

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

**FAO No.830 of 2015 (O&M) and
Cross Objection No.265-CII of 2015 (O&M)**

Date of decision : 18.11.2016

Vinod and another

.....Appellants

Versus

Mayawati and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. J. S. Hooda, Advocate for appellants.

Mr. B. S. Tewatia, Advocate for
respondents No.1 to 4/cross objectors.

DARSHAN SINGH, J.

The present appeal has been directed by the owner and the driver of the offending vehicle bearing registration No.HR-38N-5985 against the award dated 07.10.2014, passed by learned Motor Accidents Claims Tribunal, Palwal (hereinafter called the 'Tribunal'), vide which respondents No.1 to 4/cross objectors (who were the claimants before the Tribunal) and respondent No.5 (who was performant respondent No.3 before the Tribunal) have been awarded compensation to the tune of Rs.13,16,000/- (correct total Rs.12,26,000) on account of death of Samaybir in the motor vehicular accident which took place on 16.09.2012.

2. The present appeal has been preferred by the owner and the driver of the offending vehicle to assail the award. Respondents No.1 to 4-

claimants have also filed the cross objections for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through the record of the case meticulously.

4. Initiating the arguments, Mr. J. S. Hood, Advocate, learned counsel for the appellants contended that deceased Samaybir himself was negligent for causing this accident. He was driving the tanker bearing registration No.HR-63-5311 and he dashed his vehicle with canter bearing registration No.HR-38N-5985 *i.e.* the vehicle of the appellants, which was lying parked on the side of the road. Thus, he contended that as the vehicle of the appellant was stationary, the deceased himself was negligent for causing this accident as he has struck his vehicle against the stationary vehicle from behind. The learned Tribunal has wrongly held the appellant No.2-driver to be negligent for causing this accident.

5. He further contended that the learned Tribunal has also awarded the exorbitant amount of compensation.

6. On the other hand, learned counsel for the cross objectors-respondents No.1 to 4 contended that the accident has taken place in the night time. Appellant No.2-driver Narbir the driver of canter bearing registration No.HR-38N-5985 had parked his vehicle on the national highway No.2 without any indicator. Due to night time, the vehicle of the deceased dashed from behind in the said vehicle parked on the road. Thus, he contended that appellant No.2 Narbir was negligent for this accident.

7. He further contended that the learned Tribunal has not

awarded the just amount of compensation. Less amount has been awarded towards loss of consortium and last rites. No amount has been awarded to the children and the mother of the deceased on account of loss of love and affection.

8. I have duly considered the aforesaid contentions.

9. Firstly, I take up the issue regarding negligence. As per the case of the claimants deceased Samaybir was the driver of canter bearing registration No.HR-63-5311 and on the date of accident *i.e.* 16.09.2012, he was driving his vehicle and was proceeding towards Badarpur. When they reached near Chaudhary Hotel, at about 03:00 a.m. in the night, Eicher canter bearing registration No.HR-38N-5985 was lying parked on national highway No.2 without blowing indicators and without putting any sign for slowing down the other vehicles. PW-2 Ombir, who was the conductor of the vehicle being driven by the deceased and is the witness to the occurrence, in his testimony has fully corroborated the version of the claimants. He categorically deposed that at about 03:00 a.m., when they reached near Chaudhary Hotel, Samaybir dashed the vehicle against the Eicher canter lying parked without blowing indicators and without putting any stop sign. So, appellant No.2-driver had parked the vehicle on the national highway in the dead hours of the night without switching on the indicators and putting any sign for stopping the vehicles coming from behind. It is a fact of common knowledge that due to night time the visibility is very less. Moreover, no one can expect that a vehicle will be parked in stationary condition on the national highway. Thus, in view of the

peculiar circumstances of the case as it was night time, appellant No.2 was required to be taken extra precautions for the safety of the other vehicles passing over the road. He was required to park the vehicle on the side of the road and not to block the road. He was further required to switch on the indicators and to put some sign behind the stationary vehicle to warn the drivers of the other vehicles coming from behind. The appellants have not led any evidence to show that such precautions were taken by appellant No.2 the driver of vehicle bearing registration No.HR-38N-5985. Even appellant No.2 Narbir the driver of the said vehicle has not stepped into the witness box which raises an adverse inference against the appellants. The criminal case has also been registered against appellant No.2 for causing this accident. So, I do not find any infirmity in the findings of the learned Tribunal that appellant No.2 the driver of Eicher canter bearing registration No.HR-38N-5985 was the sole author of the accident resulting into death of Samaybir.

10. I found substance in the contentions raised by learned counsel for the cross objectors that the learned Tribunal has not awarded the just compensation particularly under the conventional heads. The learned Tribunal has awarded less amount for loss of consortium to respondent No.5 (performa respondent No.3 before the Tribunal). No amount has been awarded on account of loss of love and affection to the children and the mother, and the funeral expenses have also been awarded less. Performa respondent No.3 Smt. Vandana alias Bandana the widow of the deceased shall be entitled to a sum of Rs.1,00,000/- as loss of consortium. Claimants

No.2 & 3 the minor daughters of the deceased shall also be entitled to Rs.1,00,000/- on account of loss of love, care and guidance of their father. Claimant No.1 Smt. Mayawati the mother of the deceased shall also be entitled to a sum of Rs.1,00,000/- on account of loss of love and affection of her young son. The claimants shall also be entitled to a sum of Rs.25,000/- towards transportation and last rites expenses. Thus, the total amount of compensation comes to Rs.15,31,000/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal has no merits and the same is hereby dismissed. However, the cross objections filed by respondents No.1 to 4-claimants are hereby partly allowed. The amount of compensation is enhanced to Rs.15,31,000/-. The claimants shall also be entitled to interest on the enhanced amount of compensation at the rate as awarded by learned Tribunal from the date of filing the claim petition till realisation. The liability to pay the enhanced amount and the apportionment of the same amongst the claimants shall remain the same as determined by the learned Tribunal in the main award.

18.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No