

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

**FAO No. 3374 of 2001 (O&M)
Date of Decision:- 15.11.2017**

Gurmeet Kaur & Ors.

....Appellants

Versus

Dharam Singh & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. R.S. Mamli, Advocate, for the appellants.

Mr. Manoj K. Sangwan, DAG, Haryana.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed challenging the award dated 13.11.2000 passed by Motor Accident Claims Tribunal, Jagadhri (for short, 'the Tribunal').

On 01.06.1999, Naib Singh aged 30 years lost his life in a motor vehicular accident. He was going on his motor-cycle and his motor-cycle had a head-on-collision with Haryana Roadways Bus bearing registration N0. HR-02PA-0155. He suffered injuries in the accident and as a result he lost his life.

A claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act') was filed by the widow, two minor children and parents of the deceased.

The Tribunal vide its award dated 13.11.2000 came to the conclusion that there was 50-50 contributory negligence of both the vehicles. An amount of Rs.1,40,500/- awarded along with interest @12%

per annum.

Learned counsel for the appellants has raised the contention that there was no contributory negligence and the Tribunal erred in holding that the negligence was 50-50. He further states that the other vehicle involved was a bus and deceased was going on the motor-cycle, therefore, there cannot be a contributory negligence of the motor-cyclist. He further prays for enhancement of the compensation on the ground that no future prospect has been awarded and that the amount awarded under the conventional Heads is on the lower side.

Learned counsel for the respondent argued that the claimants have taken contradictory stands regarding the accident. He further argues that merely deceased was on motor-cycle will not mean that only his driver was negligent.

In the present case, the appellant has not been able to point out any evidence produced by the claimants from which it could be proved that the accident occurred due to rash and negligent driving of the bus. Under Section 166 of the Act, the duty is casted upon the claimants to prove the rash and negligent driving of the offending vehicle. Rather in the claim petition, it was claimed that the bus hit the motor-cycle from the behind. In the FIR the version given was that it was head on collision between the motor-cycle and the bus. RW-2 Kuldeep Kumar, who deposed before the Tribunal has also stated that it was a head on collision.

In such circumstances, no fault can be find in the award of the Tribunal in holding that there was a 50-50- contributory negligence. Merely because the deceased was on motor-cycle, it will not absolve him from

obeying traffic rules. The issue can be looked from another angle i.e. the claimants have not been able to discharge the onus casted upon them with regard to proving the rash and negligent driving of the bus. Keeping in view the entire facts of this case and the fact that the deceased was travelling a motor-cycle, the Tribunal taking a lenient view has come to the conclusion that it is 50-50 contributory negligence.

Learned counsel for the appellants further argues that the income has been wrongly assessed and there should have been a future prospects also. This contention needs some factual aspects to be gone into. The matter so far as enhancement of compensation is concerned is remitted back to the Tribunal to be decided afresh, in accordance with law.

Parties are directed to appear before the Tribunal on 22.12.2017.

With the above observation, the present appeal is disposed of.

November 15, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No