

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

F.A.O No. 1235 of 2015

Date of Decision:- 08.11.2017

Sarjito Devi & Ors.

....Appellants

Versus

Jaswinder & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Berwal, Advocate, for the appellants.

Mr. S. S. Sidhu, Advocate, for the respondents

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against the award dated 28.10.2014 passed by the Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal').

The challenge in the present appeal is with regard to contributory negligence held by the Tribunal of 50-50. The appellant has in the present appeal challenged the quantum of compensation awarded. The grievance is that the Tribunal erred in holding the deceased to be negligent and thereby restricting the compensation to 50%.

The factual matrix necessary for adjudication of the present appeal are that on 28.11.2013 Raja @ Rajinder had gone to house of his sister-in-law in Village Siwan. He alongwith his wife went on a motor-cycle bearing registration No. HR08-C-6653. He left his wife Sarjito Devi at place of her sister and was coming back on his motor-bike. It was alleged that a rashly and negligently driven car bearing registration No. HR-33-C-9529 hit the motor-cycle as a result of which Raja suffered injuries. He

was shifted to Civil Hospital, Kaithal and then he was taken to General Hospital, Kaithal from where he was referred to PGIMS, Chandigarh. He succumbed to his injuries on 30.11.2013. FIR No. 162, dated 30.11.2015 was registered at Police Station Sadar Kaithal.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal awarded a sum of Rs.5,99,800/- along with interest @7.5% per annum. The Tribunal found that it was a case of contributory negligence of both the drivers, therefore, a compensation was restricted 50% of the amount assessed.

Aggrieved of the said award, the present appeal has been filed.

Learned counsel for the appellant has argued that it was not a case of contributory negligence. The respondents have not produced any evidence on record to establish contributory negligence. He relied upon deposition of PW-1 wife of the deceased and PW-2 Suresh who was brother-in-law (jija) of the wife of the deceased.

Learned counsel for the respondent on the other hand has argued that the facts of the case are self-evident, it has come on record that he was coming from the side and entering the main road. It was his negligence which resulted in accident.

It is important to note that the appellant has relied upon the deposition of PW-1 Sarjito Devi. A perusal of the claim petition would show that she was not present at the time of accident. Opening para says that the deceased after leaving Sarjito Devi at he sister's place was coming back. In such circumstances, no weight can be given to the deposition of

PW-1.

In the present case the appellant has raised one aspect of the issue involved that the respondents have not adduced any evidence to prove contributory negligence. The otherside of the coin is that under Section 166 of the Act, the onus is upon the claimants to establish that accident occurred due to rash and negligent driving of the offending vehicle. The contributory negligence in the present case is an extended limb of the said onus casted upon the claimants.

The facts which have not been disputed are that the car was going on the main road and it was the deceased who was coming from the approach road and was to enter the main road. A duty is casted upon the person who is entering on the main road to ensure the safe entry to the main road as the vehicles travelling on the main road may be taken by surprise by the sudden turn of the motor-cyclist on to the main road. PW-1 as already discussed was not present at the time accident. So far as PW-2 is concerned there is nothing in his deposition to contradict the fact that the deceased was coming from the approach road and was entering to the main road. This rather proves that the deceased had entered the main road in such a case it was his duty to look at the car which was coming from the opposite side. In such circumstances the contributory negligence of the deceased as held by the Tribunal cannot be faulted with.

The learned counsel for the appellant further argues that a FIR was registered against the driver of the car and criminal proceedings were initiated that itself is a proof of rash and negligent driving. The said contention raised by learned counsel has no substance. The Hon'ble Apex

Court in case of *Kamlesh and Ors. Vs. Attar Singh and Ors, 2015(15) SCC 364* had held that registration of the case by the police against the driver and filing of the charge-sheet cannot be said to be conclusive. The Supreme Court held as under :-

“8. We have heard learned counsel for the parties and perused, inter alia, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a chargesheet but the same cannot be said to be conclusive. Though, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint ‘tort-feasors’, thus, liable to make

payment of compensation.”

This Court in case of **Rudhar Maini and Ors. Vs. Kulbir Singh, in FAO No. 1453 of 2007 dated 29.02.2016** relying upon the above Supreme Court decision has held as under :-

*“14. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the respondent as the Tribunal is required to act upon the evidence adduced before it. To support this view reference can be made to case **Ram Karan Vs. Zile Singh 2001(3) R.C.R (Civil) 582**. In a latest judgment titled as **Kamlesh and others Vs. Attar Singh and others 2016(1) RCR (Civil) 24** the Hon’ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive”*

The learned counsel for the appellant further placed reliance upon a decision of the Apex Court in case **Meera Devi and Ors. Vs. HRTC and Ors.2014(3) JT 577**. He contended that as per the decision of Hon'ble Supreme Court in order to prove a contributory negligence there must be a cogent evidence. The said authority has no application in the facts of the present case. In the said case before the Hon'ble Apex Court no evidence was there before the Tribunal or the High Court on basis which it can be concluded that it is a case of contributory evidence.

In the present case as discussed in paras above it is a undisputed fact that the deceased was coming from an approach road and entering the main road.

There is another aspect to be considered that from the reading

of the depositions of PW-1 and PW-2 alongwith their cross-examination, it has nowhere been specifically stated that they were present at the time of the accident. Their only claim is that Sarjito Devi and Suresh took the injured to the hospital. Sarjito Devi in her cross-examination has denied the suggestion that she was not present at the time of accident. Same is the case in case of Suresh. In the claim petition it has not been averred that the deceased was accompanied by someone at the time of accident. The deposition of Suresh itself states that the deceased left his wife Sarjito at his place and then left for his village. It is not evident that Suresh accompanied the deceased. Be that as it may, the contributory negligence cannot be ruled out. Rather it would be a case where a doubt can be raised that the claimants were not able to establish rash and negligent driving of the car.

The next contention of the learned counsel for the appellant is that the income assessed of the deceased is on the lower side. The income assessed was Rs.4400/- per month. The said contention deserves acceptance. Minimum what was required was that Tribunal should have awarded the minimum wages prevalent in the State of Haryana at the time of accident. The minimum wages for unskilled labour 5350/- per month. Since there is no dispute with regard to 1/4th deduction for personal expenses and on multiplier applied of 13, the loss of dependancy recalculated taking the monthly income as Rs.5350.

Annual Income = 5350 x 12 = 64,200/-

1/4th deduction for self expenses = 16,015/-

Total after deduction = 48,150/-

Applying multiplier of 13 = 6,25,950/-

The enhancement is Rs.6,25,950/- - 5,14,800/- = 1,11,150/-.

No other issue has been raised.

Award dated 28.10.2014 is modified to the extent that the since 50% of the amount was awarded because of the contributory negligence, the net result is that the amount awarded by the Tribunal is enhanced by Rs.55,575/-. The same is rounded off and made Rs.55,600/-.

The claimants would be entitled to enhanced amount alongwith interest @6% per annum from the date of filing of the claim petition till realisation.

Accordingly, the appeal is disposed of in the above said terms.

November 08, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No