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

FAO-1615-2003

Date of decision : 17.08.2017

Amarjit Kaur and others

... Appellant(s)

Versus

Parkash and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Jain, Advocate
for the appellants.

Mr. Sherry K. Singla, Advocate
for respondent Nos.1 & 2.

Mr. Paul S. Saini, Advocate
for respondent No.3/Insurance Company.

AMIT RAWAL, J. (ORAL)

The appellants are aggrieved of findings rendered by the Motor Accident Claims Tribunal (in short 'the Tribunal') on issue No.1, whereby contributory negligence to the extent of 25% has been attributed to the deceased and for enhancement of the compensation.

Mr. Sanjay Jain, learned counsel appearing on behalf of the appellants submits that the deceased Satpal Singh, while going to his Village Ghanaur on Scooter bearing Registration No.PB-11-N-4308 along with Harbans Kaur (his Bhabhi), met with an accident with a truck bearing Registration No.PB-11-D-1619, which came from the side of Ghanaur, in a very rash and negligent manner. In fact, the scooter was being driven on the left hand side of the road, owing to accident, fell on road and succumbed to

the injuries. At the time of accident, he was 47 years' old and was working as Sewadar in the office of ITI Rajpura. An FIR bearing No.8 dated 12.01.2002 under Sections 279, 337 & 304-A of the Indian Penal Code was registered at Police Station Ghanaur against the driver. The Tribunal has erroneously applied the multiplier of 07, by taking the age of the deceased as 47, whereas it should have been 13. The gross income of the deceased has also been proved through the direct and cogent evidence, but yet his carry home salary has been taken into as ₹ 4,410/-. The deceased left behind widow, two minor daughters, two minor sons and father and therefore, deduction should have been 1/4th instead of 1/3rd. No compensation on account of loss of consortium, love and affection and funeral expenses has been awarded, thus, urges this Court for enhancement of compensation.

Mr. Sherry K. Singla & Mr. Paul S. Saini, learned counsel appearing on behalf of respondent Nos.1 & 2 and 3, respectively, submit that the compensation awarded is fair and just and does not require any enhancement. Even the factum of contributory negligence to the extent of 25% cannot also be tinkered with as the findings of the Tribunal is based upon the evidence on record. The appellants failed to prove on record the care and precaution taken by the deceased.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the finding of the Tribunal on issue No.1 with regard to the attribution of contributory negligence to the extent of 25% upon the deceased, is incorrigible, for, the testimony of AW-4 unflinchingly established that the scooter at the time of accident was being driven on correct side of the road, but without any evidence, the Tribunal

has gone in arena of surmises and conjecture in rendering the findings which reads as under:-

"1. However, if some precaution of taking the scooter on kacha side of the road would have been taken by the deceased, then the accident could have been avoided."

Even the driver of the truck to controvert the version of the claimants has also not stepped into the witness box. The portion of the order, whereby the Tribunal has formed the opinion with regard to the scooter driven by the deceased on the correct side, also requires to be extracted, which reads as under:-

"Scooter was also to go on left hand side of the road leading from village of AW-4 to Ghanaur because deceased was going from his village to side of Ghanaur and as such it is obvious that the above pointed version of AW4 establishes that scooter was going on the correct side of the road at the time of accident."

The cumulative effect of the aforementioned findings do not reveal as to how and under what circumstances, the Tribunal formed the opinion of attributing the contributory negligence to the extent of 25% upon the deceased, particularly, when no evidence contrary, in the cross-examination of AW-4, has surfaced.

In view of what has been observed above, the findings of the Tribunal qua attribution 25% of contributing negligence to the deceased is hereby set aside.

As regards the enhancement of the compensation, I will take the income of the deceased as ₹ 7,065/- and apply a deduction of 1/4th. I will take the multiplier of 13, instead of 07 and provide ₹ 1 lac for loss of

consortium to the wife, ₹ 50,000/- each to the four minor children and ₹ 50,000/- to the father for loss of love and affection and ₹ 25,000/- for funeral expenses, much less, ₹ 10,000/- for loss of estate. I also add 30% future prospects. The various heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	47 years		
Occupation	Peon in ITI Rajpura		
Claimants	Widow, 2 minor daughters, 2 minor sons and father		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount(₹)	Amount (₹)
1	Income	4410	7065
2	Add, % of increase 30%		2120
3	Less Deduction (1/4 th)	2500	6889
4	Multiplicand (annualized by multiplying 12)	30000	82668
5	Multiplier	07	13
6	Loss of dependence	210000	1074684
7	Medical Expenses & Transportation		--
8	Loss of Consortium		1,00,000
9	Loss of love and affection @ ₹ 50000 to child & ₹ 50,000 to parents	--	2,50,000
10	Loss to estate		10000
11	Funeral expenses		25000
12	Less 25% contributory negligence	-52500	
	Total	1,57,500	14,59,684

The total compensation payable shall be ₹ 14,59,684/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing of the appeal till the date of realization. The liability shall remain the same as fixed by the Tribunal. The said amount shall be paid within a period of two months from the date of the

receipt of the certified copy of this order, failing which, it entails the interest @ 9%.

Resultantly, the appeal is allowed and the award is modified to the aforementioned extent.

17.08.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasonedYes/ No

✓

Whether ReportableYes/ No