207 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: 23.10.2017

1. F.A.O. No. 3059 of 2009 (O&M)

Sunita and another .....Appellants

versus

Jagdish Kumar and others .....Respondents

2. F.A.O. No. 3254 of 2009 (O&M)

Smt. Kamlesh and others .....Appellants

versus

Jagdish Kumar and others .....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Arun Singla, Advocate,
for the appellant(s).

Mr. Vishal Aggarwal, Advocate
for the respondent-Insurance Company.

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Rajbir Sehrawat, J.(Oral)

1. This order shall dispose of above noted two appeals i.e. FAO Nos. 3029 & 3254 of 2009. **FAO No. 3254 of 2009** has been filed by the dependants of the deceased Dharam Singh claiming the enhancement of the amount of compensation awarded by the Tribunal. Likewise, **FAO No. 3059 of 2009** has been filed by the dependants of Randhir Singh claiming the enhancement of amount of compensation awarded by the Tribunal.

2. Both the appeals are arising out of the claim petitions filed regarding the same accident. Therefore, both the claim petitions were decided by the Tribunal by a common award. Resultantly, the present appeals are also being decided by a common order.

3. The brief facts are that on 06.11.2007, Randhir Singh, along with other co-passengers, was travelling in a Santro Car bearing registration No. HR-11B-7501 which was being driven by Dharam Singh and they were going from Gohana to Rukhi. The car is claimed to be driven, at the relevant time, on the correct side of road by observing all the traffic rules at a moderate speed. At about 6:15 PM, their car reached near Satbir Bhatta on Gohana Road in the area of Village Bhainswan Khurd. One Trailer bearing registration No. HR-46E-3002 was going ahead of them. The driver of the trailer without giving any signal, all of sudden, stopped the trailer in the middle of the road, due to which, the Santro car struck against the trailer from behind. As a result of this accident, all the occupants of the Santro car received multiple injuries in the accident. Devender and Prem reached on the spot and they arranged the vehicle and shifted the injured persons to PGIMS, Rohtak for treatment. Rajesh, Dharam Singh and Randhir Singh succumbed to the injuries received in the accident. It was claimed that the accident had taken place due to rash and negligent driving of the Trailer by its driver. Further, it was pleaded that in this regard, an FIR No. 194 dated 07.11.2007 was registered at Police Station, Baroda.
4. Regarding this accident, several claim petitions were filed. However, the present appeals are relating to only the claim petitions filed by the dependants of two deceased persons as mentioned above.
5. In the claim petition involved in **FAO No. 3059 of 2009**, the claimants Sunita and others had claimed that deceased, Randhir Singh was 51 years of age and he was employed as Assistant Lineman in Uttar Haryana Bijli Vitran Nigam Limited and was also doing the work of agriculture. It was pleaded that he was getting salary of Rs.15,822/- per month. The claimant

had also claimed that Rs.50,000/- was spent on his treatment and last rites of the deceased.

6. In the claim petition involved in **FAO No 3254 of 2009**, the claimants claimed that the deceased, Dharam Singh was aged 36 years at the time of his death. He was driver and owner of the car. Besides this, it was claimed that he was running a Dhaba and also doing agricultural work. Besides this, it was claimed that he was earning Rs. 20,000/- per month from Dhaba and Rs. 15,000/- per month from the agriculture.
7. The claimants led their evidence. Respondents has not led any evidence in the claim petitions.
8. After considering the evidence on file and hearing the parties, learned Motor Accident Claims Tribunal, Sonepat awarded an amount of Rs. 4,63,000/- in the claim petition filed by the dependants of Randhir Singh and an amount of Rs. 5,75,000/- in the claim petition filed by the dependants of Dharam Singh.
9. While dealing with the negligence involved in the case, the Tribunal held that though the driver of Trailer was negligent, however, the driver of the Santro car has also contributed to the accident by his negligence. The Tribunal held that since the car has struck from behind. Therefore, the driver of the Santro car should have maintained some safe distance. Had the safe distances been maintained, the accident would not have happened. However, since the accident had happened, therefore, it has happened due to the contributory negligence of the driver of Santro car. Therefore, the amount was apportioned between the two Insurance Company of the respective vehicles to the extent of 50%. Therefore, in the claim petition filed by the dependants of Dharam Singh, the Tribunal apportioned the amount of compensation to the extent of 50% against

each of the Insurance Company of the respective vehicles. On the other hand, in the claim petition filed by the dependants of Randhir Singh, since the Insurance Company of the car had not been impleaded as a party, therefore, the Tribunal has assessed the amount as per the entitlement but the recovery by claimants was restricted only to one Insurance company available as respondent, to the extent of 50% awarded amount.

