

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

**FAO No.5246 of 2010 (O&M)
Date of Decision: 20.09.2018**

Smt. Charno and another

..... Appellants

Versus

Mohinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Vijay Lath, Advocate for the appellants.

Mr. Baldev Kapoor, Advocate for respondent Nos.1 and 2.

Mr. Raja Bahadur Singh Jain, Advocate for respondent No.3.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed by the claimants under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned Award dated 16.11.2009, passed by learned Motor Accident Claims Tribunal, Rupnagar (*for short 'Tribunal'*) for enhancement of compensation on account of death of Nirmal Singh (*for short 'deceased'*).

(2) The claim petition was filed before learned Tribunal by appellants, claiming compensation of ₹ 10,00,000/- (Ten Lakh), but learned Tribunal accepted the same partly while attributing 50% negligence to the deceased and awarded compensation of ₹ 1,81,000/-.

(3) Brief facts of the case are that on 27.02.2008, deceased-Nirmal Singh along with Gurnam Singh, Gurdial Singh and other persons was coming back from Delhi to their village (District Ropar), Punjab in a private bus bearing registration No.PB-12G-5603 (*for short 'offending vehicle'*),

driven by respondent No.1-Mohinder Singh and owned by respondent No.2. On the way, the offending vehicle took a halt for the passengers to answer the call of nature and deceased also got down from the same. While he was likely to board the offending vehicle, all of sudden, respondent no.1 drove it and as a result thereof, deceased was crushed under its rear tyre and died on the spot. An FIR No.25 dated 27.02.2008, under Sections 279 and 304-A IPC, Police Station Sadar, Rupnagar was registered in the matter.

(4) Upon notice, respondent Nos.1 and 2 filed joint reply and, *inter alia*, raised the plea that no accident had taken place, however, it was admitted that the offending vehicle was owned by respondent no.2.

Respondent No.3 filed separate reply and denied the averments made in the claim petition as well as factum of accident. Further submitted that driver of the offending vehicle was not holding a valid and effective driving license at the time of alleged accident and as such, there is a violation of the Insurance Policy.

(5) On the basis of pleadings of both the sides, learned Tribunal framed the following issues:-

1. *Whether Nirmal Singh had died due to the injuries sustained in a motor vehicular accident dated 27.02.2008 at about 2.15 am in the area of village Ghanauli caused by respondent no.1 while driving bus bearing No.PB-12G-5603 rashly and negligently ? OPP*
2. *Whether respondent No.1-driver was not holding a valid and effective driving licence at the time of alleged accident? If so, its effect? OPR*
3. *Is the petition not maintainable as alleged? OPR*
4. *Whether the claimants are the legal representatives of deceased Nirmal Singh and are entitled to get*

compensation ? If so, to what amount and from whom?
OPP.

5. *Relief.*

(6) Claimants/appellants, in order to prove their case, examined Gurnam Singh as PW-1 and Charno as PW-2. Documentary evidence i.e. FIR (Ex.P-1) and Post Mortem Report (Ex.P-2) were produced on record.

On the other hand, respondents did not produce any oral evidence, but learned Counsel for respondent Nos.1 and 2 tendered into evidence copies of documents i.e. driving license (Ex.R-1); Verification Report (Ex.R-2); Registration Certificate (Ex.R-3); Route Permit (Ex.R-4) and Insurance Policy (Ex.R-5). Learned Counsel for respondent No.3 also tendered Insurance Policy (Ex.R-6).

(7) Learned Tribunal, while deciding Issue Nos.1 and 3, came to the conclusion that deceased (Nirmal Singh) died in the accident on 27.02.2008 due to rash and negligent driving of the offending vehicle by respondent No.1, but at the same time, held that deceased was also negligent up to the extent of 50% for the accident in question.

While deciding Issue No.2, learned Tribunal found that respondent No.1 was holding a valid and effective driving license at the time of accident. Registration Certificate as well as Route Permit of the offending vehicle were also held to be genuine.

Learned Tribunal, while deciding Issue No.4, came to the conclusion that appellants are legal representatives of deceased and held them entitled for compensation while taking into consideration the fact that deceased himself was negligent up to the extent of 50%.

Learned Tribunal assessed the monthly income of deceased as ₹ 4000/- and after deducting $1/3^{\text{rd}}$ towards his personal expenses, calculated the annual dependency of ₹ 32,000/- ($₹ 4,000 \times 12 = ₹ 48,000 - ₹ 16,000$). Since deceased was 51 years of age at the time of accident/death, therefore, learned Tribunal applied the multiplier of 11 and worked out the total compensation as $₹ 32,000 \times 11 = ₹ 3,52,000/-$. In addition, an amount of ₹ 5000/- was awarded for loss of consortium as well as ₹ 2500/- for loss of estate and ₹ 2500/- for funeral expenses. In this way, total compensation was calculated as ₹ 3,62,000/- ($₹ 3,52,000 + ₹ 5000 + ₹ 2500 + ₹ 2500$). As already mentioned, deceased was attributed negligence up to the extent of 50%, therefore, the compensation to be payable was worked out as ₹ 1,81,000/-.

