

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

FAO No. 10539 of 2014 (O&M)

Date of Decision: 13.02.2017

Jai Bhagwan

... Appellant

vs.

Kaushal Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. J.S. Saneta, Advocate
for the appellant.**

**Mr. Puneet Jain, Advocate for
Insurance Company-respondent No.3.**

ANITA CHAUDHRY, J.

The appellant-claimant has filed the instant appeal seeking modification of award dated 29.03.2014 passed by the Motor Accident Claims Tribunal, Sonapat(for brevity, the Tribunal) to the extent of inadequacy of compensation awarded on account of death of Gulabo, the mother of the appellant and the finding holding it a case of contributory negligence.

The accident took place on 26.08.2012 at about 6:30 a.m. when the vehicle bearing No. HR55H-6547 dashed into a stationary canter No. HR55J-6567, resulting in the death of Gulabo, mother of the appellant and other occupants of the vehicle.

The main submission on behalf of the appellant is that the Tribunal had gone wrong in holding the driver of the van, in which the deceased was travelling, liable for causing the accident and apportioning their liability to the extent of 30%. He further urges that

the amount of Rs.20,000/- awarded for loss of estate is on the lower side.

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

The Tribunal held it a case of contributory negligence on the part of driver of stationary vehicle and the driver of the van in which the deceased was travelling in the ratio of 70:30. While dealing with this, the Tribunal observed as under:-

“16. XXX. It is the case of the claimants themselves that the accident in question took place at about 6/6:30 am on 26.08.2012. Thus the time and day of the accident itself goes to show that the accident took place in the morning hours of the month of August. Admittedly there is no issue qua lack of visibility at the time of accident in view of the fact that sufficient day light is available in this part of the country in the month of August. Accordingly this tribunal finds force in the argument raised by learned counsel for the respondents. There is nothing on record to show that driver of the ill-fated vehicle could not have seen the parked offending vehicle from a sufficient distance and could have avoided the accident. Rather the factum that 4-5 persons died at the spot itself would show that the vehicle of the deceased was being driven at very high speed at the relevant time. Had he deceased's vehicle been driven at moderate speed, then the driver of the said vehicle could have averted the accident in question by applying brakes in time. Thus it cannot be said that there was no negligence on the part of the driver of

deceased's vehicle as from the overall facts and evidence on record it is clear that the driver of the said vehicle could see the stationery vehicle from a fair distance. As such, he ought to have brought the moving vehicle to a grinding halt. The fact that he collided with the stationery vehicle indicates that he could not control his speeding vehicle. Therefore, he was also negligent in causing the accident and was also responsible for the accident. Thus even in the absence of evidence of the respondents, it is clearly made out that the vehicle of the deceased had also contributed in causing the accident. The concept of contributory negligence envisages that where a person suffers injury, partly due to the negligence on the part of another person/ persons, and partly as a result of his own negligence, then the negligence on the part of the injured, which contributed to the accident is referred to as his contributory negligence. If the claimant is guilty of an act or omission which materially contributed to the accident and resulted in injury, the concept of contributory negligence would apply. A cursory look at the facts pleaded in the petitions and the deposition PWs would indicate the negligence on the part of driver of the deceased's vehicle. Keeping in view the aforesaid facts and evidence on record and the law applicable thereto, it can reasonably be presumed that the driver of the ill-fated vehicle in which the deceased were travelling had contributed in causing the accident. Never-theless, the negligence of the stationery offending vehicle would be much more than the vehicle coming from behind. In the light of these facts, this Tribunal hold that there

was contributory negligence on the part of the deceased's vehicle. Further, it is also well settled that where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence. On the facts and circumstances, the Tribunal accordingly fix the responsibility at 30% on the part of deceased and 70% on the part of first respondent in causing the accident in question. Thus this issue stands decided accordingly.”

The accident had taken place at 6:30 a.m. in the month of August and there was enough light. It appears that the driver was driving at a high speed and could not stop the vehicle in time. The findings recorded by the Tribunal also leave no doubt that the driver of the vehicle in which the deceased was travelling had contributed in the accident. The Tribunal had rightly assessed the liability to the extent of 30%. The deceased was a lady of 62 years. The amount of Rs.20,000/- awarded for loss of estate, cannot be said to be on lower side. No ground for interference is made out. The appeal is dismissed.

13.02.2017

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No