2016

Smt. Sunita alias Shalu and others

.....Appellants

Versus

Krishan Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vivek Suri, Advocate for appellants.
 Mr. Virender Soni, Advocate for respondent No.1.
 Mr. Anil K. Yadav, Additional Advocate General
 for respondent No.2.
 Mr. Aseem Aggarwal, Advocate for
 Mr. Harsh Aggarwal, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 18.02.2014, passed by learned Motor Accidents Claims Tribunal, Rohtak (hereinafter called the “Tribunal”), vide which they have been awarded compensation to the tune of ₹3,98,500/- on account of the death of Sudesh Kumar in the motor vehicular accident which took place on 13.12.2011.

2. The present appeal has been preferred by the appellants-claimants to assail the findings of learned Tribunal holding the deceased to be contributory negligent to the extent of 50% and for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through

the record meticulously.

4. Learned counsel for the appellants contended that the learned Tribunal has wrongly held the deceased to be contributory negligent to the extent of 50%. The respondents have not led any evidence to establish that the deceased had stepped down while the bus was moving. The story projected by the respondents that the deceased has stepped down from the front door of the bus without the driver having noticed thereof, is not believable as the front door is just near to the seat of the driver. Thus, he pleaded that the driver of the bus was sole negligent for causing this accident.

5. He further contended that no future prospects have been awarded by the learned Tribunal towards the income of the deceased. No amount has been awarded to the children of the deceased towards the loss of love and affection. Thus, he contended that the just amount of compensation has not been awarded.

6. On the other hand, learned counsel for the respondents contended that the deceased had stepped down from the moving bus. The driver of the bus only came to know when the passengers raised the alarm. Thus, they contended that the deceased himself was responsible for this accident. Even the contributory negligence on the part of the driver of the bus is not established.

7. They further contended that the just amount of compensation has been computed by the learned Tribunal. The said award does not call for any interference.

8. I have duly considered the aforesaid contentions.

9. As per the version of the claimants, on 13.12.2011 deceased Sudesh Kumar was coming from the house of his relative from Gohana to Rohtak and was travelling in bus bearing registration No.HR-46C-8502. At about 07:15 *p.m.*, when the bus reached at new bus stand, Rohtak, the driver stopped the bus and Sudesh Kumar was getting down from the bus but suddenly respondent No.1 started the bus without caring for the traffic rules and due to the jerk, deceased fell down from the bus and sustained the fatal injuries. Ashok Kumar the brother of the deceased reached at the spot. The deceased disclosed him the manner of the accident.

10. Respondent No.1 the driver of the bus has filed the written statement pleading therein that he was driving the bus in question at moderate speed and by following the traffic rules. No accident was caused with the vehicle bearing registration No.HR-46C-8502 and he has been falsely implicated in collusion with the police.

11. Respondent No.2 Haryana Roadways, the owner of the bus pleaded in separate written statement filed by it that respondent No.1 the driver of the bus was driving the bus at moderate speed with due care and caution when the bus reached near main gate of bus stand, Rohtak, since there was a turn on the road, the driver of the bus was driving the bus at a very slow speed. The bus was just turning into the main gate. Some passengers raised alarm to get the bus stopped. Consequently, the conductor also blew the whistle to get the bus stopped. So, the driver applied emergency brakes and stopped the bus at once. They came down from the

bus and saw that a person was lying on the road. On enquires from the passengers, the driver and conductor of the bus came to know that a person hastily tried to alight the slow moving bus from the front door without informing the driver and conductor of the bus and in that process he fell down on the road as he could not maintain the balance. So, they have pleaded that the accident has occurred due to rash and negligent act of the deceased himself.

12. The learned Tribunal on appreciation of the evidence had held the deceased as well as respondent No.1 the driver of the bus equally at fault, so both the deceased and respondent No.1 were held contributory negligent to the extent of 50% each.

