

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2632 of 2012

Date of Decision: 18.04.2018

Kavita and others

.....Appellants

Vs.

Mehtab and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Raj Kapoor Malik, Advocate, for the appellants.

Mr.Vishal Aggarwal, Advocate, for respondent No.3.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant(for short 'the appellant'), against award dated 03.12.2011, passed by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') vide which compensation to the tune of Rs.2,57,000/- was awarded to the claimant on account of death of Rajesh son of Gulab Singh and findings of contributory negligence given by the learned Tribunal.

FACTS NOT IN DISPUTE

On 28.11.2009, deceased Rajesh and Jitender were going on scooter bearing registration No.HR-14A-4639 near JCB BNTPL office and the scooter was being driven by Rajesh and in the meantime a JCB machine being driven by its driver (Respondent No.1) in a very rash and negligent manner came and hit against the scooter being driven by Rajesh, both the occupants of the scooter fell down and received serious and multiple injuries. One Mukesh son of Mauli Ram, Caste Kumhar resident of Babu

and Nathu Ram son of Ramphal resident of Matanhel took the injured to Govt.Hospital Jhajjar, but Rajesh succumbed to the injuries on the way and Jitender was referred to PGI (MS) Rohtak. With these details it was claimed that the accident was caused on account of rash and negligent driving of the driver of JCB machine namely Mehtab-respondent No.1. A case bearing FIR (Ex.P-3) has been registered against the respondent No.1.

On notice, respondent No.1 and 2 filed the written statement with preliminary objections were taken that the claim petition is baseless as based on frivolous grounds and the claimants have no locus standi and cause of action. The allegations of the claim petition were controverted alleging that JCB vehicle was not involved in the accident. Respondent No.3 filed a separate written statement on merits taking the plea that the deceased was older than his age shown as 24 years and the deceased was unemployed and was not earning Rs.10,000/- per month. PW-1 Mukesh was eye witness of the occurrence and in his testimony he deposed that on 28.11.2009, deceased Rajesh and Jitender were going on scooter bearing No.HR-14-A-4639 and the scooter was being driven by Rajesh and when the above scooter reached near JCB BNTPL office, one JCB machine came being driven by respondent No.1 hit his vehicle against the Scooter and the scooter fell down and Rajesh and Jitender sustained serious and multiple injuries. However, in the cross-examination, PW-1 admitted that the scooter was coming out of the plant where as JCB machine was going inside the plant and after these deposition it was categorically admitted that it was head on collision between scooter and JCB Machine. Learned Tribunal after taking into consideration the judgment as referred by counsel for the respondent/Insurance Company in

RCR 590, came to the conclusion that accident in question was a result of contributory negligence of deceased Rajesh as well as of respondent No.1 Mehtab and Rajesh succumbed to the injuries received in the accident. As such, compensation was ordered to be born in the ratio of 50 :50 by both the parties i.e. Claimants and respondent No.1.

COMPENSATION ASSESSED BY MACT

Deceased Rajesh was 24 years old at the time of accident. Factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company. The compensation has been assessed as under:

Sr.No.	Heads of compensation	Amount
1	Annual Income	Rs.42,000/-
2.	Deduction 1/3rd	Rs.42000/- ----Rs.14000/-= Rs.28,000/-
3	Total loss of dependency after applying the multiplier	Rs.28,000/- X 18=Rs.05,04,000/-
4.	Conventional heads	Rs.10,000/-
	Total	Rs.5,14,000/-
	Amount of compensation to the claimants due to contributory negligence 50: 50= Rs.5,14,000/-/2= Rs.2,57,000/-	Rs.2,57,000/-

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced in view of the judgment of Supreme Court in the case of "**National insurance Company Ltd. Vs. Pranay Sethi and others passed in SLP (Civil) No.25590 of 2014.** . On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

Learned counsel for the appellants submits that accident took place on the rash and negligence driving of JCB machine because JCB Machine is heavy and the road was not a national highway. He further submitted that road was narrow and JCB machine is taking more space than scooter. As such, deceased is not liable for cause of accident.

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

The argument of the counsel for the appellant/claimants is reasonable keeping in view that it was the duty of the driver of JCB Machine to drive the vehicle carefully in a narrow road at the office premises. As such, finding of the learned Tribunal with regard to ratio of 50:50 contributory negligence is being modified that respondents are only liable to satisfy the assessed amount of compensation to the extent 75% whereas for remaining 25% of the assessed compensation liability goes to the deceased Rajesh himself.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Keeping in view the above, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Annual Income	Rs.3500 X 12=Rs.42,000/-
2.	Future prospects	Rs.42,000/- + Rs.16800/-= Rs.58,800/-
2.	Deduction 1/4rd	Rs.58,800/- ----Rs.14700/-= Rs.44,100/-
3	Total loss of dependency after applying the multiplier	Rs.44,100/- X 18=Rs.7,93,800/-
4.	Conventional heads	Rs.70,000/-
	Total assessed	Rs.8,63,800/-

	compensation	
	Compensation to the claimants of 75% to the total assessed compensation due to contributory negligence	Rs.8,63,800/- X 75%=06,47,850/-
	Enhanced amount of compensation	06,47,850/- -----Rs.2,57,000/- =Rs.3,90,850/-

Resultantly, the enhanced amount of compensation of **Rs.3,90,850/-** shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5%% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors. Vs. The Oriental Insurance Company Limited and Others passed in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

18.04.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No