

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

FAO No. 1436 of 2014 (O&M)

DATE OF DECISION : 29.09.2017

The New India Assurance Co. Ltd., Old Railway Road, Gurgaon

.... APPELLANT

Versus

Tilak Raj and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Vandanaa Malhotra, Advocate,
for the appellant.

Mr. Sudhir Aggarwal, Advocate,
for respondents No.1 to 5.

Mr. S.K. Bawa, Advocate,
for respondent No.6.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 04.12.2013 passed by the Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') in MACT Case No. 11 dated 28.02.2013.

On 22.11.2012, Parkash Yadav aged 46 years met with a motor vehicular accident, in which he suffered grievous multiple injuries and ultimately lost his life. The deceased was going on his motor cycle bearing registration No. HR-26AP-3363. When he crossed Kherki Daula Toll Plaza on National Highway 8 towards Manesar, a truck bearing registration

No.HR-46B-7305 (for short, 'the offending vehicle') which was being driven in a rash and negligent manner overtook the motor cycle, suddenly came to the left side and without giving any signal applied brakes. As a result of the sudden brakes, motor cycle of the deceased banged into the offending vehicle from behind.

A claim petition under Section 166 of the Motor Vehicles Act, 1988, was filed by the widow, three children and father of the deceased.

The Tribunal, after considering the evidence and witnesses, awarded a sum of ₹ 20,69,200/- along with interest at the rate of 7.5% per annum.

Aggrieved of the said award, the Insurance Company has filed the present appeal.

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

Learned counsel for the appellant argued that the Tribunal has wrongly assessed the salary of the deceased as ₹ 12,368/- per month. The same was not proved on record. She further argued that 30% has been wrongly added towards future prospects. The deceased was working as Security Guard and was in private employment, therefore, no future prospects should have been added. Learned counsel argued that since the motor cycle banged into the truck from behind, therefore, it is a case of contributory negligence.

Learned counsel for respondents No.1 to 5 argued that the

respondents – claimants have duly proved salary of the deceased by producing his salary certificate Ex.P8. He further contended that the deceased was employed as Head Guard in Checkmate Services Private Limited, Gurgaon, and Manager of the said Company also deposed before the Tribunal as PW.5. He brought the salary record of the deceased and proved the salary certificate issued by the Company as Ex.P8. Learned counsel further argued that simply because the motor cycle of the deceased banged into the truck from behind, is not sufficient to say that there was contributory negligence. He contended that in the written statement, no pleading was raised to this effect. Even no specific issue was framed with regard to the contributory negligence. It has been argued that at this belated stage, this factual argument cannot be raised. Learned counsel argued that 30% has been rightly added in the income of the deceased towards his future prospects.

After hearing learned counsel for the parties, I am of the opinion that the first contention with regard to assessing salary of the deceased, raised by learned counsel for the appellant, is bereft of merit. A perusal of the award will show that salary certificate of the deceased was proved on record. Not only the certificate, even the Manager of the Company, with whom the deceased was employed, appeared before the Tribunal along with the salary record. Nothing contrary was brought on record by the appellant to dispute the earning of the deceased. Even the evidence brought on record by the claimants was not doubted at any stage.

In such circumstances, the Tribunal was justified in assessing the salary of the deceased as ₹ 12,368/-.

With regard to the second contention raised by learned counsel for the appellant that future prospects should not have been awarded to the claimants, it is an admitted position that the issue of awarding future prospects in case the deceased was in private job is pending before a Larger Bench of the Hon'ble Apex Court. At this stage, it would not be fair that the future prospects already granted by the Tribunal are deducted. As on date, decision of the Hon'ble Apex Court holds the field that future prospects have to be added. Hence, this contention of learned counsel for the appellant is also rejected.

The third contention raised by learned counsel for the appellant that there was a contributory negligence on the part of the deceased, as the motor cycle banged into the offending vehicle from behind, cannot be accepted. A faint pleading in this regard was made in the written statement which was not substantiated by any evidence. Not only this, even this point was not pressed before the Tribunal, as is evident from the fact that the Tribunal even did not frame the issue with regard to the contributory negligence. At this stage, it would not be possible to go into this factual aspect of the matter, in absence of any evidence in this regard. Furthermore, it has not been disputed that the offending vehicle overtook the motor cycle of the deceased, diverted towards left side and suddenly applied brakes. In such circumstances, motor cycle coming from behind is bound to bang into

the offending vehicle. It has no where been alleged that the motor cycle was being driven at a very high speed and therefore, it banged into the offending vehicle.

For the reasons mentioned above, no fault can be pointed out in the award passed by the Tribunal. Same is, therefore, upheld.

Appeal is, accordingly, dismissed.

September 29, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes