

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

FAO No. 6601 of 2015 (O&M)

Date of decision : September 28, 2018

Trilochan Singh and others

.....Appellants

Versus

Jarnail Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikram Bali, Advocate
for the appellants.

Mr. Sandeep Singh Deol, DAG, Punjab
for respondents No. 2 and 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal') on account of death of Charanjeet Kaur vide award dated 24.02.2011.

Brief facts necessary for adjudication of the case are that the claimants i.e. husband and children of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Charanjeet Kaur on 14.04.2010 in a motor vehicle accident caused due to driving of the offending vehicle Bus bearing registration No. PB-12C-9022 driven by respondent No.1 in a rash and negligent manner. It was averred that Charanjeet Kaur alongwith her daughter Gagandeep Kaur was going on Scooter bearing registration No. PB-12-K-0885 driven by Gagandeep Kaur – appellant No. 3 from village Rangeelpur towards their village. When they reached near Avtar Welding Shop at village Mianpur,

the offending vehicle, i.e. bus bearing registration No. PB-12-C-9022 came from the opposite side and struck against the scooter. Due to this impact, both riders fell down on the road and sustained injuries. They were removed to Civil Hospital, Ropar. Charanjeet Kaur succumbed to her injuries on reaching the hospital. The deceased, aged 44 years at the time of the accident was stated to be engaged in diary farming earning a sum of ₹15,000/- per month.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether death of Charanjit Kaur took place in a road accident on 14.04.2010 at about 1.40 p.m. in the area of village Mianpur and whether said accident caused due to rash and negligent driving of bus bearing No. PB-12-C-9022 by respondent No. 1 ? OPP
2. If issue No. 1 is proved, whether claimants being legal heirs of deceased entitled to get compensation? If so, to what amount and from whom? OPP.
3. Whether petition bad for non-joinder and mis-joinder of necessary parties? OPR
4. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 14.04.2010 due to rash and negligent driving of the offending bus bearing registration No. PB-12-C-9022 by respondent No. 1. Income of the deceased was assessed as ₹3,000/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 14 was applied as the deceased was 45 years old at that time. Additionally, a sum of ₹5,000/- on account of loss of consortium was awarded, besides a sum of ₹9,000/- each on account of loss of estate and funeral expenses. Learned Tribunal awarded a sum of

₹3,50,000/- with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award. Learned Tribunal held that it is a case of contributory negligence. In view of the rash and negligent act on the part of respondent No. 1 to the extent of 50%, claimants were held entitled to 50% of the total amount of compensation awarded to them. Therefore, learned Tribunal directed a sum of ₹1,75,000/- to be released to the claimants as compensation.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that meagre compensation has been afforded. Income of the deceased has been wrongly assessed. Learned counsel relies upon the judgment of this Court in **United India Insurance Company Limited versus Sube Singh and others** wherein notional income of a housewife has been assessed as ₹9,000/- in respect to the accident which took place in November, 2012. No compensation, it is submitted, has been awarded on account of loss of future prospects. Moreover, compensation under the conventional heads is meagre. It is vehemently argued by learned counsel for the appellant that the learned Tribunal has grossly erred in holding that the present is a case of contributory negligence. Deceased was a pillion rider on the scooter being driven by Gagandeep Kaur. Therefore, it cannot be held that she was guilty of any kind of contributory negligence. Accordingly, the claimants are entitled to the entire amount of compensation and deduction to the extent of 50% is unjustified. It is, thus, prayed that this appeal be allowed and compensation be enhanced.

Learned counsel for respondents No. 2 and 3, however, prays

for upholding the amount of compensation while submitting that no ground for enhancement or any variation in the award is made out. It is, thus, prayed that this appeal be dismissed.

Heard, learned counsel for the parties and have gone through the file with their able assistance.

Smt. Charanjeet Kaur lost her life in the accident which took place on 14.04.2010. As per the finding of the learned Tribunal the driver of the scooty was equally negligent and, therefore, it was held that accident took place due to negligence of respondent No. 1 as well as the driver of the scooty. Accordingly, holding the claimants to be guilty of contributory negligence, deduction of 50% was effected in compensation which was awarded.

In my considered opinion, learned Tribunal has grossly erred in returning such a finding. In **M.P. State Road Transport Corporation and others versus Abdul Rahman and others**, 1997 AIR (M.P.) 248, a Division Bench of the Madhya Pradesh High Court has held that a pillion rider cannot be held responsible for any kind of contributory negligence. In the present case, Charanjit Kaur was admittedly a pillion rider on the scooty which was being driven by the claimant – Gagandeep Kaur. Therefore, it cannot be held that Charanjit Kaur was in any manner guilty of contributory negligence.

There is merit in the argument raised by learned counsel for the claimants that at best deduction can be effected from the compensation to be afforded to appellant No. 3, who is guilty of contributory negligence. The deceased was riding pillion with her, therefore, compensation to be awarded to appellants No. 1, 2 and 4 cannot be reduced to the extent of 50%.

It has been held by the Hon'ble Supreme Court in **Pawan**

Kumar and another versus M/s Harkishan Dass Mohan Lal and others

2014(3) SCC 590 that when the claimant himself is found to be a party to the negligence, the plaintiff's claim to the extent of his own negligence as may be quantified, will have to be severed. In such a situation, it was observed that the claimant would be held entitled to such part of damages/compensation that is not attributable to his own negligence. In this view of the matter, appellant No. 3 – Gagandeep Kaur shall only be entitled to 50% of compensation which may fall to her share. Deduction of 50% qua the entire compensation has been wrongly directed by the learned Tribunal and the said direction is set aside.

There is no dispute that Charanjit Kaur lost her life in a motor vehicle accident, which took place on 14.04.2010 caused due to the rash and negligent driving of bus bearing registration No. PB-12-C-9022 driven by respondent No.1. The age of the deceased was assessed as 45 years at the time of accident keeping in view the post mortem report available on record. There is no documentary evidence to prove the income of the deceased to be ₹15,000/- per month on account of her employment with Milk Co-operative Society. However, even if notional income is assessed by taking her to a house wife, it cannot be less than ₹7,000/- per month.

Income of the deceased is, accordingly, assessed as ₹7,000/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 25% (₹1750/-) is afforded as the deceased was 45 years old at the time of accident, which takes the income of the deceased to ₹8750/- per month. No deduction is to be effected as the deceased is taken to be a housewife. Applying a multiplier of 14, dependancy of the claimants is,

therefore, assessed as ₹14,70,000/- (₹8750x12x14). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant – husband is entitled to ₹40,000/- on account of loss of spousal 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 ₹16,60,000/- detailed as under:-

Loss of dependency (₹8750x12x14)	₹14,70,000/-
Loss of spousal consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Loss of parental consortium ₹40,000/- each to all three children	₹1,20,000/-
Total	₹16,60,000/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount. It is clarified at this stage that the appellants shall not be entitled to any interest on the period of delay of 1107 days in re-filing and 400 days in filing of the appeal as the delay in this case was specifically condoned on 04.10.2017 on this condition and undertaking of the appellants.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to

the claimants shall enure. It is reiterated that appellant No. 3 Gagandeep Kaur shall be entitled to 50% of the compensation which may fall to her share.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

September 28, 2018	(Lisa Gill)
rts	Judge
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No