

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2767 of 2013
Date of Decision: 08.08.2017

Neeraj and others

.....Appellants

Vs.

Prithvi and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:-

Mr.Ashish Gupta, Advocate,
for the appellant.

Ms.Alisha Soni, Advocate, for
Mr.Shalender Mohan, Advocate,
for respondents No.1 and 2.

Mr.Ashwani Talwar, Advocate,
for respondent/Insurance Company.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 08.02.2013, passed by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') vide which compensation to the tune of Rs.3,31,300/- was awarded to the claimants on the death of deceased Sandeep.

FACTS NOT IN DISPUTE

Tony riding Santro car bearing registration No.HR26BK-6316 had started their journey for Gurgaon from Jhajjar. Sandeep-deceased was driving the car and Vikas @ Tony(deceased) was sitting in front seat by the side of Sandeep-deceased. It was around 10/11.00 p.m. when they reached near village Dadri Toe on Farrukh Nagar Jhajjar road, then a truck bearing registration No.HR-46-B-1996 driven by its driver/respondent No.1 at a very high speed and in a rash and negligent manner on coming to the wrong side had hit the Santro car in which the deceased were travelling. As a result, Sandeep and Vikas alias Tony had sustained serious multiple injuries and had died at the spot. Impact of the accident was so forceful that both the deceased were trapped in between the seats and body of the car. The car was damaged badly. The accident was witnessed by Narender son of Surjan Singh and Sushil son of Kalandar Singh who were following the deceased in their Safari vehicle bearing registration No.HR-26BC-8768. An FIR No.497 dated 20.08.2011 under Section 279 and 304-A IPC was registered on the statement of Narender Singh resident of village Garhau, District Gurgaon against the driver of the offending truck.

COMPENSATION ASSESSED BY MACT

Learned Tribunal while awarding compensation to the claimants to the tune of Rs.3,31,300/- i.e. 50% of the total compensation on account of contributory negligence attributed to

the driver of the truck and Sandeep-deceased. A perusal of the award shows that Narender Singh (PW-5) in his statement has specifically stated that the truck had struck straightway into the car of Sandeep (deceased), but firstly had come on wrong side of the road. The learned Tribunal has held that when it was straight hit of truck against Santro car of Sandeep-deceased in its front, it is a case of head-on-collision and when the vehicles had a head-on-collision, the drivers of both the vehicles are equally liable for the accident. As such, learned Tribunal had come to the conclusion that accident had been caused by negligence of the offending truck by respondent No.1 and deceased-Sandeep of Sentro Car. Accordingly, The learned Tribunal has assessed the compensation as under:-

Sr.No.	Heads of compensation	Amount
1	Income	Rs.4200/-
2.	Dependency 1/4th	Rs.4200 --- Rs.1050/- =Rs.3150/-
3.	Annual dependency	Rs.3150/- X 12= Rs.37,800/-
3.	After applying multiplier (age 26 years)	Rs.37,800/- X 17= Rs.6,42,600/-
4.	consortium	Rs.10,000/-
5.	Loss of estate	Rs.5,000/-
6.	Last rites	Rs.5000/-
	Total	Rs.6,62,600/-
	Total compensation awarded	Rs.6,62,600/- X 50 %= Rs.3,31,300/-

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment "**Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77'**; **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**; '**Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459'**; **Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193**. Learned counsel submits that the loss of consortium awarded by the Tribunal is on the lower side and further nothing has been awarded towards love and affection to parents, who were fully dependent upon the deceased.

Learned counsel for the appellants further contends that a perusal of the statement of Narender Singh who had appeared before the Tribunal as PW-5 shows that he was eye witness of the accident and he has made the statement on affidavit (Ex.PW5/A) that on 19.08.2011, He along with Sushil son of Sh.Kalander Singh was coming to Gurgaon from Jhajjar by his Safari car. His brother in-law Sandeep son of Sh.Suraj Mal and his friend Tony alias Vikas along with us were coming to Gurgaon by their Santro car.

Sandeep was driving his Santro Car at a slow and moderate speed

on his correct left hand side of the road observing all traffic rules and Tony alias Vikas was sitting on the front seat of the car by the side of Sandeep and their care followed by his aforesaid safari car. At about 10/11 p.m., when they reached near village Dadri Toe, in the meantime the offending truck bearing registration No.HR-46-B-1996 came from front side i.e. opposite side being driven by its driver/respondent No.1 at a very high speed, rashly, negligently, carelessly, without observing any traffic rules and straightly hit into the car of Sandeep after coming to the wrong side of the road. As a result of that Sandeep and Tony alias Vikas trapped into the front seat of their car and received serious, grievous, multiple and fatal injuries on their persons and succumbed to the injuries. Therefore, keeping in view the above mentioned facts it can be said that the present accident in question is not the result of contributory negligence.

On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record.

A perusal of the Award shows that the offending vehicle came from the wrong side and hit the car of the deceased, this

finding is required to be considered by the learned Tribunal in

view of the statement made on behalf of PW-5 Narender Singh. So, it is proved that deceased was driving at a moderate speed and on the correct side and offending truck had hit the vehicle of deceased-Sandeep Singh after coming from wrong side and as such, no lapse is found on the part of deceased-Sandeep Singh. As such, the finding of contributory negligence given by the learned Tribunal is set aside and respondent/Insurance Company is held liable to pay the entire amount of compensation.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income (as per daily wages)	Rs.4600/- p.m.
2.	Future Prospect (50%)	Rs.4600/- + Rs.2300/-= Rs.6900/-
3.	Dependency (1/4)	Rs.6900/- -- Rs.1725/- =Rs.5175/-
4.	Multiplier	Rs.5175/- X 12X 17=Rs.10,55,700/-
5.	Love and affection 2 children Rs.1,00,000/- each and a widow Rs.50,000/-	Rs.2,50,000/-
6.	Loss of estate	Rs.5,000/-
7.	Last rites	Rs.5,000/-

	Total	Rs.13,15,700/-
	Enhanced compensation	Rs.13,15,700/- --- Rs.3,31,300/- = Rs.9,84,400/-

Resultantly, the enhanced amount of compensation of Rs.9,84,400/-of the enhanced amount in reassessed compensation shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

08.08.2017

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<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>