

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7083 of 2015 (O&M)
Date of decision:22.11.2018.

Smt. Anita and others

...Appellants

Versus

Sohan and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K. Rana, Advocate for the appellants.

Respondent No.2 ex parte vide order dated 12.05.2016.

Mr. D.P. Gupta, Advocate for respondent No.3/Insurance
Company.

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Jhajjar ('Tribunal' for short) vide award dated 09.04.2015 on account of death of Bijender in a motor vehicle accident on 16.12.2012. Finding of the learned Tribunal regarding contributory negligence to the extent of 50% on the part of the deceased, has also been challenged.

The claimants, who are wife, minor son and parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of Bijender due to injuries received in a motor vehicle accident which took place on 16.12.2012. As per the averments in the claim petition, on 16.12.2012, Bijender (deceased) along with Parvinder alias Bittu were going to Rohtak from Village M.P. Majra on their separate motorcycles bearing Nos.HR-14D-9517 and HR-14C-3438 Parvinder was following the motorcycle of Bijender. Respondent No.1, driver of the offending truck No.HR-69A-3578, parked the same on the road without

any indicator, reflector or signal. When Bijender and Parvinder reached near the waterworks of Village Wazirpur, Tehsil Beri, District Jhajjar, Bijender could not see the offending truck due to the strong lights of the oncoming vehicles. Consequently, his motorcycle struck against the truck, which was parked on the road without any indicator or reflector. Bijender fell down and became unconscious. Bijender was brought to Government Hospital, Beri, where he was declared dead. FIR No.387 dated 17.12.2012 was registered under Sections 304-A and 387 IPC at Police Station Beri against respondent No.1 on the statement of Parvinder. It was pleaded that the deceased at the time of his death was an agriculturist earning Rs.40,000/- per month. He was 43 years old at the time of accident. Compensation was, thus, prayed for.

Learned Tribunal concluded the deceased to be 43 years old at the time of his death and assessed his income as Rs.12,000/- per month. Deduction of 1/4th was effected towards personal expenses. Multiplier of 14 was applied. Thus, total dependency was assessed at Rs.15,12,000/- (9000x12x14). A sum of Rs.30,000/- was awarded towards funeral and transport expenses. Another sum of Rs.28,000/- was awarded towards loss of love and affection besides Rs.30,000/- towards loss of consortium. Total compensation of Rs.16,00,000/- was assessed. Learned Tribunal concluded that the accident in question was caused due to the rash and negligent driving of the driver of the offending truck as well as negligence on the part of Bijender himself. It was held that the present is a case of contributory negligence on the part of the deceased. Contributory negligence was assessed as 50% on the part of the deceased as well as the driver of the offending truck. Therefore, amount of compensation to be released to the claimants was reduced by 50%. Claimants were accordingly held entitled to

compensation of Rs.8,00,000/- along with interest @ 8% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants argues that the learned Tribunal has wrongly concluded that there was contributory negligence on the part of the deceased and thus awarded only 50% of the compensation. As per evidence on record, offending vehicle was parked on the road without any indicator and/or reflector. Therefore, the appellant cannot be held negligent in any manner. It is further submitted that there is no dispute regarding the income of the deceased to be Rs.12,000/- per month as assessed by the learned Tribunal, however, no increment has been afforded on account of future prospects. Multiplier has rightly been applied keeping in view the age of the deceased. However, learned counsel for the appellants submits that compensation awarded under conventional heads may be reworked in terms of the judgments of Hon'ble the Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009 and Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018. It is, thus, prayed that this appeal be allowed and compensation awarded be enhanced.

Learned counsel for the Insurance Company, while refuting the arguments raised by learned counsel for the appellants, submits that the learned Tribunal has rightly assessed the compensation awarded to the claimants. Moreover, the evidence on record clearly shows that there was contributory negligence on the part of the deceased. He relies upon the judgment of this Court passed in Raj Kaur and others Vs. Gurnam Singh and others 2015 (8) RCR (Civil) 813 to contend that in case the driver of the motorcycle (deceased) was driving the offending vehicle at a reasonable

speed, he could have averted the accident, even if he was blinded by powerful lights of vehicles coming from the opposite side. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not in dispute that Bijender lost his life due to injuries received in a motor vehicle accident which took place at about 06.30 pm on 16.12.2012. FIR Ex.P1 was registered on the statement of Parvinder, PW2. PW2 Parvinder specifically stated that on 16.12.2012 at about 06.30 pm, he along with his neighbour Bijender (deceased) were going to Rohtak from Village M.P. Majra on their separate motor-cycles. PW2 Parvinder was following Bijender (deceased). The offending truck was parked negligently on the middle of the road without any indicator or reflector. Due to the light of the oncoming traffic, Bijender (deceased) could not see the offending truck which was parked on the road admittedly without any indicator or reflector and struck his motorcycle against the offending vehicle. He received serious injuries in the said accident and later succumbed to them. Post-mortem was conducted on the body of the deceased.

