

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

**FAO No.2342 of 2013 (O&M)
Date of Decision: 10.11.2017**

Santosh and others

...Appellant(s)

Versus

Santokh Singh and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.P.S. Mann, Advocate
for the appellants.

Mr. R.C. Gupta, Advocate
for respondent No.3-Insurance Company.

ANITA CHAUDHRY, J.

This is the claimants appeal seeking enhancement of the award.

Deceased-Krishan Kumar was 42 years of age and was working as a Chowkidar with Food and Civil Supplies, Hoshiarpur. He met with an accident on 24.10.2008. It was claimed that Arjun Singh was driving the scooter and Krishan Singh was sitting on the pillion. A truck was parked in a wrongful manner. The scooter struck against the stationary truck.

The Tribunal noted that the claimant was not a permanent employee but was a temporary employee who had been appointed in

2006. The addition towards future prospects was denied and a sum of Rs.11,800/- was taken as his income. The Tribunal relying upon the judgment passed in '**Harbhajan Kaur and others Vs. State of Haryana and others, 2009 ACJ 2625,**' deducted the allowances which the deceased was using on himself that is tea and washing etc. allowances. It made a deduction of 1/3rd and applied the multiplier of 14. It held that the scooter driver was negligent and the claimants were entitled only to 50% of the adjudged amount. On the miscellaneous heads, Rs.5,000/- was added for loss of estate, Rs.5000/- for loss of consortium and Rs.5000/- for funeral expenses and an award of Rs.6,75,800/- was passed.

Learned counsel for the petitioners has three submissions to make. Firstly that there could have been no deduction on account of contributory negligence as it was attributed to Arjun Singh who was driving the Scooter and Krishan Kumar was a pillion rider and he was not at fault and he was entitled to full amount and the claimants had the option to recover the damages from any of the tortfeasors and non-impleading of the joint tortfeasor was not a defence to reduce the compensation.

It was also urged that the future prospects were not taken into consideration while awarding dependency and the Larger Bench in '**National Insurance Company Ltd. Vs. Pranay Sethi and others (SLP (Civil) No.25590 of 2014)**' has clarified on this issue. Reliance was placed upon '**Khenyei Vs. New India Assurance Co.**

Ltd. and others AIR 2015 Supreme Court 2261, 'Pawan Kumar and another etc. Vs. M/s Harkishan Dass Mohan Lal and others, 2014 (4) S.C.R., 'Babita Rani and others Vs. Harinder Pal Singh Chawla and others MAC. APP. 748-752/2005' and 'Heer Singh and others Vs. Jai Singh and others.'

The submission on behalf of the respondents is that the deceased was a temporary employee and there could be no addition towards future prospects as he was not on a permanent job. It was urged that they had taken the objection regarding non-joinder and the claimants should have impleaded the owner of the scooter as well and had both the tortfeasors been impleaded and the proportion of negligence determined then half of the liability would have come on the other side and there should be given the right to recover the amount.

The question raised by the appellants has been fully answered by the Apex Court in ***Khenyei's case (supra)*** and it would be appropriate to refer to Para 11 of the judgment which reads as under:-

"A Full Bench in KSRTC v. Arun @ Aravind (supra) while answering aforesaid questions has observed that it was a case of composite negligence and the liability of tortfeasors was joint and several. Hence, even if there is non-impleadment of one of tortfeasors, the claimant was entitled to full compensation quantified by the Tribunal. The Full Bench referred to the decision of a Division Bench of the Gujarat High Court in [Hiraben Bhaga & Ors. v. Gujarat State Road Transport](#)

Corporation [1982 ACJ (Supp.) 414 (Guj.)] in which it has been laid down that it is entirely the choice of the claimant whether to implead both the joint tortfeasors or either of them. On failure of the claimant to implead one of the joint tortfeasors, contributory liability cannot be fastened upon the claimant to the extent of the negligence of non-impleaded joint tortfeasors. It is for the joint tortfeasors made liable to pay compensation to take proceedings to settle the equities as against other joint tortfeasors who had not been impleaded. It is open to the impleaded joint tortfeasor to sue the other wrong doer after the decree or award is given to realize to the extent of others' liability. It has been laid down that the law in Ganesh's case (supra) has been rightly laid down and it is not necessary to implead all joint tortfeasors and due to failure of impleadment of all joint tortfeasors, compensation cannot be reduced to the extent of negligence of non-impleaded tortfeasors. Non-impleadment of one of the joint tortfeasors is not a defence to reduce the compensation payable to the claimant. In our opinion, the law appears to have been correctly stated in KSRTC v. Arun @ Aravind (supra)."

So far as the finding regarding contradictory negligence is concerned, the scooter driver was rightly held liable to the extent of 50% as he had struck against the stationary truck which was stationed partly on the metalled road. It has come in evidence that he was driving at a fast speed therefore, was unable to control the speed and stop the vehicle on time.

The deceased was sitting on the back of the scooter and this fact is not disputed. The question which arises is whether on the

facts and circumstances of the case, contributory negligence of the driver of a vehicle can be attributed to its pillion rider. There was no omission on the part of the deceased and certainly he had not contributed to the accident and it is a case where the accident and consequent death of Krishan Kumar had occurred on account of collision of two vehicles due to negligence of both the drivers. The claimants had failed to implead all the tortfeasors and could claim the amount from both or any of the joint tortfeasors. The law on this is correctly settled. The amount could not have been reduced as the fault did not lie with the pillion rider, it was the scooter driver who was at fault. In the circumstances, liberty should also be given to the Insurance Company to recover the amount from other tortfeasors in appropriate proceedings as held in ***Khenyei's case (supra)*** .

Now coming to the question of addition of future prospects. The deceased was not getting a fixed salary. He was a Chowkidar with FCI but since his job was not permanent, therefore, an addition of 25% can only be allowed as the deceased was in the age group of 40 to 50. Taking the income at Rs.11,800/- and making an addition of 25%, the amount would come to Rs.14,750/-. Making a deduction of 1/3rd the amount available for the family would be Rs.9,834/- and the compensation would come to Rs.9,834x12x14=Rs.16,52,112/-. To this a sum of Rs.15,000/- should be added for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium. the total amount that was payable would be

Rs.17,22,112/-.

The Tribunal had allowed Rs.6,75,800/- which would be deducted and the remaining amount would be paid by the Insurance Company with interest @6% from the date of filing of the appeal and they (Insurance Company) would be entitled to recover the amount from the other tortfeasors.

The appeal is partly allowed.

November 10, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No