

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

**C.M. No.2597-CII-2016 in/and
F.A.O. No.901 of 2016
Date of Decision : 01.03.2016**

The New India Assurance Company Limited

..... Appellant

versus

Smt. Amanbir Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.C. Gupta, Advocate
for the applicant-appellant.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

CM-2597-CII-2016

For the reasons recorded, the application is allowed. Delay of 29 days in filing the appeal is condoned.

FAO-901-2016

This appeal has been filed against the award dated 03.09.2015 passed by the Motor Accident Claims Tribunal allowing the claim petition filed by the legal heirs of the deceased.

As per the case set up by the claimants, on 17.10.2012 the deceased Sakattar Singh alongwith Jagroop Singh, Onkar Singh @ Uma and

Jassa Singh Mason were going from Village Chabhal on motorcycle bearing registration No.PB-02-BQ-3843. When they reached near Bus Stand Chowk Gandiwind, at about 9.00 A.M., a Truck bearing registration No. RJ-07-GA-9175 came from the side of Chabhal in a rash and negligent manner and it struck against the said motorcycle. As a result of the accident all fell down. Sakattar Singh, Onkar Singh @ Uma and Jassa Singh died at the spot and Jagroop Singh, injured, was taken to hospital.

The Tribunal took the monthly income of the deceased as Rs.22,428/- and added 50% of future prospects in it since he was working in the Indian Army. It applied the deduction of 1/3rd and assessed the income at Rs.2,69,136/-p.a. It also deducted Rs.7121/- towards income tax during the relevant financial year and therefore the dependency of the claimants comes to Rs.2,62,015/- per annum. It also applied the multiplier of 17 since the deceased was 28 years of age. It further awarded Rs.1 lac towards loss of consortium, Rs.1 lacs towards loss of love and affection and Rs.25,000/- as funeral expenses. Resultantly, the Tribunal awarded total compensation comes to Rs.46,79,255/- alongwith interest @ 7% p.a.

Learned counsel for the appellant-insurance company has argued that admittedly the motorcycle on which the deceased was riding had four persons sitting on it, and by sitting on the motorcycle and thereby impairing the ability of the motorcycle driver to control his vehicle, the deceased had contributed to his own death.

In my opinion, this argument cannot be accepted. No doubt a vehicle which is overladen (and more particularly a motorcycle which has

2-3 pillion riders) becomes that much harder to control but that would not and can not give rise to an inflexible presumption that it must be a contributory cause for every accident. The Tribunal has rightly relied upon the judgment of the Madhya Pradesh High Court in the matter of ***Devi Singh vs. Vikram Singh and others, reported as 2008(2) R.C.R.(Civil) 107*** wherein a Full Bench speaking through Chief Justice A.K. Patnaik (as his Lordship then was) in similar circumstances held as follows to the questions referred to it:-

“Accordingly, our answers to the questions referred to us are:-

- (1) Violation of Section 128 of the Act, per se, by a motor cyclist does not raise a presumption of contributory negligence on his part;*
- (2) Similarly, violation of Section 128 of the Act per se does not amount to contributory negligence on the part of the pillion riders;*
- (3) A pillion rider cannot put up a plea of composite negligence by the driver of the motorcycle, if the driver only violates Section 128 of the Act.”*

Consequently, this argument is rejected.

Learned counsel for the appellant has further argued that the Tribunal made a provision for deduction of income tax only on the existing emoluments but it should have increased the deduction due to the fact that future prospects of 50% had been granted.

In my opinion, even if this argument is accepted in the abstract it cannot be given any weight in the present case because the amount of the notional tax exigible on the increased emoluments (by the addition of future prospects) was also a matter of evidence and had to be proven before the

Tribunal. In appeal it would not be possible for me to make some kind of rule of thumb deduction without any material on the record. Suffice it to say that the theoretical argument that tax had been deducted on the lower side as in the present case would not render interference in the award justified.

Consequently, the appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 01, 2016

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**(AJAY TEWARI)
JUDGE**