

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

FAO No. 5510 of 2012 (O&M)

Date of decision : November 12, 2018

Suman and others

.....Appellants

Versus

Shyambir and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep K. Sharma, Advocate
for the appellants.

Mr. Robin Singh, Advocate
for respondent No. 1.

Mr. Ashwani Talwar, Advocate and
Ms. Priya Deep, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed challenging dismissal of the petition under Section 166 of the Motor Vehicles Act filed by the appellants vide award dated 23.04.2012 passed by the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal').

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and children of Suresh (deceased) filed a claim petition seeking compensation on account of his death on 26.07.2011 in a motor vehicle accident caused due to driving of the offending vehicle motorcycle bearing registration No. HR-12J-8260 by respondent No.1 in a rash and negligent manner. It was averred that Suresh was going on bicycle to respond to the call of nature. He was on the left side of the road at a normal pace. When he reached near Chaudhary Gas Agency on Gudhan Road, a motorcycle came from Gudhan side and hit the bicycle of Suresh. As a

result thereof, Suresh sustained multiple injuries and succumbed to them at

PGIMS, Rohtak.

Learned Tribunal on consideration of the facts and circumstances of the case concluded that the claimants failed to prove that the accident in question was caused due to the rash and negligent act on the part of respondent No. 1, who was driving the offending motorcycle. It is observed by the learned Tribunal that there are serious discrepancies in the evidence led by the claimants and they were unable to lead cogent evidence to establish that the accident in question took place due to the rash and negligent driving of the motorcycle even though the accident in question stood admitted by respondent No. 1. Petition was, accordingly, dismissed. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants argues that the accident in question is duly admitted by respondent No. 1 - driver of the motorcycle. It is specifically mentioned in FIR No. 199 dated 27.07.2011 registered at the instance of PW3 - Wazir Singh, that the deceased was coming from the side of Gudhan village on his bicycle and respondent No. 1 was approaching from the side of village Kalanaur on his motorcycle. It is due to rash and negligent act of respondent No. 1 that a collision took place in which brother of PW3 namely Suresh received injuries and ultimately succumbed to them. It is further argued that even if it is accepted that there is some negligence on the part of the deceased, claim petition filed by the present appellants should not have been dismissed throughout. At best it could be a case of contributory negligence and the requisite compensation after deducting the commensurate amount should have been awarded. The deceased, it is submitted, was working as a Contractor with Super Bhatta Company, Nigana earning ₹25,000/- per month. He was the sole bread

earner of the family. He is survived by his widow and three children. It is, thus, prayed that the present appeal be allowed.

Learned counsel for the respondents while refuting the arguments raised by learned counsel for the appellants pray for upholding the award dated 23.04.2012 passed by the learned Tribunal.

Heard learned counsel for the parties and have gone through the record of the case.

It is not in dispute that the accident in question indeed took place involving motorcycle bearing registration No. HR-12J-8260, driven by respondent No. 1. FIR No.199 dated 27.07.32011 (Ex.P5) was registered at the instance of Wazir – PW3 (brother of the deceased) on the same day. Doubtlessly Wazir while recording his statement before the police authorities, which led to registration of FIR in question, stated that his brother was coming from the side of village Gudhan and the motorcyclist from Kalanaur side. However, in his affidavit (Ex.PW3/A), PW3 – Wazir stated that respondent No. 1 was approaching from Gudhan side on his motorcycle. It is further relevant to note that PW3 – Wazir, in his cross examination admitted that he reached the hospital after the accident in question. Evidently he was not an eye witness.

Be that as it may, it is relevant to note at this stage that RW1 Shyambir, who was driving the motorcycle has admitted the factum of accident, which took place on 26.07.2011. He, however, sought to explain the same by stating that it was the deceased who was at fault. The cyclist – Suresh came from the opposite side in a zig-zag manner and struck against his motorcycle on the wrong side. Therefore, the factum of the accident taking place between the cyclist and the motorcyclist – respondent No. 1 is not in dispute. The accident took place at about 8.00 p.m. in the month of

July. Even if it is accepted that the cyclist was on the wrong side of the road, there is a corresponding duty upon the motorcyclist to have taken due care and caution to have applied brakes etc., and try to avoid the accident. Clearly, respondent No. 1 is also at fault. Therefore, learned Tribunal has erred in dismissing the claim petition throughout.

Keeping in view the facts and circumstances of this case, it is concluded that the deceased was guilty of contributory negligence to the extent of 60%. The claimants are entitled to 40% of the compensation assessed.

It is noticed that the learned Tribunal while dismissing the claim petition did not assess the quantum of compensation, though evidence in this respect was led by the parties. The claim petition is of the year 2011. Present appeal has been pending before this Court since 2012.

I do not find any ground for remanding the matter for the purpose of assessing the quantum of compensation. It is considered just and expedient to assess the quantum of compensation on the basis of the evidence, which is already on record.

Learned counsel for the appellants is unable to point out the specific income being earned by the deceased, neither is there anything on record to prove that the deceased was working as a Contractor at Super Bhatta Company at Nigana. In the absence of any specific evidence on record, income of the deceased is assessed at par with a daily wager in the State of Haryana at the relevant time i.e. ₹4,643/- per month.

As the deceased was 48 years old at the time of accident, increment of 25% has to be afforded in terms of the guidelines of the Hon'ble Supreme Court in the case of National Insurance Company

Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009. An increase on account of future prospects at the rate of 25% (₹1160/-) takes the income of the deceased to ₹5,803/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, deduction of 1/4th is to be applied as number of dependants is four (4), thereby rendering income of the deceased to be ₹4352/-(5803-1451). Applying a multiplier of 13, dependency of the claimants is assessed as ₹6,78,912/- (₹4352x12x13). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), appellants No. 2 to 4 i.e. children of the deceased are entitled to ₹40,000/- each on account of loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹8,68,912/- detailed as under:-

Loss of dependency (₹4352x12x13)	₹6,78,912/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium (40,000x3)	₹1,20,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹8,68,912/-

As the deceased is held to be guilty of contributory negligence to the extent of 60%, the amount payable to the claimants – appellants is accordingly, reduced to ₹5,21,347/-. Appellant No. 1 - widow is entitled to 50% of the amount of compensation and the rest of the amount shall be apportioned equally between appellants No. 2 to 4.

Appellants shall be entitled to interest at the rate of 7.5% per annum on the awarded amount of compensation from the date of filing of the petition till realization.

Present appeal is, accordingly, disposed of.

November 12, 2018
rts

(Lisa Gill)
Judge

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