

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

Sr. No.340

**FAO No.3661 of 2004
Date of decision : 17.11.2017**

Satinder Pal Bansal

..... Appellant

VERSUS

Jaswinder Kaur and others

..... Respondents

(2)

FAO No.5233 of 2005

Ranjit Kaur and another

..... Appellants

VERSUS

Satwinder Bansal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Sham Lal Bhalla, Advocate
for the appellant in FAO-3661-2004.

Mr. Manish Kumar Singla, Advocate
for the appellants in FAO-5233-2005 and
for respondents No.1 to 3 in FAO-3661-2004.

Mr. Ravinder Arora, Advocate
for respondent No.4 in FAO-3661-2004.

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company
in FAO-5233-2005.

SUDHIR MITTAL, J.

An accident took place on 21.11.1999 between a Maruti Van bearing registration No.PB-48-2585 and an Ambassador Car registration No.PB-10-G-9887. The Maruti van was being driven by the deceased-Jagpal Singh and the Ambassador car was being driven by respondent No.1-Satinder Pal Bansal. There were other people in the Maruti van apart from its driver, whose names are Darshan Singh, Harinder Singh, Ram Vivek and one other person apart from the father of the deceased.

These vehicles were approaching each other from opposite directions and a collision took place resulting in the death of the driver of the Maruti van and injuries being suffered by the driver of the Ambassador car. FIR under Sections 279, 337 and 304-A IPC, was registered against respondent No.1 on 22.11.1999 at 6.15 a.m. Three claim petitions were preferred before the learned Motor Accidents Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as 'the Tribunal'), one by the parents and widow of deceased-Jagpal Singh for compensation on account of his death, the second by Ranjit Kaur (mother of deceased-Jagpal Singh) as owner of the Maruti van for damage caused to it and the third one by respondent No.1 for compensation for injuries sustained by him. The claim petition filed by Ranjit Kaur for compensation on account of damage to the Maruti van was dismissed by the learned Tribunal vide the impugned award. No appeal has been filed there-against. Regarding the other two petitions, the learned Tribunal held contributory negligence on the part of both drivers in the ratio of 50:50. On account of death of Jagpal Singh, a lump sum compensation of ₹3,00,000/- was granted, whereas respondent No.1 was awarded ₹1,50,000/- on account of injuries and disability. Since, both the drivers were held equally negligent, the amount of compensation to be actually paid, was ₹1,50,000/- in the death case and ₹75,000/- in the injury case.

2. These two appeals have been filed on behalf of the claimants in both claim petitions, for enhancement of compensation granted by the learned Tribunal. The questions which arise therein are

- (i) whether the finding of contributory negligence is sustainable in law?
- (ii) whether the compensation granted in respect of the death and injury case can be said to be 'just compensation'?

3. I have heard learned counsel for the parties and with their assistance have gone through the record.

4. Mr. Singla, learned counsel appearing on behalf of Ranjit Kaur etc. (legal heirs of deceased-Jagpal Singh) has submitted that the accident took place on account of rash and negligent driving of the driver of the Ambassador Car and that the present case, is not one of contributory negligence. He relies upon the statement of AW-2, Darshan Singh, who was an eye-witness to the accident. According to him, said Darshan Singh was sitting in the Maruti Van, when the accident took place and he has categorically stated that the Maruti Van was struck by the Ambassador Car by coming on the wrong side of the road. As a result of this impact, the Maruti Van over-turned and all occupants received injuries. He further states that an FIR was registered against the driver of the Ambassador Car, whereas no FIR was registered against the driver of the Maruti Van. It is, further the argument of the learned counsel that compensation has been wrongly assessed as income of deceased-Jagpal Singh has been proved to be ₹8,000/- to ₹10,000/- per month, whereas the Tribunal has assessed the compensation by considering him to be a labourer, earning ₹70/- to ₹80/- per day. On the other hand, learned counsel appearing for Satinder Pal Bansal (driver of the Ambassador Car) has supported the finding of the Tribunal regarding contributory negligence as well as the compensation assessed on account of death of Jagpal Singh. His only submission is that the compensation granted to his client should be enhanced because it is proved on the record that he was running a hardware and spare-part shop and was earning ₹1,92,000/- per year. He submits that the Tribunal has erred in concluding that there is no evidence on the record suggesting that Satinder

