

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

FAO-10500-2014(O&M)

Date of decision:-17.9.2019

Bhagwan Dass Chawla and another

...Appellants

Versus

Shankar Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jagdish Manchanda, Advocate
for the appellants.

Mr.Harsh Aggarwal, Advocate
for respondent No.3 – insurance company.

H.S. MADAAN, J.

Briefly stated, the facts of the case as per the version of claimants are that on 26.2.2012, Sahil was going from his village Anwal to Kalanaur riding his Scooty having registration No.HR12Q-9446; Anil son of Inder Lal Jangra was also going behind him on his motorcycle having registration No.HR-12M-9679; Sahil was driving the Scooty at a very slow speed on his left hand side by obeying all traffic rules; at about 8:50 p.m. when Sahil reached college turn, Kalanaur, then a truck bearing registration No.RJ-29-GA-0089 was parked on the road without putting the parking lights or rear lights on and without side signals on; there was no indication of the parking of the vehicle on the road; the vehicles coming from the opposite side were giving heavy glare without dipper from the headlights; Sahil could not observe the truck parked on the road

due to darkness and his Scooty hit the backside of the stationary truck, resultantly Sahil suffered multiple grievous injuries on his head and other parts of the body; the accident was witnessed by Anil son of Inder Lal, who was following the Scooty of Sahil on his motorcycle and he with the help of passerby took Sahil to Civil Hospital, Kalanaur where the doctor on duty gave first aid to such injured and referred him to PGIMS Rohtak for further treatment; on 29.2.2012 at night the doctors of PGIMS Rohtak referred Sahil to Maharaja Aggarsen Hospital, New Delhi where he was admitted on 1.3.2012 at 12:00 a.m., ultimately he expired there on 2.3.2012 at 2:00 a.m. succumbing to the injuries suffered by him in the road side accident; FIR No.62 dated 1.3.2012 for the offences under Sections 279, 337 IPC was registered against respondent No.1 – Shankar Lal – driver of the offending truck and he was sent up to face trial for causing the accident.

Petitioners/claimants Sh.Bhagwan Dass Chawla – father and Smt.Sunil Rani – mother of deceased Sahil had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Shankar Lal – driver, Mukand Lal – owner and United India Insurance Company Ltd., Rohtak – insurer of the truck No.RJ-29-GA-0089, claiming compensation to the tune of Rs.25,00,000/- along with interest before Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as the Tribunal).

As per the case of the claimants, due to untimely and sudden death of their son Sahil, they had suffered great mental shock; they were fully dependent upon the earnings of the deceased, who was a young-man

of 21 years; a student of engineering and his future is very bright; he was giving tuitions to students of higher classes and was earning Rs.20,000/- per month and he used to hand over all his earning to his parents, the petitioners. According to the petitioners/claimants they had spent Rs.2,50,000/- on treatment, transportation of the dead body, last funeral rites etc.

On notice, all the three respondents appeared and filed written statements contesting the claim petition. Respondents No.1 and 2 had filed a joint written statement wherein they raised various legal objections and on merits denied the assertions in claim petition contending that their vehicle has been wrongly involved in the criminal case by the police in collusion with the petitioners with an ulterior motive; as a matter of fact, no accident had been caused by respondent No.1 at any time; that respondent No.1 was having a valid and effective driving licence and the vehicle was insured with respondent No.3.

In the written statement filed on behalf of respondent No.3 – insurance company many legal objections were raised and statutory defences were taken contending that the driver of the truck was not holding a valid and effective driving licence.

In the end, all the respondents prayed for dismissal of the claim petition.

Issues on merits were framed. Both the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Tribunal vide award dated 14.7.2014 accepted the petition partly granting compensation of

Rs.3,35,000/- being 50% of total compensation calculated as Rs.6,70,000/- in favour of petitioner No.2 and against the respondents, who were held liable to pay the same jointly and severally. Interest @ 8% per annum was also awarded from the date of filing of the petition till the realization. The Tribunal had found it to be a case of contributory negligence and for that reason only 50% of the compensation so calculated was awarded to the claimant No.2 since the deceased was also found responsible for the accident and his role in the accident was assessed to be 50%.

However, the claimants were dissatisfied with the compensation awarded to them and they had filed appeal before this Court seeking enhancement of compensation.

Notice of the appeal was issued to the respondent No.3 – insurance company, which appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal considering the fact that the deceased driving his Scooty had hit the truck parked on the road from behind has come to the conclusion that deceased was also at fault in happening of the accident and it was taken to be a case of contributory negligence.

That finding is being vehemently assailed by learned counsel for the claimants/appellants. He has contended that the respondents have not taken any specific plea in that regard and no evidence was adduced by them in proof thereof and the Tribunal was not justified in returning a finding.

Whereas learned counsel for the respondent – insurance company contended that facts and circumstances of the case clearly point out that deceased had failed to exercise due care and caution while driving his Scooty and had hit the stationary truck from behind, therefore, the Tribunal was justified in taking it as a case of contributory negligence.