(8) It is argued on behalf of the appellants that learned Tribunal has committed a grave error of law while attributing 50% negligence to the deceased despite the fact that neither as per reply of the respondents; nor in evidence, the plea of negligence on the part of deceased had been raised, yet learned Tribunal, at its own, recorded the erroneous finding and attributed 50% negligence to the deceased. Further argued that appellants are entitled for compensation towards future prospects as well as under other conventional heads in view of the judgment of Hon'ble Supreme Court in '*National Insurance Company Limited Versus Pranay Sethi and others*', (2017) 16 SCC 680.

(9) On the other hand, learned Counsel for Insurance Company has vehemently opposed the contentions of learned Counsel for the appellants and submitted that learned Tribunal has rightly attributed the negligence

up to the extent of 50% to the deceased and the same does not require any interference by this Court and prayed for dismissal of the present appeal.

(10) Heard arguments from both sides and perused the record.

(11) Respondents have neither filed any substantive appeal; nor cross-objections against the impugned award. Even no argument has been raised regarding the age, income, validity of driving license of respondent no.1 and route permit of the offending vehicle, therefore, findings to that effect are affirmed.

(12) The points for determination in the present appeal are:-

1. *Whether attribution of 50% negligence to the deceased by learned Tribunal, while deciding Issue No.1, is legally sustainable or not?*
2. *What should be the 'just compensation' to be awarded in favour of appellants in view of the facts and circumstances of the present case?*

(13) This Court has carefully gone through the replies filed by respondents, but none of them have taken the plea that accident in question had taken place due to the negligence of deceased or he was responsible for the same in any manner and their categoric stand is that no such accident had taken place at all with the offending vehicle on 27.02.2008.

PW1-Gurnam Singh, who happens to be the witness of the accident in question, narrated the entire contents of the claim petition verbatim and duly supported the same. He deposed that when deceased was in the process of boarding the offending vehicle from the left side, then immediately, respondent No.1 (driver) started the same in a rash and negligent manner and hit the deceased by taking it on the wrong side of the road and due to which, deceased suffered injuries and died.

During cross-examination, he denied the suggestion that deceased tried to board the offending vehicle when it has already started and during this process, he was run over under the rear tyre of the bus. Specifically denied that accident had taken place due to the fault of the deceased.

It is necessary to mention here that even neither driver-respondent No.1; nor conductor of the offending vehicle appeared as witnesses to attribute the plea of negligence to the deceased. Still further, learned Tribunal also did not disbelieve the testimony of PW-1, but despite that, while deciding Issue No.1, recorded the findings that deceased was responsible up to the extent of 50% negligence for the accident in question, which is based on conjunctures and not on substance.

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that the findings of learned Tribunal on Issue No.1, thereby holding the deceased responsible up to the extent of 50% negligent, deserves to be interfered and the same is set aside.

Consequently, it is held that deceased died in the accident in question on account of rash and negligent driving of the offending vehicle by respondent No.1 and deceased cannot be held responsible for the same in any manner.

(14) Learned Tribunal, while deciding Issue no.4, found that in view of the testimony of PW-2, deceased was having two acre of land and after his death, same is being given on *Batai* (annual lease) for ₹ 5000/- and taking into consideration the managerial capacity, assessed his monthly income ₹ 4000/-. Evidently, the deceased was 51 years of age, therefore,

multiplier of 11 has rightly been applied by learned Tribunal in view of the judgment of Hon'ble Supreme Court in '**Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121**'. But, in view of the judgment of **Pranay Sethi's case (supra)**, the appellants are entitled for addition of 10% on the annual income of deceased along with compensation under conventional heads i.e. ₹ 15,000/- for loss of estates, ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

(15) Resultantly, in the opinion of this Court, the following amount of compensation would be the 'just compensation' for which the appellants are entitled in the present case on account of death of Nirmal Singh:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Monthly income of the deceased	₹ 4000
(ii)	Annual income of the deceased	₹ 4000 x 12 = ₹ 48,000/-
(iii)	1/3 rd of (ii) deducted for personal expenses	₹ 48,000/- - ₹ 16,000/- = ₹ 32,000/-
(iv)	10% of addition for future prospects	₹ 32,000/- + ₹ 3200/- = ₹ 35,200/-
(v)	Net annual income of the deceased	₹ 35,200/-
(vi)	Multiplier	11
(vii)	Total loss of dependency	₹ 3,87,200/-
(viii)	Compensation for loss of estate	₹ 15,000/-
(ix)	Compensation for loss of consortium	₹ 40,000/-
(x)	Compensation for funeral Expenses	₹ 15,000/-
	<i>Total Compensation</i>	₹ 4,57,200/-

Keeping in view the untimely death as well as loss & agony suffered by appellants, they are also held entitled for interest @ 7.5% per annum from the date of filing of claim petition till realization of the amount of compensation.

In view of above, the present appeal is accepted and the impugned award dated 16.11.2009, passed by learned Tribunal, is modified. The amount of compensation is enhanced from ₹ 1,81,000/- to ₹ 4,57,200/-. Needless to say that amount of compensation, if already paid to the appellants, shall be adjusted and the remaining balance amount shall be paid to them in the same proportion as awarded by learned Tribunal within a period of six weeks from the date of receipt of certified copy of this order.

September 20, 2018
dkp/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>