

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

FAO No.6261 of 2014 (O&M)

Date of decision: 08.12.2017

Smt. Kamlesh Devi and others

...Appellants

Versus

Dharmender Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gopal Sharma, Advocate for the appellants.

Ms. Manpreet Kaur, Advocate for respondent No.1.

Mr. Sandeep Verma, Advocate for respondent No.2.

Mr. Rajneesh Malhotra, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.17015-CII of 2014

Heard.

For the reasons stated in the application supported by affidavit of Mohan S/o Yogesh Kumar, one of the claimants, same is allowed. Delay of 22 days in filing the appeal is condoned.

Main Case

The claimants are in appeal seeking enhancement of compensation in regard to death of Yogesh Kumar in a motor vehicular accident that took place on 07.06.2010.

The Tribunal has assessed compensation to the tune of

Rs.5,82,644/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5200/-
2. Deduction for personal and living expenses	1/3rd
3. Multiplier	11
4. Loss of dependency	Rs.4,57,644/- (Rs.3467 x 12 x 11)
5. Funeral expenses	Rs.25,000/-
6. Loss of consortium to the widow	Rs.1,00,000/-

However, the claimants were allowed 50% of compensation as 50% negligence in causing the accident has been attributed to the deceased.

Counsel for the appellants has assailed findings of the Tribunal attributing 50% negligence to Yogesh Kumar (since deceased). It is argued that the Tribunal has accepted it correct that Dharmender Singh, driver of container No.HR-47-A-9514 suddenly applied brakes and the deceased, driver of truck No.RJ-02-GA-0763 who was coming behind the aforesaid container struck against the container and sustained injuries that proved fatal. It is argued with vehemence that as both the vehicles i.e. container driven by Dharmender Singh respondent No.1 and the truck driven by the deceased were running on a National Highway and driver of the vehicle going ahead suddenly applied brakes, no negligence in the occurrence can be attributed to driver of the truck. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Yerramma and others Vs. G. Krishnamurthy and another, 2014(4) RCR (Civil) 266**. Further reference has been made to judgment of this Court **M/s The New India Assurance Co. Ltd. Vs. Meena and others, 2006(3) RCR (Civil) 758**.

Counsel representing the insurance company, on the contrary, would urge that findings of the Tribunal recorded in para 12 of the award are based upon appreciation of evidence in right perspective and do not warrant intervention. It is further argued that Dinesh Kumar PW4, real brother of Yogesh Kumar (since deceased) was examined to discharge onus of issue No.1 by the claimants. He has not deposed as to what care was taken by the deceased to avoid collision with the container going ahead even if driver of the container had applied sudden brakes. Another submission made by counsel is that statement of Dinesh Kumar PW4 is silent about the distance between the two vehicles. In support of his contention, he has relied upon judgment of this Court **Subhash Chand and others Vs. Satya Rani and others, 2014(5) RCR Civil 265.**

So far as the quantum of compensation assessed by the Tribunal, it is argued that deceased was admittedly driver of a heavy goods vehicle, therefore, income assessed at Rs.5200/- per month is on lower side. The Tribunal has not extended benefit of increase in income for future prospects. Adequate compensation may be allowed under conventional heads.

In reply, counsel for the insurance company has supported assessment of compensation with the submission that the claimants failed to adduce satisfactory much less convincing evidence to establish their plea that deceased was earning Rs.9000/- per month.

I have heard counsel for the parties, perused the paper book particularly the award and the judgments cited at bar.

Indisputably, the two vehicles which collided were running on the National Highway. The container (alleged offending vehicle) was going ahead of truck driven by the deceased. As per plea of the claimants, driver of container suddenly applied brakes and as a result, truck driven by the deceased hit the container on back side.

Dinesh Kumar PW4, real brother of the deceased stated himself to be working as conductor on the truck in question tendered into evidence affidavit Ex.PW4/A. A relevant extract from his testimony reads as follows:-

“Ahead of our truck, canter (container) No.HR-47-A-9514 was going. Our truck was at a moderate (sadharaan) speed. When we reached near TCI company the canter (container) driver without giving any indicator and signal but in violation of traffic rules, suddenly applied brakes on seeing TCI company. Because of this, our truck bearing No.RJ-02-GA-0763 struck against the aforesaid canter (container) and accident happened. Immediately after accident my brother Yogesh Kumar fell down while driving the vehicle. Our truck went into fields towards left side. Because of collision my brother sustained head injury on account of which he died at the spot. The accident occurred due to mistake of canter (container) No.HR-47-A-9514.”

As has been rightly argued by counsel for the insurance company, statement of Dinesh Kumar is conspicuously silent about distance

between the container and truck. Nothing had been stated by him as to what care and precaution was taken by Yogesh Kumar to avoid collision. As per the traffic rules, vehicle following another vehicle is required to maintain a reasonable distance in order to avoid collision in case the vehicle going ahead applies sudden brakes. Taking into consideration testimony of Dinesh Kumar, it is difficult to accept contention of the appellants that Yogesh Kumar cannot be attributed negligence.

In Yerramma's case (supra) relied upon by counsel for the appellants, the motorcyclist collided the bus going ahead when the bus took a right turn without any indicator. The Tribunal and so also the High Court attributed 25% negligence to the motorcyclist but those findings were set aside by Hon'ble the Supreme Court by taking into consideration judgment of the Court in **Juju Kuruvila and ors. Vs. Kunjamma Mohan and ors, 2013(3) RCR (Civil) 817**. A relevant extract from paras 9 and 10 of the judgment reads thus:-

“9. After thorough consideration of the facts and legal evidence on record in the present case, we are of the view that the collision between the motor vehicles occurred when the respondent-Corporation bus was turning to its right side without showing the turn indicator to enter the bus depot. The driver of the offending vehicle of the respondent-Corporation bus was negligent by not giving the right turn indicator and causing the accident. The driver of the respondent-Corporation bus should have been aware of the fact that he was driving the heavy passenger motor vehicle, and that it was necessary for him to take extra care & caution of the other vehicles on the road while taking the turn to enter the

depot. Had the driver of the offending vehicle taken sufficient caution and care, slowed down and allowed reasonable provision for other vehicles on the left side of the road to pass smoothly, the accident could have been averted.

10. Hence, we are of the view that the Tribunal and the High Court have erred in the apportionment of negligence at 25% on the part of the deceased and 75% on the part of the driver of the respondent-Corporation bus without evidence adduced in this regard by the respondent. But on the other hand, legal evidence produced on record by the appellants in this case would show that the accident was caused on account of the negligence on the part of the driver of the offending vehicle of the respondent-Corporation. Therefore, the erroneous finding recorded by the Tribunal & concurring with the same by the High Court on the question of contributory negligence of the deceased is liable to be set aside. Accordingly, we set aside the same as it is not only erroneous but contrary to law laid down by this Court in the case of Juju Kurivila (Supra).”

In the case at hand, the alleged offending vehicle and so also the vehicle driven by the deceased are heavy transport vehicles. The driver of the truck neither maintained sufficient distance from the vehicle going ahead nor there is material on record to suggest that he took reasonable care to avoid collision. In the given scenario, the appellants cannot derive advantage to their contentions from the referred authority. Similarly, in Meena's case (supra), accident occurred on account of Maruti car hitting truck from behind when truck driver applied sudden brakes without indication. In the said case, the truck was driven in a zig-zag manner and there was reasonable distance between the two vehicles before accident. As

such the judgment was rendered in view of its peculiar facts and circumstances and has no bearing on the case at hand. In view of the above, findings recorded by the Tribunal attributing 50% negligence to the deceased cannot be faulted with.

This brings the Court to quantum of compensation assessed by the Tribunal. It is not denied that Yogesh Kumar was driver of the truck when he met unfortunate end. The claimants examined Krishan Kumar to prove employment and salary of the deceased. Krishan Kumar tendered into evidence his affidavit Ex.PW5/A and deposed that the deceased was employed as a driver at salary of Rs.9000/- per month. However, his testimony with regard to salary of the deceased does not find corroboration from any documentary evidence. Keeping in view minimum wage of a skilled worker available at the relevant time, income of the deceased assessed by the Tribunal is affirmed. However, the claimants shall be entitled to increase in income for future prospects to the extent of 10%. The Tribunal has rightly applied deduction for personal expenses to the extent of 1/3rd and multiplier of 11. In this manner, loss of dependency comes to $\text{Rs.}5200 \times 12 \times 11 + 10\% \text{ (future prospects)} - 1/3^{\text{rd}} \text{ (deduction for personal expenses)} = \text{Rs.}5,03,360/-$.

Under conventional heads, claimants shall be entitled to following compensation in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors. Special Leave Petition (Civil) No. 25590 of 2014, decided on**

31.10.2017:-

1. Loss of consortium to the widow	Rs.40,000/-
2. Expenses on funeral	Rs.15,000/-
3. Loss of estate	Rs.15,000/-
Total	Rs.70,000/-

The compensation assessed by the Tribunal is more to the extent of Rs.9,284/-. Hence, the compensation assessed by the Tribunal is kept intact.

Disposed of accordingly.

08.12.2017
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No