

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3285 of 2012 (O&M)
Date of decision:02.12.2017

Sunita Sood and others

... Appellants

Vs.

Harjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naresh Kumar Bansal, Advocate
for the appellants.

Mr. Vinod Chaudhary, Advocate
for respondent No.3.

AMIT RAWAL J.

The appellant-claimants are the widow and children of deceased Bahadur Chand Sood, who unfortunately at the age of 47 years, died in an accident on the dividing road of Sectors 23/36, Chandigarh at about 4.00 p.m on 16.10.2006 involving his motor-cycle and bus bearing registration No.PB-06-F-2874.

Mr. Naresh Kumar Bansal, learned counsel for the appellant-claimants submits that deceased Bahadur Chand Sood was hit by aforementioned bus from the backside throwing him to a distance and suffered multiple injuries. He was working as Senior Assistant in Punjab Civil Secretariat, Chandigarh earning ₹15,000/- per month. The driver in order to avoid his liability gave different tinged colours to the accident to the extent that instead of bus hitting the motorcycle, the motorcycle hit the stationary bus from the back.

No doubt, the claimants had claimed the reimbursement of ₹60,000/- from the office of the deceased but the fact remains that he died at the age of 47 years and are entitled to compensation.

He further submits that MACT has failed to advert to the statement of PW3-Gavinder Lal, who submitted his examination-in-chief through affidavit Ex.PW3/A, much less statement of RW-1 SI Gurmail Singh and the complaints, i.e., Ex.P8 and Ex.P9, made by the widow at the public window system of SSP U.T.Chandigarh with regard to incorrect particulars given in DDR and the action of the police in not lodging the FIR against the bus driver. Perhaps these documents could have been seen conjunctively, the claim petition ought not to have been filed. Registration of FIR against the driver of offending vehicle is not "*Sine Qua Non*" as the negligence of the bus driver has been proved to the hilt.

He also submits that MACT has assessed the compensation to the tune of ₹13,28,743/-, ₹5,000/- for loss of estate, ₹5,000 as funeral expenses and ₹10,000 for loss of consortium by applying the multiplier of 13.

Per contra, Mr. Vinod Chaudhary, learned counsel for respondent No.3 has drawn the attention of this Court to paragraphs 17 and 18 of the award to contend that two versions with regard to the involvement of the accident as to whether the motorcycle was hit by the bus from the backside or it had hit the stationary bus from the backside. Thus, the claimants miserably failed to prove the negligence of the bus driver and therefore, rightly so the claim petition was dismissed. It was incumbent upon the claimants to attribute the negligence to the bus driver.

I have heard learned counsel for the parties and appraised the paper book.

No doubt, DDR -Ex.P1 has been registered by the driver of the bus bearing registration No.PB-06-F-2874, wherein, he unilaterally stated that the motorcyclist, i.e. driven by the deceased, had hit the stationary bus from the backside. Though eyewitness in this regard had been examined but the driver did not come forward to contest the petition but proceeded against ex-parte. Perhaps he was afraid of withstanding the test of cross-examination. On the contrary, PW3/A Gavinder Lal, categorically in para 2 of the examination-in-chief stated that he saw the bus bearing registration No.PB-06-F-2874 on the ill-fated date being driven by the driver in rash and negligent manner and hit motorcyclist from the backside. He denied the specific question that the motorcyclist hit the stationary bus.

It is also a matter of record that many buses had thronged into Chandigarh pursuant to the rally conducted by one political party and had congested the city of Chandigarh. Such rallies, in my opinion, should not be held in the heart of the City, causing inconvenience to the commuters and deceased in the present case had been the victim of the same.

Be that as it may, the fact of the matter is that even parking of the vehicle on the road side is also negligence, the Court ought to have apportioned the liability vis-a-vis motorcyclist and bus driver but should not have dismissed the claim petition.

I am of the view that it is a case of contributory negligence of both parties, i.e., 50% each and the amount of compensation as assessed by the Tribunal shall be apportioned to the extent of 50:50, i.e, 50% negligence

should have been attributed to the deceased and 50% to the driver of the offending bus.

Mr. Bansal has also raised an argument that the future prospects in respect of Govt. employee, in view of the judgment rendered by the Hon'ble Supreme Court in SLP(C) No.25590 of 2014 titled as **National Insurance Co. Ltd. Vs. Pranay Sethi and others, decided on 31.10.2017**, is also liable to be granted.

Since the deceased was 47 years of age at the time of accident, I deem it appropriate to grant another 30% future prospects, in view of the judgment cited supra. The compensation assessed is here as under:-

<i>Sr. No.</i>	<i>Head of Claim</i>	<i>Amount</i>
1	Income	₹12, 800/- (after deducting Income Tax)
2	Future Prospects 30%	₹16,646/-
3	Less deduction 1/3	₹11,093/-
4	Multiplicand	₹1,33,116/-
5	Multiplier 13	₹17,30,508/-
6	Loss of estate	₹15,000/-
7	Funeral Expenses	₹15,000/-
8	Loss of consortium	₹40,000/-
	Total	₹18,00,508/-

In all, the compensation payable shall be ₹18,00,508/-. However, in view of my finding of contributory negligence of the deceased to the extent of 50%, the claimants shall be entitled to a sum of ₹9 lacs and it shall also attract interest @ 6% per annum from the date of filing of the claim petition of realization. The amount shall be distributed equally between the claimants. The liability shall remain the same as has already been determined by the Tribunal.

Resultantly, the award of MACT is modified and appeal is partly allowed in the aforementioned terms.

(AMIT RAWAL)
JUDGE

December 02, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No