I have perused the testimony of PW2 Parvinder. Argument raised by learned counsel for the Insurance Company that affidavit of PW2 Ex.PW2/A could not be read in evidence, the said affidavit having not been signed by him, is devoid of merit at this stage. It is not denied that the affidavit Ex.PW2/A was signed by PW1 Anita whereas affidavit Ex.PW1/A was signed by PW2 Parvinder. No objection was raised in this regard by the Insurance Company at any earlier stage. Nothing to this effect is even reflected in the cross examination of PW2 which was duly conducted. There is indeed nothing in the cross examination which impeaches the version put

forth by PW2 Parvinder, an eye witness of the accident. PW2 has indeed reiterated and reaffirmed the version which he gave at the outset, on the basis of which FIR No.387 was registered on the very same day.

Hon'ble Supreme Court in Archit Saini and another Vs. Oriental Insurance Company Ltd. and others 2018 AIR (SC) 1143 while dealing with the matter wherein a Gas Tanker was parked without any indicator or parking light, has observed that where a vehicle dashes against a stationary vehicle, that by itself does not necessarily lead to an inevitable conclusion that there is perforce contributory negligence on the part of the deceased. In the present case as well, there is no evidence on record to prove that the offending truck was not parked as alleged without any indicator or reflector etc. or that the appellant was not blinded by powerful lights of the oncoming traffic. Therefore, the learned Tribunal has wrongly concluded that the deceased was guilty of any contributory negligence. The accident in question was wholly caused due to the rash and negligent act of the driver of the offending truck. Therefore, deduction of 50% of the compensation is incorrect and the said finding is set aside.

Learned counsel for the appellant is unable to point out any evidence on record to prove that the deceased was earning an income higher than Rs.12,000/- p.m. as assessed by the learned Tribunal. Learned Tribunal has rightly ignored the J-form upon which reliance was placed by the claimants to claim the income of the deceased to be Rs.40,000/-. The claimant produced the J-form only for the months of November and December 2012. No evidence was produced to show that the land in question, stated to be taken on lease was indeed cultivated for the years prior thereto except for the oral evidence of PW4 Deepak and PW5 Balbir Singh, who is the father of the deceased and one of the claimants. Income of the

deceased was rightly assessed by the learned Tribunal as Rs.12,000/- per month. However, in view of the judgment of Hon'ble the Supreme Court in the case of Pranay Sethi and others (supra), 25% increase in income has to be afforded on account of future prospects as the deceased was 43 years old at the time of his death. Deduction of 1/3rd towards personal expenses has rightly been effected. Multiplier of 14 has correctly been applied as deceased was 43 years old at the time of accident. In view of the judgment of Hon'ble the Supreme Court in the case of Magma General Insurance Company Ltd. (supra), appellant No.1 is entitled to Rs.40,000/- instead of Rs.30,000/- towards spousal consortium and appellant No.2 is also entitled to Rs.40,000/- towards parental consortium. Appellants No.3 and 4 are also entitled to Rs.40,000/- each on account of filial consortium. The appellants are entitled to Rs.15,000/- each for loss of estate and funeral expenses.

Appellants-claimants are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	Heads of Claim	Rupees
1.	Income	12000/- p.m. i.e., 1,44,000/- per annum
2.	Total income after addition at the rate of 25% on account of future prospects	1,44,000+36,000 (1,44,000x25%) = 1,80,000/-
3.	Income after deduction of 1/4 th on account of personal expenses	1,80,000—45,000 (1,80,000/3) =1,35,000/-
4.	Total dependency after applying a multiplier of 14	(1,35,000 x14) =18,90,000/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to the appellants @ 40,000/- (40,000x4)=1,60,000/-	1,60,000/-
Grand Total		20,80,000/-

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 entire amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 09.04.2015, present appeal is disposed of.

(LISA GILL)
JUDGE

22.11.2018
Ishwar

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