

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

Date of decision: 25.10.2018

FAO No.9829 of 2014 (O&M)

Vikram ... Appellant

Versus

Prince and others ... Respondents

FAO No.625 of 2015 (O&M)

Smt. Bimla and another ... Appellants

Versus

Prince and others ... Respondents

FAO No.626 of 2015 (O&M)

Luxmi and another ... Appellants

Versus

Prince and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Radhe Shyam Sharma, Advocate
for the appellants.

Mr. Rajnish Molhotra, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.9829 of 2014 and 625 &

626 of 2015 as these have emerged out of the same award dated 15.02.2014 passed by the Motor Accidents Claims Tribunal, Fatehabad whereby compensation has been assessed on account of injuries sustained by Vikram and death of Pardeep son of Dharampal and Sunil @ Kala in a motor vehicular accident that took place on 14.01.2013.

FAO No.9829 of 2014

With regard to injuries sustained by Vikram, the Tribunal has awarded compensation of Rs.63,490/-, detailed hereunder:-

1. Reimbursement of medical expenses	Rs.38,490/-
2. Pain and sufferings and special diet	Rs.10,000/-
3. Loss of income during the period of treatment and recovery	Rs.15,000/-

However, claimant has been held entitle to 50% of compensation as contributory negligence has been attributed because of Vikram, Pardeep and Sunil @ Kala were travelling on motorcycle in violation of provisions of the Motor Vehicles Act, 1988.

Counsel for the appellant has assailed findings of the Tribunal attributing 50% negligence to the injured/victim merely because three persons were travelling on motorcycle bearing No.HR-23-D-7813, driven by Sunil @ Kala (since deceased).

Another submission made by counsel is that compensation allowed by the Tribunal to the tune of Rs.10,000/- for pain and sufferings and special diet is grossly inadequate and liable to be enhanced.

Counsel representing the insurance company has supported

findings of the Tribunal attributing 50% negligence to the victims who were travelling on a motorcycle meant for the driver and one passenger on pillion seat.

The plea of claimant is that motorcycle No.HR-23D-7813 was driven by Sunil @ Kala on left side of the road by observing traffic rules. At about 12 noon, when they reached near village Samain, offending vehicle bearing No.HR-23D-0220 driven in a rash and negligent manner came from the side of Tohana and struck against the ill-fated vehicle. Due to impact, all the occupants of motorcycle fell down and sustained multiple serious injuries.

Before adverting to the submissions made by counsel for the parties, it is appropriate to take note of the relevant observations of the Tribunal whereby riders of the motorcycle have been attributed contributory negligence. A relevant extract from para 14 of the award, reads as follows:-

“..... There is no denial to that fact. The driver of the offending vehicle did not dare to step into the witness box to say that he was not rash and negligent while driving his vehicle. So, it is contended on behalf of claimants that though three persons were travelling on the ill-fated vehicle but it is evident from the oral as well as documentary evidence adduced that it was the driver of the offending vehicle who was rash and negligent in driving his vehicle. Reliance in this regard has been placed on the ratio of law laid down in case of Karnail Singh and others Vs. Balwinder Singh and another 2013(1) PLR 774 and wherein it was held by the Hon’ble Punjab and Haryana High Court that three persons travelling on the motor cycle may have been guilty of traffic offence but there is no reason for the Court to make any inference regarding negligence as contributory by the only fact that

three persons were going on motor cycle. There is no dispute about the version of law laid down in the above mentioned case. However, it is admitted case of the claimants that at the time of occurrence, three persons were riding on a motor cycle and the pillion riders were not wearing helmet. Secondly, it is evident from the testimony of Balbir Singh @ Bali PW3 and Vikram PW6 that the it was a head on collision and the width of the road was approximately 25 feet. So, in such a situation, the manner of accident and riding of three persons on a vehicle shows that it was not being driven within the permissible limits thereby making the ride unstable and contributing to the accident. This view was take in cases Smt.Ved Kumar and another Vs. Kishan Lal and others,1999 (1) P.L.R. 13, Managing Director, Tamil Nadu State Transport Corporation Ltd. Vs. Abdul Salam and others,2004 ACJ 1827 and Angrejo Devi and others Vs. Jai Parkash and others, 2013 (2) RCR (Civil) 161. It was also held that a motorcycle is designed to ride two persons, if used by more than two persons, then the driver will have to share part of his seat, he will not be able to control the vehicle effectively. Moreover, the weight on account of third passenger will affect its stability. In the case in hand, Sunil @ Kala deceased was driving the motorcycle in violation of section 128 of the Motor Vehicles Act, 1988 with two passengers i.e. Pardeep and Vikram on pillion seat. He was more than 19 years of age and there is every likelihood of losing control over the vehicle, seeing other vehicle coming from opposite side. The accidents occur in a fraction of seconds and on slightest miscalculation of judgment. Then in case North-East Karnataka Road Transport Corporation Vs. Vijay Laxmi and others,2012 Accident Compensation Reports 699, it was held by a Full Bench of Hon'ble Karnataka High Court that a duty of care exists as it is embodied in a statute with foresight for benefit of such persons travelling in a motor vehicle. Mere breach of law or duty would not create liability to pay damages. Such a breach should result in injury which is foundation of a claim for damage. The question of contributory negligence does not depend upon any breach of duty as between plaintiff and defendant and such a breach of duty should result in injury and consequent losses. There should be nexus between breach of duty and injury. If there is a blame causing the accident on both sides, the losses lies where it falls. This omission constitutes a careless conduct. Foresight is the test for duty and remoteness. The contributory negligence has two facets. One in which two or more vehicles and drivers are involved in the accident. It is their driving which is the cause of accident. In such a case the question is who drove the vehicle in a rash and negligent

manner. If all of them drove the vehicle in a negligent manner, who contributed to what extent in causing the accident. It is on the basis of such factual finding apportioning the blameworthiness on the drivers, the contributory negligence has to be assessed. Keeping in view the factual as well as legal position detailed above, it can be safely said that though respondent No.1 was rash and negligent while driving his vehicle and magnitude of loss but it can't be ignored that deceased Sunil was also driving the motorcycle in violation of provisions of Motor Vehicles Act, 1988. So, in such a situation, it is a case of contributory negligence of deceased Sunil and Prince respondent in the ratio of 50% each. So, findings on both these issues are, hereby, ordered to be returned accordingly.”

Vikram, the injured tendered into evidence his affidavit

Ex.PW6/A by way of examination in chief and a relevant extract therefrom,

reads as follows:-

“1. That on 14.01.2013, I along with Sunil @ Kala son of Mahender Singh and Pardeep son of Dharampal @ Pala Ram resident of village Samain Tehsil Tohana District Fatehabad had left village Samain Tehsil Tohana District Fatehabad for Tohana Tehsil Tohana District Fatehabad on motorcycle bearing registration No.HR-23D/7813 which was being driven by Sunil @ Kala and Pardeep son of Dharampal @ Pala Ram and I were pillion riders on the said motorcycle and the motorcycle was being driven by Sunil @ Kala carefully, cautiously, at a moderate speed, abiding by all the traffic rules, on correct side of the road and when at about 12.00 noon the motorcycle reached near the fields of Bharat son of Miyan Singh in village Samain Tehsil Tohana District Fatehabad then the offending vehicle car Honda City bearing registration No.HR-23D/0220 being driven by its driver i.e. the respondent No.1 rashly, negligently, carelessly and at a high speed came from Tohana side and struck into our motorcycle due to which all the occupants of the motorcycle i.e I myself, Pardeep and Sunil @ Kala along with the motorcycle fell down on the road and sustained multiples, grievous and serious injuries on various parts of bodies and Sunil @ Kala and Pardeep became unconscious.”

The witness was cross examined at length and he admitted that

the road was quite wide and two vehicles could pass simultaneously. Accident took place as head on collision and it occurred on the pucca road. He denied the suggestion that because of three occupants on the motorcycle, they fell due to rash and negligent driving of motorcyclist because of three passengers travelling on it. No such fact has been elicited in cross examination of Vikram that driver of offending vehicle was neither rash nor negligent in his driving or the accident took place in the middle of the road or towards the side to be used by driver of the offending vehicle. Similarly, no such fact has been elicited in cross examination of Balbir @ Bali PW3, a witness to the occurrence who reached the spot within 2-3 minutes after the accident. On the contrary, Balbir in his cross examination had stated that the offending vehicle was coming on wrong side of the road and accident took place at a distance of about 2 kms from village Samain.

The Tribunal has not adverted to the testimonies of Balbir PW3 and Vikram PW6 and the fact that driver of the offending vehicle did not appear in the witness box, therefore, an adverse inference is liable to be drawn against respondents before the Tribunal. In view of the above, findings of the Tribunal attributing contributory negligence to the injured/victims of accident cannot be allowed to sustain and accordingly set aside. Consequently, issue No.1 is answered in favour of the claimant(s) and against the respondents with the finding that accident is the result of absolute negligence of the offending vehicle by its driver. As a

consequence, the entire compensation assessed by the Tribunal and additional compensation, if any, allowed by this Court would be payable to injured/victim-Vikram and qua death of Pardeep and Sunil @ Kala.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has rightly reimbursed Rs.38,490/- towards medical expenses, based upon bills and testimonies of Dr. Subhash Gupta PW4 and Dr. Joginder Singh PW5 and the same is affirmed. The Tribunal has allowed compensation of Rs.15,000/- qua loss of income by treating the injured as a casual labourer and assessing his income @ Rs.5000/- per month.

The injured remained hospitalised w.e.f. 14.01.2013 to 29.01.2013 in RMC Hospital, Tohana and Manav Sewa Sangam Charitable Hospital, Tohana. Taking into consideration the period of hospitalisation in two different hospitals, interest of justice would be served, if the claimant is allowed additional amount of Rs.5000/- under the heads pain and sufferings, special diet and transportation expenses. The additional amount of Rs.5000/- shall be payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.625 of 2015

The Tribunal has awarded compensation of Rs.5,00,000/- by assessing notional income of the deceased at Rs.4000/- per month.

The deceased was a student of 10+1 at the time of occurrence aged between 15 to 18 years. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.5400/- per month. Claimants shall be entitle to addition in income for future prospects @40%. Deduction for personal expenses would be 50% and multiplier to the tune of 18 in the light of judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77, Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315 and National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. In this manner, loss of dependency is calculated at Rs.8,16,480/- [(5400 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.1,10,000/-, detailed hereunder:-

1. Loss of consortium to both the claimants	Rs.80,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.9,26,480/- and the additional amount is Rs.6,76,480/- (9,26,480 – 2,50,000), payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

In view of findings recorded in FAO No.9829 of 2014, the

claimants shall be entitle to compensation assessed by this Court minus the amount assessed by the Tribunal.

FAO No.626 of 2015

With regard to death of Sunil @ Kala, the Tribunal has awarded compensation of Rs.8,92,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.7000/-
2. Addition in income for future prospects	50%
3. Multiplier	14
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.8,82,000/-
6. Expenses on last rites	Rs.10,000/-

The deceased was a student of third semester, Printing Technology with Guru Gobind Singh Government Polytechnic Education Society, Cheeka District Kaithal. Taking a clue from the minimum wage coupled with educational qualification of the deceased, income of the deceased assessed by the Tribunal is correct and affirmed. However, claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed as deceased was unmarried son of the claimants. As the deceased was 19 years of age, multiplier of 18 is admissible in the light of judgments of Hon'ble the Supreme Court **Sarla Verma & others's case (supra)**, **Munna Lal Jain and another's case (supra)** and **Pranay Sethi and others's case (supra)**. In this manner, loss of dependency is calculated at Rs.10,58,400/- [(7000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to
Rs.1,10,000/-, detailed hereunder:-

- | | |
|---|------------------------------------|
| 1. Loss of consortium to both the claimants | Rs.80,000/-
(Rs.40,000/- each) |
| 2. Expenses on last rites | Rs.15,000/- |
| 3. Loss to estate | Rs.15,000/- |

Total compensation is Rs.11,68,400/- and the additional
amount is Rs.7,22,400/- (11,68,400 – 4,46,000), payable with interest
@7.5% per annum from the date of petition till realization, to mother of the
deceased.

The appeal is partly allowed in the aforesaid terms.

25.10.2018
ashok

(REKHA MITTAL)
JUDGE

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