Pal Bansal was running a shop and was earning to the tune of ₹1,92,000/- per year. It is, further his argument that the evidence on the record proves that his client remained confined to bed for one year and has suffered permanent disability of 45%. On account of the loss of income for the period that his client was bed-ridden, he should have been compensated adequately, after taking into consideration his income. He further submits that compensation should have been granted on account of permanent disability of his client. Ms. Vandana Malhotra, Advocate, appearing for respondent No.3, New India Assurance Company Limited, also vehemently supports the finding regarding contributory negligence. She relies upon **Bijoy Kumar Dugar Vs. Bidyadhar Dutta and others, 2006(3) SCC 242** and **The Oriental Insurance Company Ltd. Vs. Smt. Narinder Kaur and others, 2001(1) RCR (Civil) 639** to contend that in head on collision, there is bound to be contributory negligence of 50:50. She also places reliance on a judgment of this Court in **Smt. Rita Sharma Vs. Pan Chand, 1997(3) RCR (Civil) 575** to contend that non-registration of an FIR, is not conclusive to prove that there was no negligence. A finding regarding negligence has to be returned on the basis of the entire evidence on the record. Another judgment of the Hon'ble Supreme Court in **State of Haryana and another Vs. Jasbir Kaur and others, 2003(4) RCR (Civil) 140** has been relied upon to contend that where on the death of bread-winner, the asset from which income was being generated such as agricultural land etc. devolves upon the legal heirs, compensation can be assessed only for loss occasioned due to appointment of a supervisor.

Whether the finding of contributory negligence is sustainable in law?

5. From the evidence on the record, it is clear that apart from the deceased-Jagpal Singh, his father Pritam Singh, AW-2 Darshan Singh, Harinder Singh, Ram Vivek and one other person, were travelling in the Maruti Van on the date of the accident. The accident took place at about 7.00 p.m. in the month of November, 1999 and therefore, the learned Tribunal is wrong in concluding that the accident took place in broad day light. In fact, the accident took place after darkness has already set-in. AW-2, Darshan Singh was an eye-witness as he was travelling in the Maruti Van and he has categorically stated that the accident was caused due to rash and negligent driving of the driver of the Ambassador Car. The photograph, Mark-A (upon which heavy reliance has been placed by the Tribunal) also suggests that the Ambassador Car came on to the side of the road being occupied by the Maruti Van resulting in the accident. Alongwith this, admittedly, no FIR was registered against the driver of the Maruti Van. On being questioned in this regard, Satinder Pal Bansal as AW-5 only stated that father of Jagpal Singh has assured him in hospital that no case will be filed because of which he did not lodge any complaint with the police regarding the accident. This evidence, taken in totality, clearly establishes the negligence the driver of the Ambassador Car. The judgments relied upon by Ms. Vandana Malhotra, do not lay down an absolute proposition that in every case of head on collision, contributory negligence would be automatically inferred. In the case of **Bijoy Kumar Dugar** (supra), the Hon'ble Supreme Court has not relied upon the statement of PW-2 on the ground that if the other vehicle was being driven rashly then the driver of the first vehicle should have taken adequate precautions to avoid the accident. The accident, in this case, took place at 4.00 p.m., i.e. in broad day light,

whereas in the instant case, the accident took place after dark and it is quite possible that the driver of the Maruti Van was prevented from taking any remedial action on account of being blinded by the head-lights of the approaching Ambassador Car. That apart, the photograph Mark-A shows that the accident took place while the Maruti Van was on the left side of the road. Thus, the judgment in **Bijoy Kumar Dugar** (supra) is not attracted in the facts of this case. Similarly, the judgment in **Oriental Insurance Company Limited** (supra) is also distinguishable on facts as in that case there was no evidence on the record either-way except for the fact that head on collision took place. In the present case also the Tribunal has based its findings only on the head on collision and it has failed to consider the other related evidence. It has mis-read the evidence in the form of photograph, Mark-A.

6. For the foregoing reasons, the finding regarding contributory negligence is set aside and it is held that the accident was a result of rash and negligent driving of the driver of Ambassador Car.

Whether the compensation granted in respect of the death and injury case can be said to be 'just' compensation?

Death case of Jagpal Singh:-

7. It is not in dispute that deceased-Jagpal Singh was 24 years of age on the date of the accident. The Tribunal has held that there is no documentary evidence on the record to prove his income. Thus, his income has been assessed by taking into account daily-wages of an un-skilled labourer, i.e., ₹70/- to ₹80/- per day. Regarding the income, the claim petition itself states that deceased-Jagpal Singh was earning ₹10,000/- per month. AW-1, Gurcharan Singh, who resides in the neighbourhood of

deceased-Jagpal Singh, has categorically stated that Jagpal Singh was maintaining four to five buffalos and two cows and was running a dairy-farm apart from working as a taxi driver. According to him, deceased-Jagpal Singh was earning ₹7,000/- to ₹8,000/- after deduction of expenses from dairy-farming and ₹2,000/- to ₹2,500/- per month from driving a taxi. AW-2, Darshan Singh, who is known to the father of the deceased-Jagpal Singh has also stated the same thing. According to him, Jagpal Singh was maintaining three to four buffalos and two cows and was earning ₹6,000/- to ₹7,000/- per month from his dairy business. Further, an income of ₹2,000/- to ₹3,000/- per month was being generated from plying a taxi. AW-6, Ranjit Kaur (mother of deceased-Jagpal Singh) has stated that the monthly income of Jagpal Singh was ₹11,000/- to ₹12,000/- and that he was also plying a taxi. All these witnesses have stuck to their stand during the cross-examination and have remained un-shaken. Under the circumstances, the legal heirs of Jagpal Singh have succeeded in proving the fact that he was running a dairy business and was also driving a taxi. So far as, maintaining a record regarding income is concerned, a person such as deceased-Jagpal Singh, could not be expected to maintain accounts in writing. Thus, it is held that even after reducing income claimed by 1/3rd, deceased-Jagpal Singh was earning about ₹7,000/- per month. Accordingly, the finding of the Tribunal regarding income is set aside being perverse. There is no law, which states that oral evidence has to be ignored in the absence of documentary evidence.

8. This brings me to the other submission of learned counsel for respondent No.3-Insurance Company that the entire income assessed will

not be taken into consideration for determination of compensation as the assets of the deceased have devolved upon the claimants. A perusal of the judgment in State of Haryana (supra) shows that the judgment is distinguishable on facts. In that case, only a bald assertion has been made in the claim petition that the deceased was an agriculturist, although, there was no evidence brought on the record to substantiate the claim either in the form of revenue record or any other evidence. Under the circumstances, it was held that ‘just compensation’ did not mean that a wind-fall be provided for the victim in the shape of compensation. In this context and in view of the fact that there was no evidence on the record regarding the income or even regarding the land holding, the Hon’ble Supreme Court held that in case of the deceased being an agriculturist, the compensation should be determined based upon the requirement of appointing a Manager to supervise the agricultural operations. This is a finding based upon the facts of that case and no absolute proposition of law has been laid down. The argument is thus rejected.

9. The compensation on account of death of Jagpal Singh is re-assessed as follows:-

1.	Annual income (₹7,000x12)	₹84,000/-
2.	Deduction of 1/3 rd for personal expenses	₹56,000/-
3.	Addition of 40% for future prospects	₹78,400/-
4.	Annual dependency (applying multiplier of 18)	₹14,11,200/-
5.	Loss of estate	₹15,000/-
6	Funeral expenses	₹15,000/-
	Total	₹14,41,200/-

10. The enhanced compensation will be paid by respondent No.3- Insurance Company within a period of three months from the date of receipt of a certified copy of this judgment alongwith interest @ 7.5% per annum.

Injury case

11. The claimant is aged 40 years and is stated to be running a hardware and spare-part shop with annual income of ₹1,92,000/-. Satinder Pal Bansal has appeared as AW-5, but has not stated anything in his examination-in-chief regarding his occupation or his source of income. In his cross-examination, he has stated that he is an income tax assessee and that the expenditure on his treatment has been reflected in his books of accounts. However, neither the income tax returns nor books of account has been produced by him. Thus, the Tribunal has rightly held that the evidence on the record does not support the claim of Satinder Pal Bansal that he was running a shop and that his income was ₹1,92,000/-. There is a disability certificate (Ex.AX) on the record according to which, the claimant has suffered permanent disability of 45%. However, his occupation/vocation is not forthcoming nor there is any evidence regarding his income. Thus, I am not in a position to determine the functional disability of Satinder Pal Bansal or to compensate him for any loss in earning capacity. The learned Tribunal has granted him ₹56,043/- for treatment of his injuries. Considering that there is a shortening of right lower limb of one centimeter, a lump sum amount of ₹1,50,000/- has been granted as total compensation. Learned counsel representing this appellant/claimant has not been able to show how the compensation is

incorrect or inadequate. Thus, the finding of the Tribunal, in this regard, is upheld.

Conclusion:-

12. In view of the above findings, the appeal of Ranjit Kaur and another, i.e., FAO-5233-2005, is allowed and that of Satinder Pal Bansal, i.e., FAO-3661-2004, is dismissed. However, there shall be no order as to costs.

(SUDHIR MITTAL)
JUDGE

November 17, 2017

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No