

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

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Date of decision: 14.02.2018

FAO No. 6558 of 2016 (O&M)

Ajmer Singh*Appellant*

Versus

Nafe Singh and others*Respondents*

FAO No. 6560 of 2016

Ajmer Singh*Appellant*

Versus

Sultan Singh and others*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. S K Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the Appellant

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Rekha Mittal, J. (Oral)

CM 22418 - 22424 CII of 2016.

Allowed as prayed for. Annexures A-4 and A-5 are taken on
record.

CM 17439 CII of 2017

Allowed as prayed for. Annexure A-6 is taken on record.

Main case

This order will dispose of FAO Nos. 6558 and 6560 of 2016 as
these have emerged out of the same award dated 28.07.2016 passed by the

Motor Accidents Claims Tribunal, Panipat (in short, 'the Tribunal') whereby compensation has been awarded on account of death of Krishan son of Nafe and Pardeep son of Sultan Singh in a motor vehicular accident that took place on 28.02.2013.

The appeals have been preferred by registered owner of tractor bearing No. HRV 4594, alleged offending vehicle. For brevity, facts are taken from FAO No. 6558 of 2016.

Counsel for the appellant has challenged the award primarily on three counts. Submissions made by counsel with regard to sale of vehicle in question and multiplier adopted were negated as per order dated 16.12.2016 passed by this Court. A relevant extract therefrom reads as follows:-

*“Counsel for the appellant made three submissions to assail the award passed by the Tribunal. The first submission made by counsel is that as the appellant has already sold the vehicle in question to one Mohinder, appellant is not liable to pay compensation. This contention raised by the appellant prima facie does not appear to be meritorious when the case is examined in the light of judgments of Hon'ble the Supreme Court of India **“Pushpa @ Leela and others vs Shakuntala and others”**, 2011(2) RCR (Civil) 616 and **“Dr. T.V. Jose vs Chacko P.M. @ Thankachan”**, 2002(1) RCR (Civil) 120. Secondly, plea of the appellant that multiplier is to be adopted as per age of the claimants in place of age of the deceased also does not appear to be tenable in view of the judgments passed by the Supreme Court **“Smt. Sarla Verma and others vs. Delhi Transport Corporation and another”**, 2009(3) R.C.R. (Civil) 77, **“Reshma Kumari and others vs Madan Mohan and another”**,*

2013(2) RCR (Civil) 660 and “Munna Lal Jain and another vs Vipin Kumar Sharma and others” 2015(3) PLR 304. *The third submission made by counsel is that the present is a case of head on collision, therefore, contributory negligence is to be attributable to the deceased himself. He prays for time to place on record statement of the alleged eye-witness to the occurrence and evidence adduced by the respondents, if any, to rebut evidence of the claimants on issue No.1.*

Adjourned to 22.02.2017.

A photocopy of this order be placed on the file of other connected case.”

Counsel for the appellant is not in a position to advance any arguments much less meaningful to substantiate his contention that either the appellant is not liable to pay compensation as he had purportedly sold the vehicle in question to one Mohinder prior to the occurrence when otherwise said Mohinder is not a party to the petition. In view of the earlier judgments of Hon'ble the Supreme Court of India, referred to in order dated 16.12.2016 as well as latest judgment passed in ***Naveen Kumar vs. Vijay Kumar and others (Civil Appeal No. 1427 of 2018, decided on 06.02.2018)***, contention raised by the appellant is misconceived and ordered to be rejected. The multiplier adopted by the Tribunal on the basis of age of the deceased is liable to affirmed in the light of judgments referred to in the aforesaid order.

The appellant has raised a plea that the present is a case of contributory negligence, therefore, claimants are not entitled to get compensation to the extent of negligence attributable to the deceased, driver of motor cycle No. HR-06Q-4628 driven by its driver, Krishan on which

Pardeep was a pillion rider. Firstly, no such plea of contributory negligence was raised by the driver or registered owner of the vehicle in their reply to the petition. As the appellant and driver of the vehicle denied accident having taken place with the alleged offending vehicle, it is not open for them to raise a plea of contributory negligence nor the Court can introduce any such plea on the basis of evidence.

This apart, Kaptan Singh, an eye witness to the occurrence was examined to establish plea of the claimants that accident was the result of rash and negligent driving of tractor in question by Kanwar Pal, its driver. Kaptan Singh tendered into evidence his affidavit Ex PW5/A and reiterated version of the claimants that accident took place due to rash and negligent driving of the tractor in question. Kaptan Singh lodged FIR No. 100 dated 28.02.2013 under Sections 279, 337 and 304-A of Indian Penal Code in Police Station Model Town, Panipat. He was cross examined at length but nothing material and tangible has been brought forth to discard or disbelieve his testimony or to prove that he was not an eye witness to the occurrence. The mere fact that the tractor attached with trolley directly hit motorcycle of Krishan is not at all sufficient to contribute negligence to the driver of motor cycle on which Pardeep was a pillion rider.

Kanwar Pal driver of the Tractor trolley was examined in the case but counsel has failed to point out any such material brought forth in his testimony to rebut statement of Kaptan Singh or to establish contributory negligence on the part of deceased Krishan when otherwise, such a plea of the driver would be beyond pleadings. In this view of the matter, contention raised by counsel with regard to the present being a case of contributory negligence is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine.

No order as to costs.

(Rekha Mittal)
Judge

14.02.2018
mohan bimbira

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