

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

1. XOBJC No.163-CII of 2014 in/and
FAO-5192-2010
Date of decision: 22.09.2017

National Insurance Company Appellant

Versus

Sharda Devi and others Respondents

2. FAO-5193-2010

National Insurance Company Appellant

Versus

Braham Parkash and others Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Harsh Aggarwal, Advocate
for the appellant.

Mr. Deepak Kundu, Advocate
for respondents No.1 to 4/cross-objector.

Avneesh Jhingan, J.

CM-22328-CII of 2010 in
FAO-5192 of 2010

This is an application filed under Section 5 of Limitation Act for
condonation of delay of 26 days in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit, the delay is condoned and the application stands
disposed of accordingly.

The present two appeals i.e. FAO No.5192 of 2010 and FAO No. 5193 of 2010 arise out of the same award dated 25.03.2010 passed by Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal').

On 18.02.2006, there was an accident involving Alto Car bearing registration No.DL-3C-AD-5643, a Gypsy bearing registration No.DL-3CA/3005 and a bus bearing registration No.HR-55-B-7644. In the said accident, Bhudev lost his life and Braham Parkash suffered injuries.

The Insurance Company has filed FAO No.5192 of 2010 against the claimant Bhudev. The claim petition number was MACT Petition No.84 of 2008. FAO No.5193 of 2010 has been filed against Braham Parkash. The claim petition number was MACT Petition No.306 of 2008.

Legal heirs of Bhudev have also filed cross-objections for enhancement of compensation. The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.18,90,200/- along with interest of 6% per annum to the claimants of Bhudev. The amount of Rs.30,000/-along with interest of 6% per annum was awarded to Braham Parkash.

Since all three cases arise out of the same award and same are being disposed of by a common order.

The Insurance Company has filed the present appeal challenging that there was no negligence on the part of the driver of the bus whereby challenging the finding of the Tribunal recorded on issue No.1. Before proceeding further, since the issue raised by the Insurance Company

is common in both the appeals. This issue is decided first.

Learned counsel contended that the Alto car was coming from Gurgaon to Dharuhera side. On the said car a Gypsy fell which was coming from the opposite side and behind that Gypsy was bus which was insured with the appellant/Insurance Company. Learned counsel for the appellant further argued that the Tribunal framed six issues, the relevant issue is as under :-

“Whether the accident in question took place due to rash and negligent driving of vehicle No.HR-55-B-7644 (Mini Bus by its driver respondent No.1 resulting in death of Bhudev injuries to Vijay Kumar, Braham Parkash and damaged to Gypsy/Jeep No.DL-3CA-3005 belonging to claimant Rajneesh? OPP”

It is pleaded that eye witness Vijay Kumar appeared as PW5 and tendered his affidavit Ex.PW5/A. Vijay Kumar in his statement has stated that accident occurred due to contributory negligence of the driver of the Gypsy and bus. It is further contended that in cross-examination Vijay Kumar admitted that accident was result of rash and negligent driving of the Gypsy. Learned counsel argued that this is case of contributory negligence and the appellant has wrongly been held liable to pay the whole compensation.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

There is no dispute with regard to the fact that Alto car was going from Gurgaon to Dharuhera in which deceased Bhudev and Vijay Kumar were travelling. There is no dispute that rash and negligent driving can not be attributed to the driver of the Alto car. On the other hand, it is also not disputed that both the Gypsy and the bus were coming on the opposite side of the road from Dharuhera to Gurgaon.

Before the Tribunal, the driver of the Gypsy Rajnish deposed that the bus came from the back side and hit the Gypsy and as a result of which the Gypsy was thrown away towards the right side of the divider and Gypsy fell over the Alto car.

Apart from the driver of the Gypsy there was an other eye witness, Ashok Kumar, who owned a STD shop near the place of the accident. He lodged the FIR No.51 of 2006 at Police Station Manesar. According to his version in the FIR, the bus driver and the Gypsy driver were driving their respective vehicle at a fast speed. Bus driver without giving any signal brought the bus towards wrong side as a result of which Gypsy driver lost control over his vehicle and fell down on Alto car after breaking the grill. It was an admitted case before the Tribunal that the bus and Gypsy were travelling on National Highway No.8 and Gypsy fell down on car from a height after breaking the divider. In this manner, occupants of Alto car were not in a position to see the Gypsy as well as the bus.