10. So far as, the amount of compensation in the claim petition involved in **FAO 3059 of 2009** is concerned, the claimant has led evidence to show that the deceased was working as Lineman in Uttar Haryana Bijli Vitran Nigam Limited and the certificate showing the salary Rs. 15,822/- per month is proved on record. Age of the deceased is shown to be 51 years. However, while assessing the amount of compensation, the Tribunal has taken the income of the deceased to be Rs.8,000/- on the ground that the claimants were major and the fact that the deceased would have attained the age of superannuation also. Still further, keeping in view the fact that the deceased would have been superannuating after 7 years, therefore, multiplier of 7 is applied. Out of this assessed income, 1/3rd cut is applied by the Tribunal on account of personal expenses. Hence, the dependency is assessed to be Rs.5,333/- per month. Applying the multiplier of 7, a total amount on account of loss of dependency is assessed to be Rs. 4,48,000/-. Besides this, Rs. 5,000/- is awarded as loss of consortium to the claimant No. 1 who is the widow of the deceased. Further, the amount of Rs. 10,000/- is awarded as compensation on account of transportation and last rites. Hence, a sum of Rs. 4,63,000/- is awarded to the claimants/appellants in **FAO No. 3059 of 2009**.

11.In the claim petition involved in **FAO No. 3259 of 2009**, the Tribunal has taken the age of the deceased to be 40 years. The notional income of the deceased is assessed to be Rs. 5,000/- per month, since the Tribunal has not found the evidence, led by the appellants regarding the income of the deceased, to be reliable. At this income, a deduction of 1/3rd is applied by the Tribunal towards personal expenses, therefore, the monthly loss of dependency is assessed to be Rs. 3,334/- per month. Applying multiplier of 14, the loss of dependency is assessed to be Rs.5,60,000/-. Besides this, the amount of Rs. 10,000/- is awarded for transportation and last rites. An amount of Rs. 5,000/- is awarded as loss of consortium.

12.While arguing the case, learned counsel for the appellant in both the appeals submitted that the Tribunal has recorded the finding of the contributory negligence, without there being any evidence on this point led by the respondents. His argument is that the contributory negligence is not a matter of inference. The contributory negligence is a question of fact which is required to be proved by the evidence led by the respondents,as much as, the negligence, as a matter of fact, is required to be proved by the claimants. Hence, according to the learned counsel for the appellants, the findings regarding contributory negligence is perverse. Still further learned counsel for the appellants has argued that the amount on account of consortium is too insufficient. He relied upon the judgment of Hon'ble Supreme Court in ***2013(3) RCR (Civil) 170*** titled as ***Rajesh and others Vs. Rajbir Singh and others;*** to say that loss of consortium has to be minimum of Rs. 1,00,000/-. Still further it is argued that no amount has been awarded by the Tribunal on account of love and affection. Still further it is his argument that the amount awarded on account of transportation and funeral rites is insufficient and the same has to be assessed at Rs. 25,000/- as per the judgment of the Hon'ble Supreme Court judgment in ***Rajesh and others case (supra)***.

13.On the other hand, learned counsel for the respondent-Insurance Company has argued that the compensation has rightly been assessed by the Tribunal. Learned counsel has relied upon the judgment of Hon'ble Supreme Court rendered in ***2016(4) RCR (Civil) 569*** titled as ***Reliance General Insurance Co. Ltd. Versus Shashi Sharma and others*** to argue that in case of an employed person, the amounts received by the claimants from the employer on account of death of employee has to be excluded while calculating the compensation. Learned counsel submits that in the present case also, Randhir Singh, deceased , involved in **FAO No. 3059 of 2009** was an employee with Uttar Haryana Bijli Vitran Nigam Limited and it is admitted by the claimants that they are receiving, the salary last drawn, under the Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006. Therefore, this amount has to be deducted from amount of compensation awarded to the claimants. Still further, the learned counsel for the respondent-insurance company has argued that the findings recorded by the Tribunal regarding the contributory negligence is well founded. In **FAO No. 3254 of 2009**, learned counsel for Insurance Company has submitted that Insurance Company of the car has not been made a party before the Tribunal, therefore, the other Insurance Company cannot be held liable to pay the amount of compensation for non-joinder of necessary party. Therefore, accordingly, learned counsel for the Insurance Company argued that the Tribunal has rightly excluded the insurance company of the Trailer from the liability of making payment of 50% of amount of compensation.

