In the High Court of Punjab and Haryana at Chandigarh.

FAO-4851 of 2011 (O&M) with
Cross Objection No.118-CII of 2012
Date of Decision : 21.5.2018

Kiran Sethi and Others ……………….*Appellants*

Versus

Sabharwal Bus Service and others ……….......*Respondents*

CORAM: **HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. N.K.Bansal, Advocate, for the appellants.

Ms. Ekta Thakur, Advocate,
for respondents No.1 & 2/cross -objectors.

Mr. Suvir Dewan, Advocate, for respondent No.3.

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GURVINDER SINGH GILL J.

1. This order shall dispose of the above mentioned appeal filed on behalf of the appellants-claimants seeking enhancement of compensation as well as the cross-objections filed on behalf of driver of the offending vehicle.

2. The appellants-claimants Smt. Kiran Sethi along with her two minor children had filed claim petition in terms of Section 166 of the Motor Vehicle Act, 1988 seeking compensation on account of death of her husband Manpal, aged 50 years, in a vehicular accident which allegedly took place on 23.11.2009, when the deceased was going on his scooter from his house situated in Bhim Nagar, Gurgaon to 54, ASP, Air Force Station, Gurgaon where he was employed as Industrial Labour. It is the case of claimants that when he reached near Azul Kataria Chowk, a bus bearing registration No.DL-1-PB-6050 came from

wrong side in a rash and negligent manner and hit against the scooter of the deceased resulting in multiple injuries, ultimately leading to his death. The appellants-claimants, thus, prayed for award of compensation on account of death of Manpal in the aforesaid vehicular accident.

3. The claim petition was resisted by the respondents who filed written statements denying all the material averments of the claim petition. The parties were put to proof on the following issues :-

1. Whether the accident in question was caused by respondent No.1 while driving vehicle bearing registration No.DL-1-PB-6050 in a rash and negligent manner resulting into death of Manpal, as alleged? OPP

2. If issue No.1 is proved, whether the claimants are entitled to any compensation and if so to what extent and from whom? OPP.

3. Whether the respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR (3)

4. Relief.

4. The learned Tribunal, upon appreciating the evidence on record held that the accident in question had occurred on account of “contributory negligence” of the deceased as well as driver of the offending vehicle to the extent of 50% each. The Tribunal, thus, after assessing the total amount of compensation as ₹ 10,48,000/-, awarded 50% of the same to the claimants i.e. an amount of ₹5,24,000/-, being a case of “contributory negligence” to the extent of 50%. Aggrieved with the aforesaid award dated 19.11.2010, the claimants have filed the present appeal seeking enhancement of compensation, whereas the driver

has filed cross-objections on the ground that since he was possessing a valid driving licence, the insurer is bound to indemnify him.

5. The learned counsel for the claimants has first of all assailed the findings of the learned Tribunal as regards the "contributory negligence" and has submitted that the Tribunal has reached at the said conclusion without there being an iota of evidence to hold that the deceased, in any manner was himself negligent in driving his scooter.

6. Having perused the impugned judgment, it is found that the Tribunal has not assigned any convincing reason for holding that the deceased had also contributed in causing the accident. In the present case, the claimants have examined PW-5 Rahimuddin who is author of the FIR and who has categorically stated that he had noticed the bus being driven at a high speed and in a rash and negligent manner which had hit the scooter from the front side by coming on the wrong side, as a result of which the scooterist Manpal sustained grievous injuries and ultimately succumbed to his injuries. Despite having been cross-examined at length, nothing substantial could be elicited during his cross-examination so as to doubt veracity of his statement. No evidence has been led by the respondents to rebut his testimony. So much so, even the driver of the offending bus i.e. respondent No.2 has not stepped in the witness box. In these circumstances, from the testimony of PW-5 Rahimuddin – eye witness, it is evident that it was solely on account of rash and negligent driving on part of respondent no.2 that the accident had taken place. The mere fact that vehicles were coming from opposite sides cannot lead to an inference that it is a case of contributory negligence. Consequently, the findings of the learned Tribunal to the effect that it is a case of "contributory

negligence" are modified and it is held that the accident in question had occurred solely due to rash and negligent driving on part of respondent no.2 i.e. driver of the bus.