13. This fact is not disputed rather it is evident from the written statement filed by respondent No.2 that deceased Sudesh Kumar was travelling in bus bearing registration No.HR-46C-8502, which was being driven by respondent No.1. It is also not disputed that the deceased had suffered the fatal injuries due to the fall from the bus. It is the duty of the driver and conductor of the bus to take care that no passenger should stand near the door of the bus and they should not be permitted to step down from the moving bus.

14. Even as per the case of respondent No.2 pleaded in the written statement, the deceased has alighted from the front door of the moving bus when it was going to enter the gate of the bus stand. It is an admitted fact that the front door of the bus is very close to the seat of the driver, so respondent No.1 the driver of the bus could have easily noticed

and instructed the deceased not to open the door and to alight from the moving bus but he has totally neglected this aspect. In case ***G.S.R.T.C. & Anr. Vs. Madhusudanbhai Pushkarrai Dave 2010(1) AICJ 447***, the passenger was attempting to board the bus from the front door but the driver suddenly started the same. He was thrown out of the bus and his leg came underneath the wheel. The Hon'ble Gujarat High Court held the claimant passenger to be contributory negligent only to the extent of 10%. In the instant case as the deceased has alighted from the moving bus, so certainly his contributory negligence will be more but it could not be to the extent of 50% as determined by the learned Tribunal as respondent No.1 the driver of the bus was substantially negligent in performance of his duties as a driver of the passenger bus. He could have easily restrained the deceased from standing near the door and then attempting to alight from the moving bus. So, in my opinion the contributory negligence of the deceased could not be more than 30%. Respondent No.1 the driver of the bus shall be contributory negligent to the extent of 70%. So, the findings of the learned Tribunal to this extent are modified as above.

15. The income of the deceased has been taken by the learned Tribunal to be ₹6000/- per month treating him to be an unskilled worker. There could be no dispute with the aforesaid findings of the learned Tribunal. However, the learned Tribunal has not added any future prospects to the income of the deceased. Even though the deceased was just a casual worker but still his income was certainly bound to increase with the passage of time as it is fact of common knowledge that income of nobody remain

stagnant for whole of his life and it increases with the passage of time that is why even the government revises the minimum wages of the unskilled/skilled workers periodically. So, the future prospects should have been added to the income of the deceased.

16. The learned Tribunal has determined the age of the deceased to be 45 years. So, 30% of the income of the deceased shall be added towards future prospects. Thus, the monthly income of the deceased comes to ₹7800/- (6000 + 1800) *i.e.* ₹93,600/- per annum. 1/3rd of the income of the deceased is to be deducted towards his personal and living expenses. The remainder comes to ₹62,400/-. In view of the age of the deceased, the multiplier of 14 shall be applicable. The loss of dependency comes to ₹8,73,600/-.

17. The learned Tribunal has rightly awarded a sum of ₹ 1,00,000/- to appellant-claimant No.1 towards loss of consortium and a sum of ₹25,000/- towards funeral and last rites expenses. However, the learned Tribunal has not awarded any amount to the minor children towards loss of love, care and guidance. Thus, in addition to the aforesaid amount the appellants-claimants No.2 and 3, the minor children of the deceased shall also be entitled to ₹1,00,000/- towards loss of love, care and guidance. Total amount of compensation comes to ₹10,98,600/-. But as the deceased himself was contributory negligent to the extent of 30%, so 30% of the aforesaid amount is to be deducted. The remaining amount comes to ₹7,69,020/-. Thus, the appellants-claimants shall be entitled to ₹7,69,020/- as compensation.

18. Thus, keeping in view my aforesaid discussion, the present

appeal is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to ₹7,69,020/- from ₹3,98,500/- 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 of compensation and apportionment amongst the claimants shall remain as determined by the learned Tribunal in the main award.

19. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, (2015) 9 SCC 166***, in order to safeguard the interest of respondent No.3-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

08.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No