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

**FAO-679-2012 (O&M)**

**Date of decision : 02.12.2017**

Reshma Devi and others

... Appellant(s)

Versus

Naresh Kumar and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Ms. S.S. Kharb, Advocate  
for the appellant(s).

Mr. T.K. Joshi, Advocate  
for respondent No.3/Insurance Company.

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**AMIT RAWAL, J. (ORAL)**

**CM-3281-CII-2012**

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 21 days in filing the appeal is condoned.

**FAO-679-2012**

The present appeal has been preferred by the claimants i.e. widow, mother, two daughters and two sons of the deceased-Pritam Lal, who unfortunately died in a vehicular accident occurred on 26.02.2009 at 7.30 a.m. in Gopal Colony-Panipat, involving two vehicles i.e. three wheeler bearing registration No.HR-67-8043 and unknown truck.

Mr. S.S. Kharab, learned counsel appearing on behalf of the appellants-claimants submits that the learned Tribunal has committed

illegality and perversity in dismissing the claim petition by relying upon the testimony of PW-3, namely, Dharam Singh as in the FIR No.66, he had made a statement that the accident had occurred owing to the negligence of the driver of the unknown truck, but thereafter, he suffered a supplementary statement dated 02.03.2009 by imputing the negligence on the part of driver of three wheeler, therefore, the learned Tribunal ought to have determined the liability to some extent/percentage of both the vehicle, but ought not to have dismissed the claim petition. The deceased-Pritam Lal aged 27 years, was working as Halwai and earning ₹ 8,000/- per month. He left behind widow, mother, two daughters and two sons. The FIR, aforementioned, had been registered against three wheeler, aforementioned, which has been proved through the testimony of PW-2 Suraj Bhan, Criminal Ahlmad to learned ACJM, Panipat, much less, filing of the challan. The statement of PW-3 has not been read in correct perspective. All these factors have not been noticed by learned Tribunal, thus, urges this Court for setting aside the award, under challenge.

On the contrary, Mr. T.K. Joshi, learned counsel appearing on behalf of the Insurance Company submits that no fault can be found with the findings of the learned Tribunal as version of the eye-witness had been on supplementary statement. The stand was changed by suffering a statement at the instance of the claimants, whereas the entire negligence was of the truck's driver. The filing of the challan against the three wheeler would not prove its negligence, in essence, the claimants failed to prove the negligence of the three wheeler and rightly so, the claim petition has been dismissed.

As regards the quantum, he submitted that no proof of income

as ₹ 8,000/- has been proved on record, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the contents of the FIR bearing No.66 has not been controverted, wherein the negligence was attributed to unknown truck's driver. In view of the supplementary statement *ibid*, police has filed the challan against the driver of the three wheeler, aforementioned. The aforesaid factum has been proved through the statement of PW-3 Dharam Singh. For the sake of brevity, the statements of PW-2 and PW-3 read as under:-

***"PW-2 Suran Bhan Cr. Ahlmad to LD ACJM, Panipat.***

*I have brought the summoned filed titled as State Vs. Naresh s/o Maninder, FIR No.66 dated 26.02.2009 u/s 279, 304A IPC. PS, Model Town, Panipat. Naresh accused is facing the trial and charge has been framed against him u/s 279/304-A IPC on 7.9.2009 by the Ld. ACJM, Panipat. The next date of hearing is 8.6.2010 for PWs. Three wheeler bearing No.HR-67-8043 is released on bail on superdari Pawan Kumar s/o Sh. Ram Kumar, r/o village Barota, Tehsil Gohana, District Panipat on 27.3.2009. Ex.P2 is certified copy of report u/s 173 Cr.P.C., Ex.P3 is the certified copy or supplementary statement of Dharam Singh and Ex.P4 is the certified copy of mechanical report of three wheeler which are correct as per the record. XXXXX by the counsel for respondent No.3.*

*Photocopy of DL is available in the judicial file. The original DL was not taken in custody by the police. The RC of Auto Rickshaw is available on the file bearing No.HR-67-8043. The same RC stands in the name of Pawan Kumar s/o Sh. Ram Kumar and certificate of fitness is valid upto 17.2.2010. The permit in regard the auto rickshaw is not available in judicial file. I have no personal knowledge about this case.*

