

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : 26.10.2018

FAO No.1983 of 2001 (O&M)

Jasmeet Kaur and others

..... Appellants

Versus

Gulzar Singh and others

..... Respondents

FAO No.1984 of 2001 (O&M)

Sarabjeet Kaur and others

..... Appellants

Versus

Gulzar Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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

Mr. D.K.Prajapati, Advocate for
Mr. M.S.Joshi, Advocate
for respondent No.1.

Mr. Sanjeev Pabbi, Advocate
for respondent No.3.

Mr. S.S.Tiwana, Advocate
for Mr. Jagroop Singh, Advocate
for respondent No.4.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two appeals.

Both these appeals have been filed against the award dated 09.11.2000 passed by the Motor Accident Claims Tribunal, Patiala for the deaths of Mohan Singh and Nirmal Singh. These appeals arise out of the dismissal of two claim petitions which arose from the same accident. It was alleged in the claim petition that on 22.09.1995 the two deceased persons namely Mohan Singh and Nirmal Singh boarded the bus from Bahadurgarh and sat on the front seat but due to the rash and negligent driving of the said bus an accident took place as a result of which both died. The tribunal found that actually both the two persons were sitting on the roof of the bus and they were hit by a heavy branch of a tree as a result of which they fell down on the road and suffered fatal injuries. He held that the claimants had not come to the tribunal with clean hands and dismissed the claim petition.

Since a very limited point has been raised for the consideration of this Court further detailed reference to the facts is not necessary.

Learned counsel for the appellants has argued that no doubt the claimants had stated that the deceased were traveling inside the bus and even if this statement was found to be not correct the tribunal should not have taken such a harsh view of what is essentially a beneficial legislation. Learned counsel for the insurance company has defended the order of the tribunal.

I find that in the case of Mohan Singh bearing FAO No.1983-2001, the claimants were his widow, his minor daughter, his

father and his mother and in the case of Nirmal Singh bearing FAO No.1984 of 2001, the claimants were his widow, two sons and two daughters who were all stated to be minor. Even if some wrong conduct can be attributed to the adults atleast no wrong conduct can be attributed to the minors. It can also not be lost sight of that the persons have died and this act is a beneficial legislation. Under the Motor Vehicles Act, 1988 the Court does not play its traditional role of an unbiased referee but the role of the Judge is more a kin to that under the continental system where Judges take on a more pro-active role. The mandate of the Act is to give 'just compensation'. In the circumstances, I have no hesitation in holding that the dismissal of the claim petitions was wrong. I consequently, set aside this finding. However, there can be no doubt that even the deceased were at fault in traveling on the roof of the bus and the tribunal has held that there was contributory negligence on their part and on part of the Driver.

Learned counsel for the insurance company has argued that the matter should be remitted back to the Tribunal since the compensation amount has not been worked out. On the other hand the counsel for the appellants points out that the salary and multiplier has been worked out by the tribunal. He has pointed out that the accident took place more than 23 years ago and consequently, it would be extremely hard to remit the cases back.

Counsel for the insurance company points out that apart from the compensation for death the claimants had also prayed for medical expenses of Nirmal Singh.

Counsel for the appellants states that he would not press the medical expenses and would be satisfied only with compensation for the death. In the circumstances, as regards the claim arising from the death of Mohan Singh, his salary has been proved to be Rs.5,000/- per month. Since he was 24 years old he would be entitled to 40% on account of future prospects in view of the judgment passed in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*** and the multiplier would be 18 in view of the judgment of the Supreme Court in the matter of ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.*** Counsel for the respondents are not in a position to deny these facts. Ordered accordingly. The deduction would be 1/3rd.

Further counsel for the appellants has argued that the Tribunal has awarded nothing under conventional heads and as per the judgment passed in ***Pranay Sethi (supra) and Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018,*** funeral expenses, loss of estate, filial consortium etc. had to be granted. Keeping that in mind the total contribution under conventional heads would have been Rs.1,50,000/-. I find this to be indeed so. Consequently, I grant Rs.30,000/- for funeral expenses, loss of estate and transportation charges along with a sum of Rs.40,000/- as consortium to the widow and Rs.40,000/- each as filial consortium to the minor daughter and mother.

Apart from the individual amounts awarded the widow and daughter would get 40% each and the mother would get 20%.

As far as the case of Nirmal Singh is concerned, he was 35 years old and was drawing salary @ Rs.2,998/- per month say Rs.3,000/- per month and applying the same principle as in the case of Mohan Singh I grant him 40% on account of future prospects in view of the judgment passed in ***Pranay Sethi (supra)*** and the multiplier should be 16 in view of the judgment passed in ***Sarla Verma (supra)***. The deduction would be 1/4th in this case and under the conventional heads, I grant Rs.40,000/- as consortium to the widow. I grant Rs. 30,000/- each as filial consortium to the minor sons and a sum of Rs.40,000/- each as filial consortium to the two minor daughters along with Rs.30,000/- for funeral expenses, loss of estate and transportation charges in view of the judgment passed in ***Pranay Sethi (supra)***. It is made clear that in this case apart from the individual amounts the claimants would be equally entitled to the compensation.

In both the cases, the rate of interest would be 12% per annum in view of the judgment passed in ***Magma General Insurance Company Ltd. Supra.*** In the circumstances, the entire compensation would carry interest @ 12% from the date of filing of claim petition till the date of payment.

Since I have held the driver guilty of contributory negligence for having permitted the persons to travel on the roof, the insurance company is granted the recovery rights. I apportion this contributory negligence at 50% on the part of the Driver and 50% on the part of the

deceased. In both the cases the compensation would be 50% in view of the contributory negligence.

Both the appeals are allowed in the above terms and the awards are modified accordingly.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

26.10.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No