

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

256

FAO-5426-2010 (O&M)  
Date of Decision : 30.08.2019

Hukmi Devi and others

.... Appellants

Versus

Naresh and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.Chetan Kapoor, Advocate  
for the appellants.

Ms.Shamsher Kaur, Advocate  
for respondent No.3/Insurance Company.

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**RAMENDRA JAIN, J. (ORAL)**

The claimants have filed the instant appeal for enhancement of compensation by modifying the impugned award dated 07.08.2009 of the Motor Accident Claims Tribunal, Karnal (for short-'the Tribunal').

Briefly, in the night of 02.07.2006, deceased Sugna Ram an occupant in a Maruti Car bearing registration No.HR-05-P-5152 was going from village Sambhli to village Sounkara, when they reached one kilometer ahead of village Sambhli towards Karnal, a truck bearing registration No.HR-58-A-0786 being driven by respondent No.1 in a rash and negligent manner, coming from opposite side struck against the aforesaid car. As a result thereof, all the occupants of the car including its driver, received multiple grievous injuries. Sugna Ram was shifted to a private hospital run

by Dr.Sameer Aggarwal at Karnal, where he succumbed to his injuries. Being aggrieved of his death, his widow and children filed a claim petition under Section 166 of the Motor Vehicles Act (in short, 'the Act').

After holding trial, learned Tribunal awarded ₹2,20,000/- as compensation to the appellants after deducting 50% of the same towards contributory negligence of deceased Sugna Ram.

Both the sides are *ad idem* that this appeal has to be decided in accordance with the principles laid down in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Learned counsel for the appellants contends that since deceased Sugna Ram was only occupant of the car, therefore, he cannot be held liable for contributory negligence in the accident question in any manner. Learned Tribunal has committed a grave error in deducting 50% of the amount of compensation of the appellants determined on account of death of Sugna Ram towards his contributory negligence.

Refuting the above submission, learned counsel for Insurance Company/respondent No.3 submits that as per medical record Ex.R3 the driver of the aforesaid car was drunk. Therefore, the learned Tribunal has rightly held 50% contributory negligence of Sugna Ram. The appellants before the learned Tribunal intentionally and deliberately did not implead the driver of Maruti

Car in which Sugna Ram was travelling as he was his co-villager.

Having given thoughtful consideration to the rival submissions, this Court is of the view that Sugna Ram, being occupant of the car, did not in any manner contribute in the accident inasmuch as he was not driving it. Learned Tribunal has wrongly held 50% contributory negligence of the deceased Sugna Ram. Therefore, the finding of the learned Tribunal to this extent is set aside.

Learned counsel for the appellants has furnished the calculations (Mark A). As per calculations 'Mark-A', the total amount of compensation payable to claimants-appellants, according to ***Pranay Sethi's case (supra)***, comes to ₹5,40,400/- less ₹2,20,000/- already awarded by the learned Tribunal. Meaning thereby, the claimant-appellants are entitled to ₹3,20,400/- over and above the compensation awarded by the learned Tribunal.

Learned counsel for respondent No.3/Insurance Company has not been able to controvert or point out any infirmity in the above calculations (Mark-A). Hence, the same is accepted.

In view of the above, the claimant-appellants are held entitled to compensation of ₹3,20,400/-over and above the amount of ₹2,20,000/- already awarded by the learned Tribunal, vide Award impugned herein. Respondent No. 3-Insurance Company, through its counsel is directed to deposit the aforesaid enhanced amount of compensation before the learned Tribunal within one month from

today, along with up-to-date interest @ 7.5% per annum from the date of filing of claim petition till realization, for onward disbursement to the claimant-appellant, in proportion so arrived at by it, in accordance with law against proper receipt and identification.

In case aforesaid enhanced amount is not deposited within stipulated time, Insurance Company would be liable to pay the same with interest @15% from the date of institution of claim petition till realization.

The instant appeal stands disposed of, accordingly.

August 30, 2019  
*anju*

( RAMENDRA JAIN )  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |