

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.8707 of 2014 (O&M)
Date of Decision: January 18, 2018.

Jaswinder Kaur

.....APPELLANT(s).

VERSUS

Kanwarjit Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jaswal, Advocate
for the appellant (s).

Ms. Vandana Malhotra, Advocate
for respondent No.2.

SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the tribunal') vide award dated 02.04.2014 allowed compensation of ₹8,30,000/- for death of Gurmail Singh, husband of appellant, in a motor vehicle accident with Tractor trolley bearing registration No.HR-02Z-2598.

The compensation awarded was computed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Gurmail Singh
(ii)	Age of the deceased	50 years
(iii)	Income of the deceased	₹160000 per annum.
(iv)	Deduction towards personal expenses 1/3rd	₹160000-₹53300= ₹106700.
(v)	Multiplier applied 11	₹106700X11 = ₹11,73,700/-
(vi)	Deduction towards contributory negligence 50%	₹1173700-₹586850 =₹586850
(vii)	Medical expenses @ 50% to actual expenditure	₹237968-₹118984= ₹118984/-

(viii)	Expenses for transportation of dead body and funeral expenses	₹25000
(ix)	Loss of consortium	₹100000
<i>Total</i>		₹830684/- rounded off ₹8,30,000/-

As per the claimant, accident took place in following manner:-

“On 8.1.2013 at about 8.30 PM, the tractor trolley bearing registration No.HR-02Z-2598 make Mahindra 575 DI loaded with safeda wood was coming from the side of Ambala Cantt on Jagadhari Road in a rash and negligent manner on its wrong side of the road and colluded with the Santro Car No.HR-01U-0211 which was on its right side of the road i.e. left hand side, which was coming from Saha side. After the impact, both tractor and car turned towards Radical Factory and occupant of the car suffered various injuries and the car was damaged to a great extent from its front side. After the accident, respondent No.1 who was driving the tractor trolley ran away from the spot of the accident after leaving the tractors and trolley at the spot.”

The tribunal while holding that it was a case of contributory negligence, observed in para 17 of the award as follows:-

“However, it it may be observed that the ill-fated Santro Car bearing registration No.HR-01U-0211 as being driven by deceased was on the wrong side i.e. right side of the road when the alleged accident was occurred. From the site plan Ex.R3, it depicts that deceased Gurmail Singh while driving the alleged Santro car coming from Saha on Jagadhri-Ambala road i.e. on the wrong right side of the road. As per mechanical report Dex.P5, left side of the car has been damaged. Had the accident been caused purely by negligence driving of tractor-trolley in question then the car in which deceased

and PW1 were travelling should have been damaged from right side. There is no denial to the fact that it was a head on collision. This fact amply goes to prove that it was not sole negligence of respondent no.1 but the alleged accident was also caused due to contributory negligence of the deceased while driving Santro car. No doubt, respondent no.1 has not come into witness box to describe the manner in which the accident caused but even then the circumstances explained by learned counsel for the respondents coupled with oral and documentary evidence on record, I am of the considered view that the alleged accident was caused also due to contributory negligence of Santro Car in question. Although, it is proved that respondent no.1 was rash and negligent in driving the Tractor-trolley in question, yet it cannot be ignored that Santro Car at the time of alleged accident was on the wrong right side of the road. Thus, it can be concluded that it was a case of contributory negligence of deceased Gurmail Singh in the ratio of 50% each.”

From the above observation of the tribunal, it appear that two facts led to the above observations by the tribunal which are as follows:-

- (1) Left side of the car was damaged. In case the accident had been caused due to rash and negligent driving of tractor-trolley, right side of the car would have been damaged.
- (2) Santro Car, at the time of alleged accident, was on the wrong side of the road.

Firstly, I have a look on the pleadings to make out as to whether any of the respondent had pleaded the above facts. On perusal of the written statement filed by Kanwarjit Singh, owner and driver of the

offending vehicle, I find that there is no plea that accident was caused due to contributory negligence of the deceased. He had, rather, denied the accident and alleged that his vehicle has been falsely implicated in this case. He has, however, pleaded that *“the accident, if any, took place due to own rash and negligent driving of car No.HR-01U-0211.”* Even while taking the above plea, respondent No.1 has nowhere stated as to in which manner accident took place. Respondent No.2-insurer of the offending vehicle in its written statement has also denied the accident.

Respondent No.1 has also not appeared in the witness box to rebut the statement of Gulzar Singh, PW1, who has given eyewitness account of the accident. In his affidavit Ex.PW1/A, he has stated that on 08.01.2013, he was coming with his brother in his Santro car bearing registration No.HR-01U-0211 towards Mithapur. Gurmail Singh was driving car on his left hand side. When they reached near Radical Factory, offending vehicle came from the side of Ambala Cantt. It was being driven by its driver in a very rash and negligent manner at a high speed. He brought the offending vehicle on the wrong side of the road and hit the car. As a result of the accident, the car got badly smashed. Respondent No.1 left the tractor and ran away from the spot. In cross-examination, he has stated that tractor was seen from a distance of 10 to 15 feet and has denied that the deceased was driving the car at a high speed. He has further stated that driver of the tractor-trolley (offending vehicle) over-took a vehicle and came towards wrong side of the road, resulting in accident with the Santro Car. He denied that both the vehicles i.e. car and offending vehicle have struck in each other in the middle of the road. It is evident from the

testimony of PW1 Gulzar Singh that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1, who came on the wrong side of the road and hit Santro car.

Respondent No.1 has not appeared to rebut the testimony of PW1 Gulzar Singh or to give his own version regarding the accident. Learned tribunal while reaching the conclusion that it was a case of contributory negligence has relied upon mechanical report (Ex.R5) of the car damaged in the accident. This report was given by Vehicle Mechanic, Police Lines, Ambala City. He has, however, not been examined in this case so as to provide opportunity to the claimant to inquire about the damage to the Santro car and the manner in which it could be caused. The report describes the damage to the Santro car as follows:-

- (i) Head lights, indicators, side mirror, front main glass and window glass were lying broken.
- (ii) Front bumper, bonnet, mud-guard were damaged.
- (iii) Left side front tyre, rim, tube were damaged.
- (iv) Engine was also damaged.

Firstly, the above report nowhere says that the car was damaged from left side, rather the head-lights, indicators, side mirror, front main glass, bumper, bonnet, mudguard, engine and window glass all were found damaged. This shows that car was badly damaged in the accident. The left tyre, rim, tube were also damaged but this does not mean that left side of the car had hit the tractor.

Learned counsel for the appellant has shown me the photographs of the damaged car which show that entire front portion of the car got smashed. Though, I am not taking any note of the photographs

shown by learned counsel for the appellant but even after referring to the mechanical report (Ex.R5), no conclusion can be drawn that left side of the car hit the tractor. When an accident takes place, the vehicle with the impact of the accident get tilted and it is not required that if vehicle is hit in the middle, the damage will be to both the front tyres. It is difficult to ascertain as to how the vehicle will tilt with impact of accident. In this case, conclusion was drawn by the tribunal on the basis of mechanical report (Ex.R5), which was not duly proved by examining the Mechanic. Site plan relied by the tribunal also depict position of vehicles after accident and not the location of vehicles at the time of accident. In the absence of any cogent and convincing evidence, the finding recorded by the tribunal that it is proved to be a case of contributory negligence, is not sustainable and call for outright rejection. This conclusion is otherwise not sustainable as neither of the respondent has raised any plea or produced evidence to prove that the accident was caused due to the contributory negligence on the part of driver of the Santro car.

The date of birth of the deceased as mentioned in his PAN card is 13.05.1963. As per this piece of evidence, which is unrebutted, the deceased was not less than 50 years of age at the time of accident and the multiplier, while computing the compensation as per observations in case of *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, is 13 instead of 11 as awarded by the tribunal. As per law laid down by Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009*, 25% of the income of deceased is to be added towards his future prospects.

Claimant is also entitled to compensation of ₹15,000/- towards funeral expenses and ₹40,000/- towards loss of consortium. As the only claimant/dependent is wife of deceased, 50% of income of deceased could be deducted towards his personal expenses.

In view of the above, compensation to which the claimant is entitled, is computed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹160000 per annum
(ii)	Deduction of 50% towards personal expenses of the deceased	₹160000-₹80000=₹80000.
(iii)	25% of above (ii) to be added as future prospects	(₹80000+₹20000)=₹100000 per annum
(iv)	Compensation after multiplier of 13 is applied	(₹100000X13)=₹1300000
(v)	Medical expenses	₹237968
(v)	Loss of consortium	₹40000
(vi)	Funeral expenses	₹15000
<i>Total</i>		₹15,92,968/-

The appeal has merits and is accepted. The award of the tribunal is modified and the compensation allowed to the appellant-claimant is enhanced from ₹8,30,000/- to ₹15,92,968/- for death of Gurmail Singh. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the appeal till actual realisation. Respondent No.4-insurance company will deposit the share of appellant-claimant in her bank account or pay the same through demand draft. The claimant shall also be entitled to costs of this appeal. The counsel fee is assessed ₹20,000/-.

January 18, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No