

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

**F.A.O. No.2313 of 1994 (O&M)
Date of Decision: 20.08.2019**

Shakuntla Devi and others

.....Appellants.

Versus

Lakhmi Chand and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sanjay Mittal, Advocate
for the appellants.

Ms. Simranjeet Kaur, Advocate
for Mr. Kulvir Narwal, Advocate
for respondent no.1.

Mr. Ashish Yadav, Addl.AG., Haryana
for respondents no.5 and 6.

Mr. Radhey Shyam Sharma, Advocate
for respondent no.7.

LISA GILL, J.

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Narnaul (for short 'tribunal'), vide impugned award dated 27.05.1994, on account of death of Bhim Sain Chaudhary.

Appellants-claimants are the widow and children of the deceased.

As per averments in the claim petition filed under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Bhim Sain Chaudhary (deceased), on 04.03.1993, at about 12.30.p.m., was going to New Mandi

Narnaul from New Bank of India situated on Mohindergarh-Narnaul road on his scooter bearing registration no. HR-35-2953. When he reached near Mahabir Chowk on Mohindergarh-Narnaul road, a bus bearing registration no. HNR-4411 of Haryana Roadways was standing parked adjacent to the road divider in the middle of the road leaving no space for passing of the vehicles coming from behind. The bus had been stopped there by its driver to facilitate the boarding and de-boarding of passengers. Bhim Sain Chaudhary accordingly stopped his scooter behind the bus as he could not pass the bus. In the meanwhile, a four-wheeler bearing registration no. DIL-8285, driven by respondent no.1-Lakhmi Chand, in a rash and negligent manner struck against the scooter of Bhim Sain Chaudhary from behind. As a result thereof, Bhim Sain Chaudhary along with his scooter were sandwiched between the rear portion of the bus and the four-wheeler. As a result thereof, Bhim Sain Chaudhary, received fatal injuries and died at the spot. FIR No. 100 dated 04.03.1993, under Sections 279 and 304-A IPC, Police Station Narnaul, was registered against respondent no.1-Lakhmi Chand, driver of the four-wheeler, in this respect. Claimants pleaded that the accident took place due to composite negligence of both the bus driver as well as the driver of the four-wheeler.

The deceased was claimed to be a commission agent and doing business under the name and style of M/s Chaudhary Har Parshad and sons. It is stated that the deceased was a partner in the firm to the extent of 40%. Income tax return of the deceased was filed. Compensation was thus claimed

Learned tribunal on considering the evidence on record concluded that the accident in question took place due to the sole negligence

and rash driving of the offending four-wheeler by its driver-respondent no.1- Lakhmi Chand. Learned tribunal negated the plea of composite negligence raised by the claimants on behalf of both the bus driver as well as driver of the four-wheeler. Learned tribunal while accepting the income of the deceased to be ₹32,000 p.a., awarded compensation, which is detailed as under:-

1.	Total income of deceased	₹32,000/- p.m.
2.	Multiplier	12
3.	Loss of dependency	₹3,84,000/-
4.	Loss of consortium	₹16,000/-
	Total	₹4,00,000/-

Aggrieved therefrom, the present appeal has been filed by the appellants-claimants.

Learned counsel for the appellants vehemently argues that the present is a case of composite negligence. The offending bus was not stopped at a designated bus stop, but in the middle of the road by its driver. It is in this situation, that the deceased had to stop his scooter behind the bus and wait for it to move on so that he could proceed further. The four-wheeler, admittedly hit the scooter of the deceased-Bhim Sain Chaudhary, from behind, leading to his death. Therefore, the learned tribunal has grossly erred in holding that the accident took place due to the sole negligence of the driver of the four-wheeler. Income of the deceased as assessed by the learned tribunal is not questioned, though, it is submitted that increment on account of future prospects be afforded. It is fairly stated that deduction of 1/4th should be effected. It is prayed that compensation under the conventional heads be enhanced. It is thus prayed that this appeal be allowed.

Learned counsel for respondents no.5 and 6 vehemently argues that there is no question of any negligence on the part of the Haryana Roadways, bus. It had stopped for enabling the passengers to alight from the bus. Even though, the spot was not a designated bus stop, it is for convenience of the passengers that the bus had been stopped on the left side of the road. Learned counsel further submits that the driver of the bus, who testified as RW-3, stated that the bus was stopped on the left side of the road

Furthermore, no FIR was registered against the driver of the bus in question which shows that there was no negligence on his part. It is further contended that the plea of negligence on the part of the offending bus has been raised as this appeal was dismissed qua the owner of four-wheeler on 10.10.2017 due to inability of the appellants to serve the said respondents after filing of their correct address. It is further submitted that just and reasonable compensation has already been awarded to the appellants, which calls for no further enhancement. Therefore, this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record which was requisitioned .

It is to be noted that the FIR No. 100 dated 04.03.1993, Ex.PA, was registered on the statement of Kishan Chaudhary, who testified as PW-2 before the learned tribunal. PW-2-Kishan Chaudhary, specifically and categorically stated that he was present on 04.03.1993 at about 12.30.p.m., at the juice shop situated at Mahabir Chowk, Narnaul. A Haryana Roadways bus bearing registration no. HNR-4411 came from Mohindergarh side and it stopped about ten feet prior to the crossing in between the public urinals and

the divider of the road. Bus was parked in the centre of the road and there is no space meant for parking of the vehicles or alighting of the passengers at that spot. PW-2 further stated that Bhim Sain Chaudhary (deceased) came from Mohindergarh side on a scooter bearing registration no. HR-35-2953. As there was no space to overtake or cross the bus, therefore, Bhim Sain Chaudhary stopped his scooter five to six feet behind the bus. In the meanwhile, the offending four-wheeler bearing registration no. DIL-8185 came from the Mohindergarh side at a very fast speed and driven in a rash and negligent manner without blowing any horn by its driver-Lakhmi Chand. The said four-wheeler struck against the scooter of Bhim Sain Chaudhary from behind. As a result thereof, Bhim Sain Chaudhary was crushed in between the back portion of the bus and front of the four-wheeler. Bhim Sain Chaudhary died at the spot.

It is relevant to note that PW-2 further stated that the driver of both the bus as well as four-wheeler fled from the spot. PW-2 has steadfastly denied the suggestion that the bus was parked on the extreme left side of the road to enable the passengers to alight. He has clearly denied the absence of negligence on the part of the bus driver.

Similarly, PW-5-Suraj Vohra, who was also present at the spot at the time of the accident has deposed in the same vein, giving a graphic description of the accident as it took place, leading to the death of Bhim Sain Chaudhary.

A perusal of the claim petition reveals that a specific plea of composite negligence on the part of both the four-wheeler as well as the Haryana Roadways bus, is raised by the claimants. In the written statement

filed on behalf of the Haryana Roadways, Rohtak, it is admitted that the bus had stopped to enable the passengers to alight at Mahabir Chowk. It is specifically mentioned in the FIR, Ex.PA that the bus in question had stopped at Mahabir Chowk to enable the passengers to alight and that the deceased was also waiting behind the said bus. Learned counsel for the respondent-Haryana Roadways, is unable to point out any evidence on record to prove that the bus had been stopped at a designated bus stop or in such a manner, so as to facilitate free flow of the traffic.

Contention of learned counsel for the Haryana Roadways that the bus always used to be stopped at this point for convenience of the passengers, is clearly illogical, fallacious and of no avail to the said respondents. It is not open to the drivers of public transport vehicles to stop the vehicles at any unauthorized place in order to facilitate the passengers to alight or board the vehicle and that too in the middle of the road, while blocking and stalling the entire flow of traffic. It is apparent from the facts and circumstances of the case that the bus was parked right in the middle of the road. It is only due to this reason that the deceased stopped his scooter behind the bus, otherwise it is obvious that the deceased would have overtaken the bus which had conveniently stopped in the middle of the road to enable the passengers to alight or board the same. It is opposed to all commonsense that deceased would have stopped his scooter behind the bus in case there was any place to pass the same. Apart from a display of scant respect for traffic rules and convenience of the general public, the bus driver was clearly rash and negligent in his act of stopping his bus in the middle of the road in this fashion. Driver of the four-wheeler was equally responsible

for the accident in question leading to the death of Bhim Sain Chaudhary. Therefore, composite negligence on the part of both the bus as well as the four-wheeler, is apparent on record. Merely, because the driver of the offending bus was not proceeded against in the criminal matter, cannot be a ground to conclude absence of composite negligence. Therefore, this finding of the learned tribunal, is set aside and it is held that the accident in question took place on 04.03.1993, due to composite negligence of both the Haryana Roadways as well as four-wheeler. They are guilty of contributory negligence to the extent of 50% each.

There is no dispute regarding the death of Bhim Sain Chaudhary in the motor vehicle accident, which took place on 04.03.1993 and neither is there a dispute regarding the income of the deceased as assessed by the learned tribunal i.e., ₹32,000/- p.a. Thus, income of the deceased as assessed by the learned tribunal i.e., ₹32,000/- p.a, is upheld.

As the deceased was admittedly about 43 years old at the time of accident, increase in income at the rate of 25% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009**. Appellants, are the widow and children of the deceased and there is no evidence on record to refute the claim set up by the appellants that they were dependent upon the deceased. Therefore, in terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**, 1/4th deduction on account of personal expenses is to be effected keeping in view the number of dependants i.e. four.

Multiplier of 14 instead of 12 has to be applied as the deceased was 43 years old at the time of accident.

Appellants are awarded a sum of ₹15,000/- each towards loss of funeral expenses and loss of estate. Instead of ₹16,000/-, appellant-no.1- widow of the deceased, is entitled to ₹40,000/- for loss of consortium. Appellants no.2 to 4 i.e., children of the deceased, are entitled to a sum of ₹40,000/- on account of loss of parental consortium. Reference in this regard can gainfully be made to the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333**, as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others).

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

Sr. No.	Heads of Claim	Amount
1.	Income	₹32,000/- p.a.
2.	Income after addition at the rate of 25% on account of future prospects	₹32000 + (32,000 x 25%) = ₹40,000/-
3.	Deduction of 1/ 4 th on account of personal expenses	₹40,000/- (₹40,000*1/4=₹10,000 /-) = ₹30,000/-
4.	Loss of dependency after applying a multiplier of 14	(₹30,000 x 14) = ₹ 4,20,000/-
5.	Loss of estate	₹15,000/-
6.	Funeral expenses	₹15,000/-
7.	Loss of consortium to widow of the deceased	₹40,000/-
8.	Loss of parental consortium to appellants no.2 to 4	₹40,000/-
	Total	₹5,30,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount of compensation at the rate of 7.5% per annum from the date of filing of the petition till realization. Manner of disbursement as determined by the learned Tribunal shall remain the same. As the present has been held to be a case of composite negligence, it is open to the claimants to recover the amount from any of the joint tortfeasors, who needless to say can recover the requisite amount from the other tortfeasor.

Present appeal is accordingly disposed of.

20.08.2019

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.