***PW-3 Dharam Singh son of Sh. Duli Chand resident of Gopal Colony Panipat***

*That on 26.2.2009 at about 7.30 a.m., I was sitting in front of my house at Nepha road Panipat. I saw a truck coming from Panipat side and three wheeler came from the Refinery side. When they reached there while crossing the truck the tempo deliver lost his balance and his auto ricksha turned to turtle on Kacha road. Auto Riksha driver was driving the auto riksha in a rash and negligent manner due to this he has lost his balance. Pritam passenger had fallen under the auto riksha and other three passengers in auto riksha are also received injuries. I dragged of the deceased Pritam from the auto riksah with the help of other passengers and peoples gathered at the spot. We brought the deceased in the auto riksha in Civil Hospital Panipat where he died. The driver Naresh himself told his name in the way to Civil Hospital Panipat as Naresh Kumar son of Sh. Mahinder resident of Village Chonchara. The driver himself told me that he has applied for the registration no. and I saw the white paper having to words written in the back side of the auto riksha. Police has recorded my statement on the same day and after we the relatives of Pritam came to me and asked about the history of accident. I told them that the accident has caused due to rash and negligent driving of respondent No.1 Naresh Kumar. They told me that police has written the accident has caused due to rash and negligent driving of truck driver. Then I visited the police station myself and got recorded my supplementary statement is Ex.P3. The accident has caused due to rash and negligent driving of respondent No.1.*

*XXXX by Sh. R.K. Tarhen Adv. For respondent No.3.*

*I can only sign. It is correct that the truck has passed from three wheeler. Three wheeler was turned turtle 2/3 second from the passing of the truck. I could not see between the truck*

*and three wheeler. I was not injured in this accident. I had voluntarily given to the statement of the police which was converted to the F IR. I cannot read Hindi and English. The person Deshraj which is present in the court today and come along with two/three person at my resident. I do not know the name and address of the persons. I explain to the person at the time of accident three wheeler and truck were passes from the way. Volunteered said the accident was caused by the driver of auto riksha. I had not recorded the no. of the truck. I also do not know the registration no. of the three wheeler. Police met me at the spot. There are many houses are surrounding at the place of accident. When the police came at the spot two/three person gathered at the spot. Accident has caused at 7.30 a.m. Police came at the spot about about 11-12 noon. Police have done the writing at the spot. Three/four days Deshraj etc. had come to my house. After that we had go to the police station three/four days. The investigation officer is the same official who recorded the FIR and my supplementary statement. The police had of trend my supplementary statement. I am no relation with the deceased. The police has not taken any money today. I called the claimant. I do not know the relating of deceased with Deshraj present in the Court. I do not know the name of other passengers sitting in the riksha. I do not tried to caught the driver of truck. My resident of is at a distance of 40 feet from the road. The front of my house is five feet other houses are surrounding his my house. It is wrong to suggest that today I have made the false statement at the instance of Deshraj and legal here of the deceased. It is wrong to suggest that the present accident was caused due to the driver of the truck as after causing accident he ran away from the spot and no body noted down the registration no. of the truck in view of that I made a false supplementary statement to the police at the instance of Deshraj and legal heirs of the deceased. It is wrong to suggest*

*that the first version of FIR is correct. It is wrong to suggest that the supplementary statement is totally false. It is wrong to suggest that I am deposing falsely to help the claimant for getting claim from the insurance company of three wheeler."*

Learned Tribunal did not advert to the statement of PW-2. Even the statement of PW-3 reveals that both the vehicles were involved. At the best, the learned Tribunal ought to have apportioned the liability involving both the vehicles, but should not have dismissed the claim petition. In my view, since it was a collision between the two vehicles, the negligence should have been attributed in the ratio of 50:50 of both the vehicles. Accordingly, I hold that the driver of the three wheeler was also negligent in driving the vehicle, in which, the deceased was travelling, as, had not taken due care and caution.

Coming to the point of enhancement of compensation, the deceased stated to have been working as Halwai and earning ₹ 8,000/- per month, but no proof of income has been placed on record. In the absence of any proof of income, I take the income of the deceased as ₹ 4,000/-, which is minimum wages in the year 2009, but provide an increase of 40% towards future prospects. I will make a deduction of ₹ 1/4<sup>th</sup> towards personal expenses and apply a multiplier of '17' to assess the loss of dependency as ₹ 8,56,800/-. I will further add to it ₹ 70,000/- towards conventional heads i.e. loss of consortium, loss of estate and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in **SLP (Civil) No.25590 of 2014** titled as **"National Insurance Company Ltd. V/s Pranay Sethi and others"**. In all the compensation payable shall be ₹ 9,26,800/-.

The liability of 50% is fastened upon respondent No.3/Ram

General Insurance Company Ltd. (insurer of the offending vehicle No.HR-67-8043) and accordingly, respondent No.3/Insurance Company is directed to pay the amount of compensation of ₹ 4,63,400/- along with interest @ 6% from the date of filling of the claim petition till its realization within a period of three months from the date of the receipt of the certified copy of this order, failing which, it entails further interest @ 10%. The amount shall be distributed amongst the appellants-claimants in the ratio of 2::2:2:2:2:1.

Resultantly, the award passed by the Tribunal is modified to the above extent and the appeal stands allowed.

02.12.2017  
Yogesh Sharma

( AMIT RAWAL)  
JUDGE

|                           |         |
|---------------------------|---------|
|                           | ✓       |
| Whether speaking/reasoned | Yes/ No |
|                           | ✓       |
| Whether Reportable        | Yes/ No |