7. As regards quantum, the learned Tribunal while accepting the pay-slip in respect of salary of the deceased for the month of October, 2009 wherein the gross salary has been mentioned as ₹ 18,156/- proceeded to deduct the amounts which the deceased was getting on account of Transport Allowance and HRA from his income and his net salary of ₹ 12,850/- was taken into account.

8. It is well settled that it is only the income tax, which can be deducted from the salary and all other allowances which a person is getting on account of his employment have to be taken into account while assessing the dependency of members of his family. In the present case, it has come in evidence that an amount of ₹ 193/- was being deducted towards income tax. Thus, after deducting the said amount from the gross salary of ₹ 18,156/-, the net salary works out to ₹ 17,963/-. Some amount on account of prospects of increase in income in future also needs to be added as per dictum of Hon'ble Supreme Court in *(2017) 16 SCC 680 National Insurance Company Limited Vs. Pranay Sethi and others.* It may here be noticed that the date of birth of the deceased, as recorded in his driving licence Mark-A is 8.4.1960. Since there is no dispute that the deceased was aged around 50 years, therefore, this Court has no hesitation in accepting the said date of birth i.e. 8.4.1960. In other words, the deceased as on the date of accident i.e. on 23.11.2009 was aged a little less than 50 years. Bearing in mind the age of deceased which has been assessed

as 50 years, the amount equivalent to 30% needs to be added towards "future prospects". Thus, by adding 30% i.e. an amount of ₹5,389/-, the income works out to ₹ 23,352/-. In other words, the annual income works out to ₹ 2,80,224/- (23,352 x 12 = 2,80,224/-). The deceased must have been spending some amount on his personal expenses. Bearing in mind the number of claimants, it can reasonably be expected that the deceased must have been spending at least one-third of his income on his personal expenses and thus after deducting one-third from the above assessed income, the dependency works out to ₹ 1,86,816/-. In view of age of the deceased i.e. 50 years as assessed, a multiplicand of 13 would be appropriate bearing in mind the dictum of Hon'ble Supreme Court in ***(2009) 6 SCC 121 - Sarla Verma and others vs. Delhi Transport Corporation and another.*** By applying the said multiplier, the compensation works out to ₹ 24,28,608/- (1,86,816x13 = 24,28,608). Claimant no.1, being widow of the deceased is entitled to an amount of ₹ 40,000/- towards loss of consortium. Additionally, the claimants are also entitled to an amount of ₹ 15,000/- towards loss to estate and another ₹ 15,000/- towards funeral expenses. Thus the total compensation would work out to ₹ 24,98,608/-

9. The learned counsel for the cross-objectors i.e. respondent no. 1 and 2 has submitted that the learned Tribunal fell in error in giving "recovery rights" to insurer despite the fact that the driver is possessing a valid driving licence. In this regard, the learned counsel has drawn attention of this Court to order dated 30.11.2015, wherein it is recorded that the learned counsel for respondent no.3-Insurance company had stated categorically that the driving licence of respondent no.2 has been found to be valid.

10. Today, the learned counsel for respondent no.3- Insurance company has filed an affidavit of Shri A.L.Madan, Manager, the New India Assurance Company Limited along with verification report in respect of the driving licence of respondent no.2 and also verification certificate as per which the licence in question is reported to be valid. The said documents are taken on record, having been filed by learned counsel for the insurer. It is held that respondent no. 2 was possessing a valid driving licence. Consequently, the Insurance company, in view of the terms of insurance policy is bound to indemnify the insured. Thus, it is held that the compensation awarded to the claimants shall be payable by respondent no.3 only.

11. In view of the discussion made above, the appeal as well as the cross-objections stands accepted to the extent indicated above. The impugned award in question is modified and the compensation awarded to the claimants is enhanced to ₹ 24,98,608/- to be paid by respondent no. 3 to the claimants along with interest @ 7.5% w.e.f. the date of filing the claim petition till realisation to be shared by the claimants in the following proportion :-

1.	Claimant No.1	-	₹ 10,98,608/-
2.	Claimant No.2	-	₹ 7,00,000/-
3.	Claimant No.3	-	₹ 7,00,000/-

12. Appeal stands accepted in the above mentioned terms.

(Gurvinder Singh Gill)
Judge

21.5.2018
Kamal

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