

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

FAO No. 3266 of 1996

Date of Decision: December 20 , 2018.

Bimla Devi and others

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ramesh Hooda, Advocate
for the appellants.

Mr. Pawan Kumar Jangra, Addl.AG, Haryana.

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Rohtak (for short, the 'Tribunal') vide impugned award dated 02.09.1996 on account of death of Rajbir Singh in a motor vehicle accident. Claimants have also challenged finding of the learned Tribunal on contributory negligence on the part of Rajbir Singh.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Rajbir Singh, who lost his life in a motor vehicle accident which took place on 27.12.1992. As per the pleadings in the claim petition, a Haryana Roadways bus bearing No.HR-31-845 being driven by Rajbir, was going from Rohtak to Jind on 27.12.1992. At that

every time, another bus bearing No.HR-12-9618 being driven by Umed Singh came from the opposite side i.e., from Jind side. Both the buses collided against each other on Rohtak-Jind road, near village Lakhanmajra, as a result of which 15 passengers of both the buses including both the drivers had died, whereas 29 others were seriously injured. FIR No.335 under Sections 279/337/304A IPC, Police Station Meham was registered in respect to the accident. Learned Tribunal while holding that as there was a head-on collision, both Umed Singh –driver of bus No.HR-12-9618 and Rajbir Singh (deceased), driver of bus No.HR-31-845 were equally negligent. Therefore, deduction to the extent of 50% was effected in the awarded amount.

It is relevant to note, at this stage, that 44 claim petitions were filed in respect to the abovesaid accident, 15 in respect of the unfortunate persons who died in the accident and 29 by those injured. A number of claim petitions were settled before the Lok Adalat. FAO Nos.3264, 3265, 3274 and 3283 of 1996 and FAO No.172 of 1997 stand decided. Claim petition filed by legal representatives of the driver of the offending bus No.HR-12-9618, namely, Umed Singh was settled before the Lok Adalat with the legal representatives accepting the agreed compensation, while accepting the case to be that of contributory negligence on the part of Umed Singh.

Present is an appeal filed by the legal representatives of Rajbir i.e., the driver of the other bus No.HR-31-845 which was proceeding from Rohtak to Jind.

Learned counsel for the appellants argues that there is nothing on record to indicate contributory negligence on the part of Rajbir which led to the accident in question. Said finding of the learned Tribunal is unjustified, incorrect

and not based on the evidence on record. Learned counsel also prays for enhancement of the compensation awarded by learned Tribunal vide impugned award.

Per contra, learned counsel for the State submits that contributory negligence to the extent of 50% has been correctly assessed by the learned Tribunal which calls for no interference. Legal representatives of Umed Singh duly accepted the compensation while accepting the case to be of contributory negligence and no distinction should be made in this case. Dismissal of the appeal is thus prayed for.

I have heard learned counsel for the parties and have perused the available record.

It is a matter of record that the FIR (Ex.PW16/B) in question was registered immediately on the statement of Satbir, who witnessed the accident, being a pedestrian, present at the spot. Satbir specifically stated that the bus coming from Rohtak to Jind i.e., HR-31-845, which was driven by Rajbir Singh, was travelling at a moderate/slow speed on the left side of the road i.e., on its correct side. However, bus No.HR-12-918 coming from Jind towards Rohtak (driven by Umed Singh) was being driven in a rash and negligent manner at a high speed. The said bus driven by Umed Singh went onto its wrong side and collided with the bus coming from Rohtak towards Jind. A perusal of the site-plan (Ex.PW16/A) clearly reflects that the bus driven by Rajbir Singh was on its correct side and it was the bus being driven by Umed Singh which crossed over towards its wrong side. Furthermore, PW15 Mehar Singh clearly deposed that he saw the accident. He stated that it was the bus proceeding from Jind to Rohtak which was driven in a rash and negligent manner. He further deposed that Satbir,

propounder of the FIR, belonged to his village and Satbir had lodged the report with the police. In cross-examination, PW15 Mehar Singh explained that it was the sides of both the buses which struck against each other. Thus manner in which the accident took place is clearly spelt out. There is no evident reason to doubt the credibility of the statement of PW15 Mehar Singh.

I do not find any merit in the argument raised by learned counsel for the respondent-State that as the propounder of the FIR, Satbir, was not examined by the claimants, therefore rash and negligent act on the part of the driver Umed Singh is not proved in this situation. Similarly, contention that as there was a head-on collision, negligence on the part of the deceased-Rajbir is evident, is rejected being untenable. Merely because there is a head on collision, it cannot per-se lead to an inference of contributory negligence on the part of both the drivers. Evidence on record does not justify such a conclusion.

In the present proceedings, the claimants are required to prove their case on the touchstone of preponderance of probabilities and not beyond reasonable doubt. In this case, FIR (Ex.PW16/B) was admittedly registered without any kind of delay. It is specifically mentioned in the said FIR that the driver of the bus coming from Rohtak to Jind was not at fault. PW15 Mehar Singh, who is a co-villager of Satbir and an eye-witness of the accident, also narrated the facts as above. There is nothing on record to disbelieve the version as put-forth by the claimants. Therefore, finding of the learned Tribunal in respect to contributory negligence to the extent of 50% by Rajbir Singh is set-aside. It is held that the accident in question took place solely due to the rash and negligent driving of Umed Singh, who was driving bus No.HR-12-9618.

Deceased – Rajbir was admittedly 35 years old at the time of the

accident, employed as a driver with the Haryana Roadways, receiving a salary of ₹2,511/- per month. Increase in income at the rate of 50% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680. As per the judgment of the Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77, deduction to the extent of 1/4th instead of 1/3rd is to be effected as the claimants in this case are widow, four minor children and mother of the deceased i.e., six in number. Multiplier of 16 has been correctly applied. ₹15,000/- each towards funeral expenses and loss of estate are awarded to the appellants. In terms of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018, the appellants/claimants are entitled to ₹40,000/- each on account of loss of consortium.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	2,511 per month i.e., 30,132 per annum
2.	Total income after addition at the rate of 50% on account of future prospects	30,132 + (30,132 x 50%) = 45,198
3.	Income after 1/4 th deduction on account of personal expenses	45,198 – (45,198 x 1/4) = 33,899
4.	Total dependancy after applying a multiplier of 16	(33,899 x 16) = 5,42,384
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium @40,000	40,000

8.	Loss of parental consortium @40,000	40,000 x 4 = 1,60,000
9.	Loss of filial consortium	40,000
Grand Total		₹8,12,384/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

December 20 , 2018.
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(LISA GILL)
JUDGE

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