

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

FAO No.2440 of 2002 (O&M)

Date of Decision: 28.05.2018

Virsa Singh and others

. . . Appellants

Versus

Sukhdev Singh and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Munish Gupta, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for respondent No.3/Insurance Company.

Avneesh Jhingan, J. (Oral)

Present appeal is filed against the award dated 04.01.2002 passed by the Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal').

A motor vehicular accident took place on 28.03.1998. Amandeep Singh, aged 22 years, lost his life in the said accident. He was going on a motorcycle bearing registration No.PB-11-K-3340. The said motorcycle dashed into the backside of a truck bearing registration No.PB-11-D-7225. FIR No.54 dated 29.03.1998, was registered under Sections 304-A, 337, 427 IPC at Police Station Sadar, Rajpura.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

FAO No.2440 of 2002 (O&M)

Unfortunate parents who lost their young son, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') before the Tribunal.

The Tribunal held that there was contributory negligence and the driver of the truck was held 25% negligent for causing the accident. The Tribunal further held that since both the parents were working, hence, no compensation was to be awarded and only ₹ 50,000/- was awarded for no fault liability and ₹ 5000/- for funeral expenses.

Learned counsel for the appellants contended that the Tribunal erred in not awarding compensation even to the mother of the deceased. His grievance is that the ratio of contributory negligence has wrongly been fixed by the Tribunal. Learned counsel for the appellants further contended that the deceased was running a health club and his earnings should be assessed accordingly.

Learned counsel for respondent No.3/Insurance Company contended that the deceased was driving the motorcycle in a rash and negligent manner. He hit the motorcycle from behind the truck, which was standing on the road, hence, the Tribunal has correctly decided the issue of contributory negligence. He contended that no document was placed on record to show that deceased was a partner in health club. There is no evidence adduced regarding his earnings and no accounts were produced, hence, at the most the minimum wages of unskilled labourer should be considered for calculating the compensation.

I have heard learned counsel for the parties and perused the paper book and relevant documents produced by them.

The accident occurred at 09.30 p.m. as per the statement of AW-5 Sarabjit Singh. The findings which have come on record are that the motor cycle driven by Amandeep Singh dashed into the back of the standing truck. It has also come on record that the truck driver had parked his truck on the main road and that too without putting on the indicator lights or the parking lights.

The negligence on the part of Amandeep Singh was that he never saw the standing truck and dashed into it. However, at night time, a

FAO No.2440 of 2002 (O&M)

truck parked on the road and that too without parking lights may not be visible from a distance providing the driver of the two wheeler an opportunity to slow down his vehicle well within time. This, by no means, absolve Amandeep Singh from his contributory negligence.

Keeping in view the facts and circumstances of the case, the truck driver's negligence is held to be 40%. The Tribunal erred in allowing only no fault liability. The deceased was a 22 years bachelor. He was partner in the firm which was running gym (health club). The partnership deed was exhibited as A2. He had taken a loan of ₹ 2,40,000/- from the bank for running the Gym (health club). Out of the said loan amount, an amount of ₹ 1,18,000/- was paid back, the said facts were proved in the deposition of AW3 Inderjit Singh, claimant No.3. Albeit no proof of earning of the deceased was adduced, yet, it would not be appropriate in such a case to equate the deceased with an unskilled labourer. Having clue from the minimum wages prevalent at the time of accident i.e. ₹ 1,600/- per month, the earning of the deceased is assessed at ₹ 2,000/- per month.

In consonance with the decision of Hon'ble Supreme Court in **National Insurance Company Limited Versus Pranay Sethi and others, 2017 AIR (SC) 5157**, 40% future prospects are to be awarded. The appellants would be entitled to ₹ 15,000/- each for loss of estate and funeral expenses. 1/2 deduction is made for personal expenses and multiplier of 18 is to be applied.

For the reasons mentioned above, the compensation is calculated as under:-

Monthly earning	₹ 2,000/-
40% future prospects	₹ 800/-
½ deduction for self expenses	₹ 1,400/-
Applying multiplier of 18	1400 x 12 x 18 = ₹ 3,02,400/-
Loss of estate	₹ 15,000/-
Funeral expenses	₹ 15,000/-
Total	₹ 3,32,400/-

The award dated 04.01.2002 is modified to the extent that the amount awarded of ₹ 55,000/- is enhanced to ₹ 3,32,400/-.

FAO No.2440 of 2002 (O&M)

The appellants/parents of the deceased would be entitled to only 40% of the enhanced amount, i.e. an amount of ₹ 1,32,960/- because of the contributory negligence along with interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

May 28, 2018
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No