

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4155 of 2015

Date of Decision: 12.02.2018

Krishna Rani and Anr.

.....Appellant

Vs.

Pawan Kumar and Ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Anshul Mangla, Advocate, for the appellants.

Mr.H.P.S.Bhinder, Advocate, for respondents No.1 and 2.

Mr.V.Ramswaroop, Advocate, for respondent No.3.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the appellant/Claimants (for short 'the appellant'), against award dated 17.11.2014, passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal') vide which the claimants have been awarded compensation to the tune of Rs.4,25,000/- on account of death of Nayan Kumar @ Kumar Nayan @ Golu in a motor vehicular accident.

FACTS NOT IN DISPUTE

On 25.11.2012, Nayan Kumar @ Kumar Nayan @ Golu(since deceased) was coming back from Adibadri-Trilokpur by driving a car bearing registration No.HR02Z-3875 make Ritz alongwith his friends namely Mohit Sharma, Gourav Singla, Rahul being occupants in this case. Nayan Kumar was driving the said car at a normal speed and in his correct left side of the road. When at about 6:00 p.m., they reached near T-point of

village Illiyaspur and Shivalik Institute, Illiyaspur on Sadhaura-Dosarka road, a tractor-trolley bearing registration No.HR01T-6760 make Farmtrac-60 being driven by respondent No.1 in a rash and negligent and zig-zag manner and without obeying traffic norms was going ahead of their car. All of a sudden, respondent No.1 without giving any indication of taking abruptly turned the offending vehicle towards the right side i.e. Towards village Illiyaspur. Nayan Kumar tried his level best to avoid the impact but the car struck against the back side of tractor-trolley. Due to the impact of accident all the occupants of the car except Rahul sustained multiple and grievous injuries on their persons as Rahul sustained simple injuries. All the injured were removed to M.M.Institute of Medical Science and Research/Hospital, Mullana, district Ambala where Mohit Sharma and gourav Singla were admitted for treatment and Nayan Kumar was declared brought dead. In this regard, a case bearing FIR No.228 dated 25.11.2012 for the offence under Section 279, 337, 338, 427, 304-A IPC was registered against respondent No.1 at P.S.Mullana.

COMPENSATION ASSESSED BY MACT

The learned tribunal held that the deceased was 21 years old and at the time of his death he was student of Diploma (Electronics and Communication Engineering), M.M.University, Mullana. In the present case learned Tribunal has placed reliance in the case of Bhagwani Devi vs. Krishan Kumar Saini and others 1986 ACJ 331 whereby, the offending vehicle was going ahead of the the car of the deceased and all of a sudden respondent No.1, driver of offending vehicle without giving any indication of taking turn, abruptly turned his tractor-trolley towards the right side i.e.

struck against the back side of said tractor-trolley. However, the deceased should also have driven his slowly to look for the sudden obstacles or other users of the road and apparently he failed in his duly of circumspection while driving car and hit back side of the tractor trolley. Hitting from behind itself is proof of some negligence though turning without giving indication also contributed to the accident and learned Tribunal recorded the findings that contributory negligence of both the vehicle is evident on record and both were held equally negligent. Keeping in view the deceased was student of B.Tech and was giving coaching to other students, his income was assessed at Rs.10,000/-. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company.

Sr.No.	Heads of compensation	Amount
1	Income of the deceased	Rs.10,000/- p.m.
2	Dependency 50%	Rs.10,000/- --- Rs.5,000/-= Rs.5,000/-
3.	Total loss of dependency after applying multiplier	Rs.5,000/- X 12 X 13=Rs.7,80,000/-
4.	Funeral and last rites	Rs.70,000/-
	Total	Rs.8,50,000/-
	Contributory negligence 50% held by the Tribunal	Rs.8,50,000/- --- Rs.4,50,000/-= Rs.4,50,000/-

Learned counsel for the appellant/applicants contends that the compensation awarded by the Tribunal deserves to be enhanced and he has referred to the judgment in the case of Yerramma and others Vs. G.Krishnamurthy and another 2015 AIR (SC) 1145 whereby, deceased was driving a motor cycle and a bus which going ahead of him took a right turn without giving right turn and motorcycle collided the bus and he died on account of injuries and in this case deceased had no

contributory negligence. In para 7 of the judgment, the Hon'ble Supreme Court has referred to the related judgment and observed as under:

Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.[2] is applicable to the facts of the present case. In the above case, Joy Kuruvila(the deceased) had a head-on collision with a bus approaching from the opposite side. Joy Kuruvila sustained serious injuries and died on the way to the hospital. The Tribunal found that the accident occurred due to the rash and negligent driving of the bus driver. It apportioned the contributory negligence between the driver and the deceased in the ratio of 75:25%. On the basis of the pleadings & evidence on record, in the above said case this Court has held thus on the negligence of the driver of the bus:-

“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. The post mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal and his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext.A-5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was

driving the car rashly and negligently at the time of the accident. The mere suspicion based on Ext. B-2 “scene mahazar” and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like PW3 (independent eyewitness), Ext. B-1 (FI statement) are on record”

In para 9 and 10 of the said judgment it is followed as under:

After thorough consideration of the facts and legal evidence on record in the present case, we are of the view that the collision between the motor vehicles occurred when the respondent-Corporation bus was turning to its right side without showing the turn indicator to enter the bus depot. The driver of the offending vehicle of the respondent-Corporation bus was negligent by not giving the right turn indicator and causing the accident. The driver of the respondent-Corporation bus should have been aware of the fact that he was driving the heavy passenger motor vehicle, and that it was necessary for him to take extra care & caution of the other vehicles on the road while taking the turn to enter the depot. Had the driver of the offending vehicle taken sufficient caution and care, slowed down and allowed reasonable provision for other vehicles on the left side of the road to pass smoothly, the accident could have been averted.

Hence, we are of the view that the Tribunal and the High Court have erred in the apportionment of negligence at 25% on the part of the deceased and 75% on the part of the driver of the respondent-Corporation bus without evidence adduced in this regard by the respondent. But on the other hand, legal evidence produced on record by the appellants in this case would show that the accident was caused on account of the negligence on the part of the driver of the offending vehicle of the respondent-Corporation. Therefore, the erroneous finding recorded by the Tribunal & concurring with the same by the High Court on the question of contributory negligence of the deceased is liable to be set aside. Accordingly, we set aside the same as it is not only

erroneous but contrary to law laid down by this Court in the case of Juju Kurivila (Supra).

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

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

The observations made by this Court in the case of Juju Kuruvila (supra) certainly apply to the fact situation on hand. Based on the evidence recorded in the present case, we are of the opinion that there is no contributory negligence on the part of the deceased but on the other hand the negligence is on the part of the driver of the respondent-Corporation bus. Thus finding on issue No.1 is reversed and Insurance Company is fully liable to pay the compensation to the claimants.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgment, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income of the deceased	Rs.10,000/- p.m.
2	Dependency 1/3rd	Rs.10,000/- --- Rs.3300/-= Rs.6600/-
3.	Total loss of dependency after applying multiplier	Rs.6600/- X 12 X 18=Rs.14,25,600/-
4.	Conventional heads	Rs.30,000/-
	Total	Rs.14,55,600/-
	Enhanced amount of compensation	Rs.14,55,600/- --- Rs.4,50,000/-= Rs.10,05,600/-

Resultantly, the enhanced amount of compensation of

Rs.10,05,600/- 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 Ltd. And ors. 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

12.02.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No