

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

FAO No.2000 of 1995

Date of Decision:-15.10.2018

Rajo Devi and others

...Appellants

Versus

Des Raj and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Abhinav Sood, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for respondent No.3-Insurance Company.

REKHA MITTAL J.(Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Gandhi Ram in a motor vehicular accident that took place on 07.08.1992.

The Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') has assessed compensation to the tune of Rs.3,88,000/-, detailed hereunder :-

Monthly income of the deceased	Rs.2926/-
Deduction for personal expenses	Rs.926/-
Multiplier	16
Loss of dependency	3,84,000/-

Funeral expenses Rs.4000/-

However, the claimants have been held entitle to 50% of the amount as 50% negligence has been attributed to deceased Gandhi Ram.

Counsel for the appellants would urge that findings of the Tribunal attributing 50% negligence to the deceased are erroneous and liable to be modified. It is argued that as accident took place because of the sole rash and negligent driving of offending vehicle i.e. Four Wheeler bearing registration No.HR-05-4560 by Des Raj, its driver issue No.1 is required to be decided against the respondents.

With regard to quantum of compensation, it is argued that claimants are entitle to addition in income for future prospects @ 50% as the deceased was a Government employee. Deduction qua personal expenses should be 1/4th as application for compensation has been filed by the widow, three minor children and parents of deceased Gandhi Ram. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 with the submission that claimants examined Ishwar Singh (PW3) to prove the accident but the Tribunal has refused to rely upon his testimony. Claimants have failed to establish their case that accident is the result of rash and negligent driving of offending vehicle by its driver. Both the vehicles were coming from the opposite directions and in view of testimony of Des Raj (RW1), the Tribunal has rightly held that the present is a case of contributory negligence of both the vehicles to the extent of 50%. He has supported assessment of

compensation by the Tribunal with the plea that claimants have been adequately compensated in view of value of Indian rupee at the relevant time.

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

Before advertng to the submissions made by counsel for the parties, it is appropriate to note the facts in brief pleaded in para 24 of the claim application. As per plea of the claimants, on the fateful day at about 1:00 PM, Gandhi Ram was coming to Karnal side via Kachhwa road on Rajdoot motor-cycle. When he reached near village Kachhwa, Four Wheeler bearing registration No.HR-05-4560, which was coming from the side of Karnal in a zig-zag manner and driven rashly and negligently, came on wrong side and hit the motor-cycle, driven by Gandhi Ram at a normal speed and by observing traffic rules. Gandhi Ram, after being hit by the said four wheeler hit with a tree in the center.

Respondent Nos.1 and 2 before the Tribunal filed reply and, in turn, raised the plea that story put forth by the claimants is false and baseless. Respondent No.1 was driving his four wheeler at a normal speed. The accident, if any, was caused due to fault of deceased himself. If the deceased had been careful a little bit while driving his motor-cycle, the accident could be avoided.

To prove their case, claimants examined Ishwar Singh (PW3). The Tribunal, in view of facts elicited in cross examination of Ishwar Singh coupled with the factum that he is none else but a clerk of counsel

representing the claimants before the Tribunal, refused to rely upon his testimony.

I have gone through the statement of Ishwar Singh in the light of observations made by the Tribunal but find that conclusion drawn by the Tribunal not to rely upon testimony of Ishwar Singh is not erroneous and do not warrant intervention. However, it remains a fact that respondent Nos.1 and 2 have not denied the accident having taken place between the motor-cycle driven by the deceased and four-wheeler driven by Des Raj on the fateful day. Des Raj, driver of the alleged offending vehicle appeared in the witness box and made a statement on oath. He has deposed that he was taking his vehicle from Karnal to Kachhwa. A motor-cycle was seen coming from the side of village Kachhwa, which was coming on wrong side of the road. Back side of his vehicle struck against the motor-cycle, which he did not notice. After about 4-5 months he was implicated in the present case by the police. The witness was suggested by counsel for the claimants that the accident had occurred because of fast speed of the four wheeler and negligent driving of Des Raj but the same was denied. Statement of Des Raj does not make the picture clear as to how the deceased was coming on wrong side of the road because of which backside of his vehicle struck against the motor-cycle. In this view of the matter, it can safely be held that even Des Raj, who was the best person to explain as to how the occurrence in question took place, could not make the things clear or portray the clear picture before the Court. As per the settled position in law, proceedings before the Tribunal are summary in nature and do not admit strict

principles of law of evidence to be applied. In the given scenario, in my considered opinion, it would be in the fitness of things if findings of the Tribunal that the present is a case of contributory negligence of both the vehicles are affirmed and ordered accordingly.

As the vehicle driven by the deceased was a two wheeler and the other vehicle driven by Des Raj was bigger in size being a four wheeler, it is supposed to take more care and precaution to save smaller vehicle being caused harm, thus, negligence attributed to the deceased is reduced to the extent of 30%. In this view of matter, findings of the Tribunal on issue No.1 are modified accordingly.

This brings the Court to compensation assessed by the Tribunal. Joginder Singh, Constable from S.P. Office, Karnal (PW2) has proved salary of the deceased at Rs.2926/- per month. The deceased was born on 10.12.1952 and passed away on 07.8.1992 meaning thereby that he was less than 40 years of age on the date of occurrence. Accordingly, claimants are entitle to addition in income for future prospects @ 50%. The application for compensation has been filed by the widow, three minor children and parents of deceased. Admissible deduction for personal expenses would be 1/4th. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at ₹6,32,016/- [2926 x 12x16= 5,61,792+2,80,896(50%)-2,10,672(1/4th)].

Under conventional heads, claimants shall be entitle to Rs.1,00,000/- detailed hereunder :-

Loss of consortium to the widow and three minor children	Rs.80,000/- (Rs.20,000/- each)
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Funeral expenses	Rs.10,000/-
Loss of estate	Rs.10,000/-

Total compensation is Rs.7,32,016/- and 70% thereof payable to the claimants is Rs.5,12,411/-. The claimants shall be entitle to the aforesaid amount minus the amount already paid to them in terms of the award passed by the Tribunal. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization, payable to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

October 15, 2018
Vijay Asija

(**REKHA MITTAL**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No