The contention raised by learned counsel for the appellant cannot be accepted in view of the detailed findings recorded by the Tribunal. The only issue which can be raised is whether the bus hit the

Gypsy from the back or the bus driver without any giving any signal brought the bus on the wrong side as a result of which Gypsy lost his control. In the present case, rash and negligence of bus driver is proved. The main reliance of the appellant is on the statement of Vijay Kumar, as he stated that it was either a contributory negligence or negligence on the part of the Gypsy driver. This contention cannot be accepted. The admitted finding before the Tribunal is that Vijay Kumar was travelling in an Alto car and further the bus and Gypsy were on the other side of the National Highway No.8 which was not visible to the occupants of the Alto car. In view of this specific finding, statement of Vijay Kumar cannot be relied upon to conclude that there was some negligence on the part of the Gypsy driver.

The most important aspect is that the driver of the bus never stepped into the witness box meaning thereby the best evidence available was held back fearing that the truth may not emanate in the cross examination. In such circumstances, the finding recorded by Tribunal with regard to the negligence cannot be faulted.

Both the appeals filed by Insurance Company are dismissed.

So far as the cross objections filed by the legal heirs of Bhudev are concerned, the only issue is regarding the enhancement of compensation.

Learned counsel for the claimants argued that the deceased was 38 years of age. He was survived by 33 years old widow and three minor children. He further argued that the total amount of Rs.18,90,200/-includes

Rs.10,000/- for loss of consortium, Rs.5,000/-for loss of estate and Rs.5,000/- funeral expenses. He contends that the amount awarded is very meager and moreover other conventional heads have not been considered.

The contention raised by the counsel discussed above deserves acceptance, in view of the law laid down in Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767***. It was held as under:

*“17. Further, the High Court has erred in awarding only Rs.5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award Rs.1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil) 876; 2014 (3) Recent Apex Judgments (R.A.J.) 112; 2014 (5) SCALE 479, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (3) R.C.R. (Civil) 170; 2013 (3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.*****

18. Further, we award Rs.1,00,000/- each to the appellant-children towards loss of love and

affection due to the loss of their father(deceased)
as per the decision of this Court in the case of
Juju Kuruvila & Ors. vs. Kunjuamma Mohan &
Ors., 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent
Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166.
Further, a sum of Rs.50,000/- is awarded to each
of the appellant-parents towards loss of love and
affection of their deceased son as per the
principles laid down by this Court in the case of
M Mansoor & Anr. vs. United India Insurance
Co.Ltd., 2013(4) R.C.R.(Civil) 729 : 2013(5)
Recent Apex Judgments (R.A.J.) 516 : 2013 (12)
SCALE 324.

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance of the minor children.

Hon'ble the Apex Court in ***Rajesh and others Versus Rajbir Singh and others***, 2013 (9) SCC 54, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as

contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased."

From the perusal of the above decision the law is clear that in case of death the claimants are to be awarded compensation under various conventional heads and these have to be re-considered at various times keeping in view the inflation,

Keeping in view the fact that the accident occurred in 2006 and the claimants have to be awarded just and equitable compensation. The amounts under the conventional heads are enhanced and is awarded as under:-

Sr.No.	Heads	Amount earlier awarded by the Tribunal	Now awarded
1	Loss of dependency	Rs.18,70,200/-	Rs.18,70,200/-
2	Loss of consortium	Rs. 10,000/-	Rs.1,00,000/-
3	Funeral expenses	Rs.5,000/-	Rs.25,000/-
4	Loss of estate	Rs.5,000/-	Rs.25,000/-

<i>Sr.No.</i>	<i>Heads</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Now awarded</i>
5	Loss of love and affection	Not awarded	Rs.1,00,000/-
	Total	Rs.18,90,200/-	Rs.21,20,200/-

The award dated 25.03.2010 in MACT Petition No.84 of 2008 is modified to the extent that the amount awarded by the Tribunal of Rs.18,90,200/- awarded is enhanced to Rs.21,20,200/-.

The claimant shall be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The net result is that the appeals filed by Insurance Company are dismissed and the cross-objections are partly allowed.

(AVNEESH JHINGAN)
JUDGE

22.09.2017

anju

Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes