

346 (2/3)

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

**1. FAO No.1701 of 2003
Date of Decision: 24.01.2019**

Smt. Mamta and others

Appellants

Versus

Jai Parkash and another

Respondents

2. FAO No.1702 of 2003

Smt. Mamta and others

Appellant

Versus

Jai Parkash and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Jitender Handa, Advocate
for the appellants.

Mr. Aseem Aggarwal, Advocate
for respondent No.2.

AVNEESH JHINGAN, J (Oral):

FAO No.1701 of 2003:

The present appeal has been preferred for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] in MACT Petition No.1 of 2001, for death of Rakesh @ Vikram. His income was ₹3,000/- per month.

The claimants were widow, two minor children and mother of the deceased. The Motor Accident Claims Tribunal, Hisar [for brevity 'the Tribunal'] assessed ₹3,99,000/- as compensation alongwith interest @ 9% per annum. Since it was held that there was 50:50 contributory negligence, the claimants were held entitled to the amount of ₹1,99,500/-.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The driver-cum-owner and insurer of truck (i.e. National Insurance Company Ltd.) bearing registration No. HR-18GA-0151 [hereinafter referred to as 'offending vehicle'] were arrayed as respondents No.1 and 2 before the Tribunal.

The brief facts necessary for adjudication of the present appeal are that on intervening night of 1/2-12-2000, Rakesh @ Vikram (deceased) was driving car bearing registration No. DL-1C-5365. There were other occupants in the Car. On his way, the car was hit by a rashly and negligently driven offending vehicle. Rakesh @ Vikram sustained grievous injuries which proved fatal. FIR No. 985, dated 02.12.2000 was registered.

A claim petition was filed under Section 166 of the Act, it was pleaded before the Tribunal that Rakesh @ Vikram (deceased) was 22 years of age at the time of accident. The monthly income of the deceased was assessed as ₹3,000/- per month; his age was 22 years; 1/3rd deduction for self-expenses was made and

multiplier of '16' was applied. ₹5,000/- each were granted for funeral expenses, transportation and loss of estate.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to contributory negligence of driver of offending vehicle and car of the deceased in the ratio of 50:50.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

Learned counsel for the appellants contends that the Tribunal erred in holding that there was 50:50 contributory negligence. He relies upon the deposition of Sohan Lal Gupta (PW-5). The contention raised is that the Tribunal erred in reading only a particular content from cross-examination of Sohan Lal Gupta in isolation, that there was head-on collision. He relies upon the portion of the cross-examination i.e. "the accident took place on road on our side". His grievance is also with regard to quantum of compensation. He argues that no future prospects have been awarded and the tribunal erred in making 1/3rd deduction for self-expenses, as the deceased was survived by four dependents. He further submits that multiplier of '16' has been wrongly applied and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer while defending the award argues that from the Site Plan, it is evident that car is lying turtled in middle of the road whereas the Truck was lying over turned in *khadda* on side of the road. He buttress his argument by relying

upon the testimony of owner-cum-driver of the offending vehicle, who stated that he was driving the offending vehicle on his left side at a speed of 30 km/h and the car came on his side and struck into the offending vehicle in very fast speed. He defends the quantum of compensation and resisted any further enhancement.

The record of the case was burnt. It is the record available with the counsel and the photocopies supplied by them which are being relied upon to decide the issue of contributory negligence. From the perusal of the statement of PW-5, it is evident that in his cross-examination he stated that there was head-on collision between the car and the offending vehicle. He further said that the accident took place on the side of the car meaning thereby that the accident took place on the left side of the road where the car was going. Besides this, there was another eye-witness, Chander Prakash (PW-6) who deposed before the Tribunal that he was following the car. He stated that the offending vehicle came from the side of the car and struck into the car. He further stated that the car was going on the extreme left side. There is nothing on record to rebut the said statement of the eye-witnesses.

The reliance placed by learned counsel for the insurer on the statement of the owner-cum-driver of the offending vehicle does not enhance his case. It is only a self-serving statement whereas the claimants have been able to prove the rash and negligent driving of the offending vehicle by producing two independent eye-witnesses.

So far as reliance on the site plan is concerned, it is not conclusive as it does not show the exact place of impact of the two vehicles rather it only shows that the car is lying turtled on the middle of the road and the offending vehicle is lying over turned quite ahead of the car in a *khadda*. As the site plan is not showing the exact point of impact, it cannot be relied upon. Reliance in this regard is placed on decision of the Supreme Court in case of **Mangla Ram Vs. Oriental Insurance Company Ltd. and others 2018 AIR (SC) 1900**, wherein it was held as under:-

“23. *Be that as it may, the next question is whether the Tribunal was justified in concluding that the appellant was also negligent and had contributed equally, which finding rests only on the site map (Exh. 2) indicating the spot where the motorcycle was lying after the accident? We find substance in the criticism of the appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep. Neither the Tribunal nor the High Court has found that the spot noted in the site map, one foot wrong side on the middle of the road was the spot where the accident actually occurred. However, the finding is that as per the site map, the motorcycle was found lying at that spot. That cannot be the basis to assume that the appellant was driving the motorcycle on the wrong side of the road at the relevant time. Further, the respondents did not produce any*

contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the appellant contributed to the occurrence of the accident by driving the motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained. The High Court has not expressed any opinion on this issue, having already answered the issue about the non-involvement of the offending vehicle in favour of respondent Nos.2 &3.”

Even if the Site-Plan is considered, it appears that that Car was going towards Hisar side and the offending vehicle was coming from Hisar side. As there was head-on collision, the distance which the offending vehicle travelled after hitting the car shows that it was on a high speed as its momentum took it to a long distance, which is evident from the naked eye inspite of the fact that the Site-Pan is not according to scale.

The findings recorded by the Tribunal that there was contributory negligence in the ratio of 50:50 cannot be upheld. The award is modified to the extent that the accident was caused due to rash and negligent driving of the offending vehicle.

The contention raised by learned counsel for the appellants with regard to quantum of compensation deserve acceptance. There is no dispute between the parties with regard to age of the deceased i.e. 22 years at the time of accident and on the monthly income assessed as ₹3,000/-.

Having due regard to the decisions of the Supreme Court

in cases of **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,** 40% future prospects are awarded. The appellants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

In consonance with the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,**1/4th deduction for self-expenses is to be made as the deceased is survived by four dependents. Keeping in view the age of the deceased, multiplier of '18' is to be applied.

In view of above discussion, the compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	3,000/-
40 % Future Prospects	1,200/-
Sub Total	4,200/-
1/4 deduction for self expenses	(-) 1,050/-
Monthly Dependency	3,150/-
Annual Dependency	37,800/-
Applying multiplier of '18'	6,80,400/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to the widow	40,000/-
Grand Total	7,50,400/-

The award dated 04.02.2003 is modified to the extent that amount of ₹3,99,000/- awarded by the Tribunal is enhanced to ₹7,50,400/-.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

FAO No.1702 of 2003:

This is an appeal preferred by the claimants assailing the award dated 04.02.2003 passed by the Tribunal in MACT Petition No.26 of 2001. Since the instant appeal arise from the same award and same accident as mentioned in FAO No.1701 of 2003, the same is being disposed of in terms of reasons recorded in order passed in FAO No.1701 of 2003.

The only grievance raised by learned counsel for the appellants is that the ½ compensation awarded on account of damage to the Car has been deducted as 50% contributory negligence was attributed to the driver of the car.

In view of reasons recorded in the order passed in FAO No.1701 of 2003, the award is modified to the extent that the accident was caused due to rash and negligent driving of the offending vehicle. The claimants shall be entitled to whole amount awarded by the Tribunal.

The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

January 24th, 2019

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |