

F.A.O.No. 4066 of 2012 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O.No. 4066 of 2012 (O&M)

Date of Decision: 7.11.2017.

Gurdev Kaur and others

.....Appellants

Versus

Kulwinder Singh @ Bittu and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Satbir Rathore, Advocate
for the appellants.

Ms. Madhu Sharma, Advocate
for respondent No.2-Insurance company.

AVNEESH JHINGAN, J.

CM-20187-CII-2017

Allowed.

Main case is taken on board today itself with the consent of
both parties.

Main Case:-

The present appeal is against the award dated 11.6.2012 passed
by the Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal'),
raising the issue of enhancement of compensation awarded for the death of
Jasmer Singh. The second issue raised is challenge to the contributory
negligence by which the Insurance Company is liable to pay 50% only.

The bare facts necessary for adjudication of the present appeal
are as under:

On 25.11.2009 Jasmer Singh aged 55 years was a pillion rider

on motor cycle make Hero Honda bearing registration No. PB-39-C-1279.

The said motor cycle was hit by an Indica Car bearing registration No.HR-3-G-4793. As a result of the accident, Jasmer Singh suffered grievous injuries and ultimately succumbed to the injuries.

As regards issue No.1, raised by learned counsel for the appellants, is that deceased was 55 years of age and the Tribunal has wrongly applied the multiplier of 7 instead of 11. The second limb of this argument is that a sum of Rs.6000/- for loss of consortium, Rs.6000/- for loss of estate and Rs.5000/- for loss of funeral expenses awarded are on lower side. The legal position with regard to these contention raised hereinabove have been settled by Hon'ble the Supreme Court in **National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017**, wherein the earlier decision of Hon'ble the Apex Court in **Sarla Verma and others Vs. Delhi Transporation Corporation and another (2009)6 SCC 121** has been upheld vis-a-vis, the application of the multiplier according to the age of the deceased. Hon'ble the Apex Court has dealt with the amount to be awarded under conventional heads. The relevant paras of the whereof reads as under:

"44.As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20

and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

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"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

- (i) The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
- (ii) As Rajesh has not taken note of the decision in *Reshma Kumari*, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
- (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
- (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the

established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

Keeping in view the authoritative decision of Hon'ble the Apex Court, the loss of dependency is re-calculated taking into consideration the loss of income already assessed by the Tribunal and applying the 1/3rd deduction for self expenses, as both the aspects have not been disputed by the appellant. The recalcalution is as below:

Monthly income Rs.6000/-

1/3rd deduction for self expenses Rs.2000/- = 4000/-

4000 x 12 x 11 = 5,28,000/-

Learned counsel for the Insurance Company though resisted the enhancement but could not raise any serious issue in view of the decision of Hon'ble the Apex Court in **National Insurance Company's case (supra)**.

In view of the fact that the deceased was survived by a widow and two major children and keeping in view the decision referred hereinabove, the amount awarded under conventional heads is enhanced to Rs.70,000/- i.e. Rs.15,000/- for loss of estate, Rs.15,000/- for loss of funeral expenses and Rs.40,000/- for loss of consortium.

As regard the issue regarding contributory negligence, the only relevant witness produced was PW2 Gurnam Singh, who was brother-in-law of the deceased. The Tribunal has relied upon his cross-examination to come to the conclusion that it was a case of contributory negligence and ultimately 50:50 contributory negligence was held.

At this stage, it would be relevant to reproduce paras- 3 and 4 of the affidavit filed by Pws As Ex.PW2/A and thereafter reproduce the cross-examination relied upon by the Tribunal.

"3.That when at about 10:00 a.m. they reached near Petrol Pump near village Saneta, then Amrik Singh turned his motorcycle towards his right hand side to Petrol Pump. In the meantime, a Indica Car No.HR-03-G-4793, driven by respondent No.1, came from opposite side in a rash and negligent manner at a very high speed.

4. That driver of the Car did not blow any horn, came on wrong side and hit against the motorcycle of Amrik Singh and due to the impact of this accident, the motorcycle and its occupants fell on left side of the road and after striking against front mirror of the Car. The Car also dragged the motorcycle to Kutcha berms on his side of the road."

Cross-examination of PW2 Gurnam Singh reads as under:

"The deceased was brother of my wife. I was married about 45 years ago. I was aged about 22 years at the time of my marriage. The deceased was younger to me by 5/7 years. Again said he was younger to me by 10 years. I attended the marriage of the deceased. The deceased was married about 32/32 years ago. I do not know if he was having ration card or not. I do not know if he was having voter card or not. I cannot tell the age of deceased at the time of his marriage. Again said he was aged about 20/21 years at the time of his marriage. Amrik Singh was driving the motor cycle No.1279. I have not seen the car prior to the accident. Car was coming from Landra side i.e. from front side. Amrik Singh driver of motorcycle is related to me. Again said he was not related to me. I made statement to the police on 25.11.2009 at Police Station Sohana. Car struck against the Motor cycle on the front. Both vehicles struck against each other from front side. It is correct that the driver of motorcycle took turn towards the petrol pump in front of its entrance. The car was at a distance of about 100 yards when Amrik Singh took turn towards the petrol pump. It is incorrect to suggest that accident was caused due to the negligence of driver of motorcycle who suddenly took turn towards petrol pump without noticing the car coming from the opposite side."

Form the reading of the affidavit and the cross-examination one thing is evident that the car was coming on its left side and it was the motor cyclist who took turn to the wrong side as there was an entrance of the petrol pump. The Tribunal has noted this fact and has rightly come to the conclusion that there was contributory negligence. It was as a result of sudden turn by the motor cyclist on which the deceased was pillion rider

that both the vehicles struck headon.

It is pertinent to note that the deceased was a pillion rider on the motor cycle but for the reasons best known to claimants, the Insurance Company of the motor cycle was not made party in the claim petition. If the Insurance Company of the motor cycle and the driver of the motor cycle had been arrayed as parties, before the Tribunal, probably this issue was not required to be adjudicated.

Now the only issue which needs consideration is "whether there is any fault by Tribunal in holding that there was 50:50 contributory negligence?". The Tribunal has ignored the deposition of PW2 and has only gone by the cross-examination. A perusal of the deposition shows that it was specifically stated that the car was being driven in a rash and negligent manner and at a very high speed. This deposition read with the cross-examination that car was at about a distance of 100 yards when Amrik Singh took turn towards Petrol Pump establishes that the car was at high speed therefore inspite of seeing that the motor cycle had made sudden wrong turn, the driver of the car was not able to stop the vehicle. Not much can be stated as neither the driver of the car nor the driver of the motor cycle was examined. In such circumstance, it is deemed appropriate that the contributory negligence instead of 50:50 is made as 60:40 i.e. 60% is fault of the car driver and 40% of the motor cyclist.

The award dated 11.6.2012 is modified to the extent that the amount awarded of Rs.3,52,000/- is enhanced to Rs. 5,98,000/- and contributory negligence is held as 60:40.

The claimants shall be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim

petition till realization of the amount.

The appeal is partly allowed in the above said terms.

7.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No