14. Having heard learned counsel for the parties and perused the record with able assistance of the learned counsel for the parties, this Court is of the view that the submissions made by the learned counsel for the appellants deserves to be accepted. So far as the point of the contributory negligence is concerned, this Court is of the considered opinion that the contributory negligence is not a matter of inference only. Contributory negligence is as much a question of fact, which is required to be proved by leading the evidence by the parties claiming the existence of this fact as is the negligence a question of fact required to be proved by claimant. However, in the present case, the respondents have not led any evidence whatsoever to prove the fact of the contributory negligence on the part of the driver of the car. On the other hand, the claimants have led the cogent and positive evidence to show that it was the driver of the Trailer who was negligent in driving the Trailer and who had applied brake suddenly without any indication, which resulted into the accident. Therefore, the claimants have been able to prove the negligence of the driver of the trailer in causing the accident. This deposition and evidence of the claimants have gone totally un-rebutted. The respondents has not led any evidence to prove the factum of contributory negligence. Therefore, there is no basis for recording a finding that there is contributory negligence on the part of the driver of the car as well in this accident.

15. Merely because the car had struck against the trailer from behind; is not sufficient to record a finding that there was some kind of negligence on the part of driver of the car as well. The learned Tribunal has recorded that the driver of the car was expected to maintain a safe distance to avoid the accident while traveling on the road. However, it deserves to be

mentioned that 'to keep safe distance' is a relative term depending upon so many factual aspects like respective the velocity of both the vehicles, the size and mass of the respective vehicles and also the road conditions etc. In car both the vehicles have same mass and velocity the minimum distance may be a safe distance. In case, the vehicle coming from behind is having more velocity and more mass than a huge distance would be required to achieve the safe breaking point. In case of light vehicle following a vehicle of heavy mass, again, a safe distance required would be a shorter distance, if the relative speed is the same. Hence, even the guess work upon the 'safe distance' required to be maintained between two vehicles would be a matter of evidence to be led by the parties. Therefore, the measure of 'safe distance' cannot be a matter of presumption to be applied arbitrarily. This measure can be applied only in case of sufficient evidence being led by the respondents. As stated above, no evidence has been led by the respondents in this case. Hence, the findings recorded by the Tribunal regarding contributory negligence is set aside.

16. So far as the amount of compensation is concerned, that also requires total re-assessing. In case of deceased Randhir Singh, it has come on record that he was employed as a Lineman with Uttar Haryana Bijli Vitran Nigam Limited. Even his salary has been proved on record. Therefore, the assessment regarding income of the deceased is not sustainable on any count. The income of the deceased has to be taken as proved on record, which is Rs. 15,700/- per month. Accordingly, the income of the deceased is held to be Rs. 15,700/- per month. Applying the increase on account of future prospects at the rate of 15%, the income

of the deceased comes to Rs.18,055/-per month, the deduction of 1/3rd has rightly been applied by the Tribunal. Therefore, after applying the deduction of 1/3rd, the loss of dependency of claimants comes to Rs. 12,036/- per month. In the present case, since the deceased was of the 51 years, therefore according to the judgment of the Hon'ble Supreme Court rendered in case of ***Sarla Verma and others versus Delhi Transport Corporation and another, 2009 ACJ 1298 (SC),*** the appropriate multiplier would be 11. Accordingly, the same is held applicable in the present case. Resultantly, the loss of dependency in the case comes to Rs. 12036 X 12 X 11 =15,88,752/-. In view of the Hon'ble Supreme Court in the case of ***Rajesh and others case (supra)***, an amount of Rs. 1,00,000/- is required to be awarded to the widow of the deceased on account of loss of consortium. Still further, an amount of Rs. 1,00,000/- is to be awarded to the dependants on account of loss of love and affection. Besides this the amount awarded to the claimants on account of transportation and last rites is also to be enhanced to be Rs. 25,000/- in terms of the judgment of the Supreme Court in the case of ***Rajesh and others case (supra)***. Accordingly, the total compensation assessed in the case comes to Rs. 18,13,752/-.

