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

FAO No. 8134 of 2014(O&M)

Date of decision: 10.8.2017

Neelam and others ….Appellants

VERSUS

Narinder Kumar and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for the appellants.

Mr. Yogesh Gupta, Advocate for respondent No.3.

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REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') in regard to death of Krishan Kumar in a motor vehicular accident that took place on 20.07.2011.

The Tribunal assessed income of the deceased at Rs.4,500/- per month, adopted a multiplier of 15, added increase in income for future prospects to the extent of 30%, deducted 1/4th for his personal expenses to compute loss of dependency. In addition, a sum of Rs.15,000/- for loss of consortium, Rs.15,000/- for loss of care and guidance for minor children, Rs.15,000/- for funeral expenses was awarded making total compensation to Rs.8,35,200/-. Out of this amount, 50% has been deducted as the deceased has been attributed contributory negligence to that extent, thus, an amount of Rs.4,17,600/- was held to be payable.

Counsel for the appellant, to assail the findings of the Tribunal on issue No.1 holding the deceased negligent to the extent of 50% in causing the accident, would argue that as offending vehicle Tata 407 bearing No.HR38G-8128 was parked in middle of the road without indicators etc. and the deceased had no occasion to notice the said vehicle before hitting it from its backside, proved by an eye-witness to the occurrence travelling in the vehicle driven by the deceased, entire liability for causing the accident is to be fastened upon driver of offending Tata 407 bearing No.HR38G-8128.

With regard to quantum of compensation, counsel has submitted that the Tribunal has assessed income of the deceased on the basis of wage of a casual labour but the minimum wage available in the State of Haryana at the relevant time was Rs.5,000/- per month. The Tribunal has committed a serious error by negating claim of Smt. Dayapatti, mother of the deceased to be dependent upon his earnings. As the deceased was 32 years old, admissible multiplier in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** would be 16 in place of 15. Compensation awarded under conventional heads is not in consonance with the judgments of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** and **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945**.

Counsel representing the insurance company has supported the award attributing contributory negligence to the deceased to the extent of 50%. It is argued that as mother of the deceased was not held to be dependent upon income of Sh. Krishan Kumar, appropriate deduction would be 1/3rd in place of 1/4th because in that eventuality number of dependents would be three.

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

To discharge onus of issue No.1 with regard to accident being the result of rashness and negligence of offending vehicle Tata 407 bearing No.HR38G-8128, claimants examined Salinder son of Sh. Ram Chander PW-2. In his affidavit filed by way of examination in chief, he has reiterated the version brought forth by the claimants attributing sole negligence to driver of the offending vehicle. A relevant extract from his testimony reads as follows:-

> "....the deponent was sitting in the Cabin of the said Canter. On 20.07.2011, at about 4.15 AM, they reached in the area of PS Massorie, District Ghaziabad; in the meanwhile, the offending TATA 407 bearing Registration No.HR-38-G-8128 was parked in the middle of the road by the respondent No.1 in very dangerous manner and without caring for the traffic rules. The indicators, reflectors and parking of the offending stationary TATA 407 bearing Registration No.HR-38-G-8128 were off. Even then no fire was lit behind the offending stationary TATA 407. No tree branches or stones were put behind the offending stationary TATA-407. The Canter of Krishan Kumar struck against the offending stationary Truck from behind side. As a result, both the occupants of the Canter received multiple, serious and grievous injuries. This accident took place due to sole, fault and negligent driving of the respondent No.1, while driving offending TATA-407 bearing Registration No.HR-38-G-8128. After the accident both the injured shifted to Hospital by the police; but Krishan Kumar succumbed to his injuries."

In his cross examination, he has deposed to the following effect:-

> "…I have seen the said vehicle from a distance of about 50 feet and that vehicle was parked on the road, again said on the middle of the road. When we saw light from front side of the coming vehicle, we could not notice that vehicle and due to which, our vehicle struck against the

> parked vehicle from behind. It is incorrect to suggest that the accident was taken place due to our own fault…"

The learned Tribunal in para 24 of the award has held that since the deceased driving the vehicle bearing registration No.HR46-B-5984 had struck against the vehicle, which is considered to be offending vehicle while it was parked on the road, it amounts to a case of contributory negligence and had he been vigilant and there was visibility of more than 50 feet as per statement of Salinder Kumar (PW2), the accident could have easily been avoided and as such it amounts to be a case of contributory negligence and at least 50% cut has to be applied.

There is no challenge to testimony of Salinder Kumar PW2 that the offending vehicle was parked in the middle of the road without any indicators and reflectors to give a pre-warning to the vehicles using that road on the day of occurrence. The accident in question took place at 4:15 AM, meaning thereby that the sun had not risen by that time. There is nothing on record suggestive of the fact that there was any source of light available at the spot. Salinder Kumar PW2 had seen the offending vehicle from a distance of about 50 feet. In the same breath, he has deposed that when they saw light from front side of the coming vehicle, they could not notice that vehicle due to which their vehicle struck against parked vehicle from behind. Statement of Salinder Kumar PW2 is silent about speed of the vehicle driven by Krishan Kumar or what effort was made by Krishan Kumar to see that parked vehicle by using dipper and high beam light successively. Under the circumstances, Krishan Kumar (since deceased) driver of vehicle No.HR46-B-5984 cannot be altogether exonerated of his liability to have contributed in causing the accident. However, taking into consideration that the offending vehicle was lying parked in middle of the road without any indicators and reflectors etc. and the accident took place at 4.15 AM, it would be fair and just that negligence attributable to the deceased is reduced from 50% to 33%. In this context, reference can be made to judgment of Hon'ble the Supreme Court **A.P.S.R.T.C. & Another Vs. K.Hemalatha & Others, 2008(3) R.C.R.(Civil) 589.**

The Tribunal has assessed income of the deceased at Rs.4,500/- per month on the basis of wage of a casual labour. By taking into consideration notification issued by the State of Haryana with regard to minimum wage available at the relevant time, income of the deceased is assessed at Rs.5,000/- per month. The Tribunal has deducted $1/4^{th}$ for personal and living expenses of the deceased, however, mother of the deceased has not been held to be dependent upon his income. If mother of the deceased is not held to be entitled to compensation, admissible deduction would be $1/3^{rd}$ in place of $1/4^{th}$.

To decide the admissible deduction, the first question for consideration is whether findings of the Tribunal negating claim of mother of the deceased are liable to be affirmed or otherwise. There is no denial that the mother is a class-I heir to succeed to the property of her deceased son under the Hindu Succession Act, 1956. Counsel for the insurance company has not disputed that though the term 'legal representative' has not been defined in the Motor Vehicles Act, 1988 but the mother is to be recognized as a legal representative of deceased son.

Competency of a brother to claim compensation under the Motor Vehicles Act, 1939 came up for consideration before Hon'ble the Supreme Court in **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another, AIR 1987 SC**

1690. Hon'ble the Apex Court on a detailed discussion in para 10 and 11 of the judgment has concluded in para 12 thereof in the following terms:-

> "12. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicular accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid."

Counsel for the insurance company is neither in a position to dispute preposition of law laid down in the aforesaid authority nor has cited any contrary judgment. In this view of the matter, findings recorded by the Tribunal rejecting claim of mother of the deceased for grant of compensation cannot be allowed to sustain and liable to be set aside with observations that mother of the deceased is entitled to get compensation. There is no denial that in case mother of the deceased is held to be legal representative of the deceased, admissible deduction would be $1/4^{th}$ as allowed by the Tribunal. Under the circumstances, no interference in deduction for personal expenses of the deceased is justifiable.

The Tribunal has accepted plea of the claimants that the deceased was 32 years old at the time of occurrence. No reason has been assigned by the Tribunal for adopting a multiplier of 15 in place of 16 despite judgment of Hon'ble the Supreme Court in **Sarla Verma's** case (supra) finds reference in para 25 of the award. In view of age of the deceased, multiplier of 16 is allowed. The Tribunal has added 30% income for future prospects. As the deceased was less than 40 years of age, addition for future prospects would be 50% in the light of judgment in **Rajesh and others case** (supra). In this view of the matter, loss of dependency is computed to Rs.10,80,000/- [Rs.9,60,000/- (Rs.5000 x 12 x 16) + Rs.4,80,000/- (50% towards future prospects) – Rs.3,60,000/-(1/4th towards personal expenses)].

Under the conventional heads, an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.1,50,000/- to children and Rs.50,000/- to the mother for loss of love and affection is awarded. In addition, appellants shall be entitled to a sum of Rs.25,000/- for expenses on funeral and another amount of Rs.25,000/- for loss of estate. The total compensation comes to Rs.14,30,000/-. The claimants shall be entitled to 67% of the total compensation as the remaining 33% is attributed to negligence of the deceased himself. The additional amount is Rs.5,35,733/- (rounded off to Rs.5,35,800/-) payable with interest at the rate of 7.5% per annum from the date of petition till realisation, to be shared by the widow and children of the deceased in equal proportion except the amount of Rs.50,000/- payable to mother for loss of love and affection. The remaining terms and conditions of the award shall remain intact.

The appeal is partly allowed in the aforesaid terms.

AUGUST 10, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no