

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.2342 of 2000

Date of Decision.17.07.2017

Sanjit minor son of Amar Singh and anotherAppellants

Vs

Balvir Singh and othersRespondents

Present: Mr. Vipul Sharma, Advocate for
Mr. Gopal Mittal, Advocate
for the appellants.

Mr. D.P. Gupta, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is on behalf of the claimants i.e. minor children, who have now become major for seeking enhancement of compensation for death of their mother aged 26 years at the time of accident. The deceased was travelling as pillion rider of scooter bearing registration No.PBK-7228, which unfortunately met with an accident with bus bearing registration No.PB-08H-8325, driven by respondent No.1-Balvir Singh, owned by respondent No.2 and insured by respondent No.3 i.e. National Insurance Company.

Mr. Vipul Sharma for Mr. Gopal Mittal, learned counsel appearing for the appellants submits that the Tribunal has committed illegality and perversity in fastening liability of negligence on the pillion rider of the scooter and as well as the bus equally and therefore, the compensation awarded to the extent of ₹2,65,000/- has been truncated into 50%, by applying the multiplier of 14 whereas the deceased was 26 years

old and was working as canteen manager. A deduction of 1/3rd has been made for personal expenses and the amount of Rs.30,000/- awarded towards loss of love and affection is on lower side. No future prospects have been granted. No doubt the father of the children is still alive but all the circumstances are to be looked into and thus, urges this Court for modification of the award.

Mr. D.P. Gupta, learned counsel appearing on behalf of the insurance company-respondent No.3 submits that from the facts brought on record, the scooter aforementioned had earlier got entangled with a cycle and as a result thereof, the scooterist had fallen on the road. The bus driver suddenly applied the brakes in order to save the persons falling on the road but despite due diligence, the deceased crushed underneath the front tyre of the bus, thus, the Tribunal has rightly fastened the contributory negligence between the scooterist/pillion rider and the driver of the bus to the extent of 50% on the perfectly legal and justified grounds.

As regards the multiplier, he submits that since the claimants have not been able to place on record any proof of income, much less, father of the claimants is alive, the multiplier of 14 is also perfect. The accident had taken place on 18.3.1995 and therefore, the amount of ₹30,000/- towards loss of love and affection is appropriate, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding arrived at by the Motor Accident Claims Tribunal in paragraph 10 and 11 of the Award is not correct, for, AW-3, Rakesh Kumar, an eye-witness had stated the negligence of the driver of the bus. A person who met even with a minor accident takes some

time to revive and lifting the vehicle. In this process, a bus came and the deceased was crushed under the tyre of the same. Had the driver of the bus been driving the bus at a reasonable speed and carefully, he would have slowed down/stopped the bus on seeing the persons falling on the road. The driver applied the brakes suddenly. Had he maintained the proper distance, the accident could have been avoided, thus, presumption can be drawn that the driver of the bus was driving the vehicle at a high speed, resulting into the accident.

In this process, one life has been lost. In my view, the liability to the extent of 50% should not have been fastened upon the pillion rider, therefore, the finding arrived at by the Tribunal, in this regard, is hereby reversed. The entire liability is fastened upon the insurance company, being indemnifier.

As regards the enhancement of compensation, the multiplier should have been 17 instead of 14. The income taken as ₹2000/- is correct as per the minimum wages applicable at that time, however, I will increase the sum of ₹30,000/- to ₹1 lac for loss of love affection and grant ₹25,000/- towards funeral expenses and ₹5000/- towards loss of estate.

As regards the increase of future prospect, the Hon'le Supreme Court in the ratio decidendi culled out in the judgment rendered in **Chikkamma and another Vs. Parvathama and another** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

“9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation ha already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.

In view of the ratio decidendi culled out by Hon'ble Supreme Court in Chikkama's case (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court. The various heads of claims are tabulated as under:-

FATAL ACCIDENT			
Age	26 years		
Occupation	House Wife		
Claimants	Two minor children		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income	2000	2000
2	Add, % of increase	--	--
3	Less, Deduction 1/3 rd	1400	1333
4	Multiplicand (annualized by multiplying 12)	16,800	16,000
5	Multiplier	14	17
6	Loss of dependence	2,35,200	2,72,000
7	Medical Expenses & Transportation		
8	Loss of Consortium		
9	Loss of love and affection	30,000	1,00,000
10	Loss to estate	--	5000
11	Funeral expenses	--	25000
	Total	2,65,200	4,02,000

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 amount shall be distributed equally amongst the claimants. The liability shall be wholly of the insurance company to make the payment.

The award stands modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

July 17, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No