17.However, the argument of learned counsel for the respondent-insurance company regarding the deduction, on account of the salary last drawn by the deceased, to the extent it would still be received by the dependants, is required to be accepted. Accordingly, the amount of salary of last drawn by the deceased, which is now being received by the claimants and would be received by them upto the age of superannuation, which is 6 years beyond the date of accident, is ordered to be reduced from the above said amount of compensation in terms of the judgment of the Hon'ble Supreme Court, in the case of ***Reliance General Insurance Co. Ltd.'s Case (supra)***. Accordingly, an amount of Rs. 11,30,400/- (15700 X 12 X 6 = 11,30,400/-) is to be deducted from the assessed compensation. Resultantly, the claimants in **FAO No. 3059 0f 2009** shall be entitled to the amount of compensation which comes to Rs. 6,83,352/-.The interest on the amount is retained as was awarded by the Tribunal.

18.In the claim petition, on account of the death of Dharam Singh, the Tribunal has assessed age of the deceased as 40 years. The notional income of the deceased has been assessed to be Rs. 5000/-. By applying $1/3^{rd}$ deduction, the income of the deceased has been assessed at Rs. 3334/-. The multiplier of 14 has been applied and resultantly the loss of dependency has been assessed to be Rs. 5,60,000/-. Besides this, the amount of Rs. 5000/- on account of loss of consortium and still further, Rs. 10,000/- has been awarded on account of transportation and funeral expenses. Learned counsel for the appellants has submitted that the claimants have not been awarded any amount on account of loss of love and affection, the amount awarded on account of consortium is too less and it has to be enhanced as per the judgment of Hon'ble Supreme Court in the case of ***Rajesh and others case (supra)***. Still further learned counsel has submitted that no benefit on future prospects has been awarded in this regard. His submission is that in terms of Hon'ble Supreme Court in the case of ***Rajesh and others case (supra),*** the benefit of the future prospects has to be granted to the claimants even in case of self employed deceased. Accordingly, learned counsel submits that future prospects increase of 30% should have been granted on account of future prospects to the claimants.

19. However, the learned counsel for the Insurance Company has submitted that enhancement on account of future prospects, in case of self employed deceased, has been referred to the Larger Bench of the Hon'ble Supreme Court .

20. Accepting the argument of learned counsel for the appellant in this appeal also, the claimants are found to be entitled to the benefit of increase in the compensation on account of future prospects. This matter has already been considered in detail and decided by this Court in ***FAO No. 7902 of 2016*** titled as ***Bharti AXA General Insurance Company Ltd. Versus Jugni Devi and others*** and it is held that merely because this point has been kept for consideration by a Larger Bench by the Hon'ble Supreme Court, does not overrule the existing precedent as contained in the judgment of the Hon’ble Supreme Court in the case of ***Rajesh and others (supra)***. Hence, the claimants are held entitled to benefit of future prospects. Following the ratio laid down in the judgment of Hon'ble Supreme Court in the case of ***Sarla Verma and others (supra)*** as interpreted by the Hon’ble Supreme Court in the case of ***Rajesh and others case (supra),*** an increase of 30% of the salary is awarded on account of future prospects of the deceased. Resultantly, the income of the deceased is assessed as Rs. 6,500/- per month. Applying 1/3rd deduction on account of loss of dependency to the claimants is comes to Rs. 4,333/- per month. So far as, the multiplier is concerned, since the age has been held to be 40 years, therefore, in accordance with ***Sarla Verma and others' case (supra)***, the multiplier of 15 is required to be applied. Accordingly, the same is ordered. Hence, the loss of dependency to the

claimants in the case comes to Rs. 4333 X 12 X 15 = 7,80,000/-. Besides this, the claimants are entitled to Rs. 1,00,000/- on account of loss of love and affection and the widow of the deceased is entitled to Rs. 1,00,000/- on account of consortium, in terms of the judgment of the Hon'ble Supreme Court in the case of ***Rajesh and others case (supra)***. Still further the claimants are entitled to an amount of Rs. 25,000/- on account of transportation and last rites expenses. Resultantly, the claimants in **FAO-3254 of 2009** are held entitled to a total amount of Rs. 10,05,000/-. The interest on this amount is retained as was awarded by the Tribunal.

21. So far as the liability is concerned, since the negligence has been found to be on the part of the driver of the Trailer, therefore, the Insurance company of Trailer shall be liable to make the payment. Ordered accordingly.

22. No further argument was raised.

23. In view of the above, both appeals are allowed in the above said terms. The award passed by the Tribunal, regarding both the claim petitions under the present appeals are, accordingly, modified.

23rd October, 2017 **[RAJBIR SEHRAWAT]**
shabha **JUDGE**

Whether speaking/reasoned - Yes
Whether reportable - Yes