

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

**C.M. No. 31316-CII-2012 in/and
F.A.O No. 6488 of 2012
Date of decision:- 25.01.2018**

Richhpal and others ...Appellants

Versus

Main Pal and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Jainainder Saini, Advocate
for the appellants

Mr. Vikramjeet Singh, Advocate
for respondent Nos. 1 and 2

Mr N.K. Manchanda, Advocate
for respondent No. 3-Insurance Company.

RITU BAHRI J. (Oral)

C.M. No. 31316-CII-2012

For the reasons mentioned in the applications, delay of 352 days in filing of the appeal is hereby condoned.

The application stands disposed of.

F.A.O No. 6488-2012

1. The present appeal has been preferred by the claimants-appellants, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') to the tune of Rs.01,33,000/- vide impugned award dated 29.07.2011.

2. The facts which are not in dispute are that on 27.08.2010, deceased Sharwan Kumar along with Sushil Kumar was going Dhab Mandir on a motorcycle bearing registration No. HR-20S-7846, which was being

driven by Sushil Kumar and Sharwan Kumar was pillion rider. When they reached near stadium village Adampur, the offending motorcycle bearing registration No. HR-20S-2441 being driven by respondent No. 1 came in a rash and negligent manner from the opposite side and struck into the motorcycle of Sharwan Kumar. Sharwan Kumar and Sushil Kumar both fell on the road. Sharwan Kumar received serious and grievous injuries and was shifted to General Hospital Adampur, from where he was referred to General Hospital, Hissar where he expired. F.I.R No. 241 dated 28.08.2010 under Sections 279/337/304A IPC was also registered in this regard against respondent No. 1.

3. As per the Tribunal, the deceased-Sharwan Kumar in the present case was 22 years old at the time of the accident. The Tribunal took the income of the deceased at Rs.4000/- per month and 1/2 was deducted towards personal expenses and thereafter, applied the multiplier of 09 taking the age of parents, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.*** The claimants were awarded Rs.5000/- for the last rites and transportation, Rs.5,000/- towards loss of estate and Rs.40,000/- towards loss of love and affection. The total compensation awarded comes to Rs.2,66,000/- but the tribunal awarded half of the amount of the awarded compensation by holding that this is a case of contributory negligence.

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced. Further it was not a case of contributory negligence, as the driver of the offending vehicle was driving negligently

and thus, respondent No. 3 is liable to pay the compensation amount.

5. Learned counsel for the appellant submits that the multiplier of 09 has also been wrongly applied taking the age of parents of the deceased and in fact the multiplier of 18 has to be applied.

6. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal.

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

8. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be

extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

9. Now coming to the fact that whether the appellants are entitled to half of the compensation amount, as the Tribunal held that it was a case of contributory negligence.

10. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in **Pawan Kumar and another etc. vs/ M./s Harkishan Dass Mohan Lal and others, 2014 (2) RCR (Civil) 764** where an accident had occurred and it was held to be a case of contributory negligence. Hon'ble the Supreme Court held that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to claimants to enforce the award against both or any of them. In paragraph 6 and 7, it has been held as under:-

6. The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz

on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:-

“WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

.....

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous.”

7. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff’s claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in T.O. Anthony (supra) followed in K. Hemlatha & Ors. (supra). Paras 6 and 7 of T.O. Anthony (supra) which are relevant may be extracted herein below:

“6. “Composite negligence” refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need

not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of “composite negligence” will not apply nor can there be an automatic inference that the negligence was 50:50 as has been

assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

11. Applying the ratio of the above said judgment to the facts of the present case, it was not necessary for the appellant to implead the insurance company of the motorcycle in which deceased was a pillion rider. The whole amount of compensation should have been awarded to the appellants by the Tribunal and thereafter, the insurance company of motorcycle of the offending vehicle can file an independent suit for recovery of the amount against the insurance company of the motorcycle in which the deceased was a pillion rider and the motorcycle was being driven by Sushil Kumar.

12. In the present case, the compensation is being reassessed as per the judgments mentioned above:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.4000/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.4000+Rs.1600=Rs.5600/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.5600-Rs.2800=Rs.2800/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.2800 X 12 X 18= Rs.06,04,800/-
(v)	Conventional heads (Loss of estate, loss of consortium and funeral expenses)	Rs.30,000/-
(vi)	Total Compensation awarded	Rs.06,34,800/-
	Enhanced amount of compensation	Rs.06,34,800-Rs.01,33,000=Rs.5,01,800/- (rounded off to Rs.5,02,000/-)

13. Resultantly, the enhanced amount of compensation of Rs.5,02,000/- 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 @ 9% 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 ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. The liability shall therefore be on the respondent No.3-Insurance Company to pay the entire amount of compensation as determined above and it shall be open for respondent No. 3 to file an independent suit for contribution against the owner of the bus, if they are so advised.

14. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

25.01.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No