After hearing learned counsel for the parties and going through the record, I find that such conclusion reached by the Tribunal was not justified. The accident in this case had taken place at night time at 8:50 p.m. There is nothing on record to show that it was a well lit area and the truck standing on the road could be seen from sufficient distance by the other commuters of the road. There is nothing on record to show that the rear lights and the parking lights of the truck had been switched on and some articles had been placed near and around it so as to indicate to the other people using the road that a vehicle was parked ahead. It is specific version of the claimants that the truck was standing on the road without any parking or back light on, without any side signal and without any other indication of parking and due to glare of lights from the vehicles coming from the opposite side, the truck was not visible. The respondents have flatly denied the happening of accident. No specific plea has been taken that sufficient indication had been given with regard to the parking of the truck on the road or that road lights were on and functioning, therefore, the truck could be visible from a great distance. The claimants had produced oral as well as documentary evidence in support of their version, which has virtually gone un rebutted. Learned counsel for respondents No.1 and 2 had closed the evidence after tendering

documents i.e. copy of driving licence Ex.R1, copy of insurance cover note Ex.R2 and copy of tourist permit as Ex.R3, whereas counsel for the insurance company had also closed its evidence after tendering document i.e. ration card Ex.R4. In that way, it was not proper and appropriate for the Tribunal to observe that deceased had also contributed to the accident attributing fault to him while driving his Scooty. The Tribunal has reached conclusion of contributory negligence by conjectures, guesswork and on the basis of assumptions and presumptions and not on the basis of the evidence available on record.

Learned counsel for the appellants has referred to judgment **Surinder Kumar Sehgal & Ors. Versus M/s New India Assurance Co. Ltd. & Ors., 2011(18)RCR(Civil) 886** by Delhi High Court wherein while dealing with an accident case where the motorcycle of the deceased had dashed against stationary truck at night and the truck was standing on road without any parking lights/indicators/reflectors on its back side, neither any lantern nor red cloth was tied to truck indicating its presence on road, it was found to be a clear case of *res ipsa loquitur* and has observed that deceased had died due to negligence on the part of driver of the offending vehicle. In that case neither owner nor driver of alleged offending vehicle appeared in witness box to contest the case, then the version of the claimants with regard to manner in which the accident occurred has corroborated by version recorded by the police was held to prevail observing that negligence may be inferred therefrom.

On the other hand, learned counsel for respondent No.3 – insurance company has placed reliance upon **Raj Rani Versus Oriental**

Insurance Co. Ltd. , 2009(13)SCC 654 wherein the principle of 50:50 in cases of contributory negligence was discussed. The ratio of the judgment is to the effect that payment of lump sum amount is not a ground to deduct 1/3rd from the compensation amount. It was just observed that since as per facts of the case when the accident took place, the truck was stationary some amount of negligence on the part of deceased could not be ruled out. No specific guidelines as to how the contributory negligence is to be concluded are there in this judgment.

Another judgment referred to was **Surinder Kaur and others Versus Kulwant Singh and others, 2014 ACJ 398** wherein dealing with the aspect of contributory negligence, it was observed that a person dashing from the rear side of the bus must take a larger responsibility of the accident and the bus which must have suddenly stopped by braking must take a minor share of responsibility, as such negligence of the deceased motorcyclist and the driver of the bus was apportioned as 60:40%.

Again this judgment does not come to help of respondent – insurance company due to different facts. It is not a case of the deceased driving a Scooty hitting the truck since the driver had applied the brakes suddenly. Rather the accident had taken place due to wrong parking of the truck on the road at night time without giving any indication that truck was parked on the road.

Learned counsel for the respondent – insurance company has further referred to judgments i.e. **Subhash Chand and others Versus Satya Rani and others, 2014(5) RCR(Civil)265** and **Nishan Singh &**

Ors. Versus Oriental Insurance Company Ltd. through Regional Manager & Ors., 2018(2) RCR(Civil)891. However, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

It is to be taken note of that FIR with regard to the accident was registered against respondent No.1 – driver of the truck, who has been sent up to face trial and as it comes out from the statement of PW4 Ajit Singh, Criminal Aholmad, Shankar Lal(driver) is facing trial in the Court of law after service of charge-sheet upon him. Therefore, the only reasonable conclusion which can be drawn is that it was respondent No.1 – Shankar Lal, who was solely responsible for the accident by his wrong parking of the truck on the road without giving any indication that truck had been parked there.

Therefore, the finding recorded by the Tribunal on issue No.2 is modified accordingly.

Now coming to the quantum part. The deceased was aged about 20 years and 8 months at the time of his death in the accident, his date of birth being 16.6.1992. He was unmarried and as deposed by PW2 Harish Kumar Mittal, Principal, Satpriya, Group of Institution, Jind Road, Rohtak Sdahil Chawla, he was a student of B.Tech Computer Science and Engineering. The Tribunal has assessed his income to be Rs.5,000/- per month. However, no amount towards future prospects has been added.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,** in such an eventuality 40% of the amount is to be added

towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.}5,000 + 2,000 = \text{Rs.}7,000/-$.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** the Tribunal has rightly deducted 50% amount towards self-expenses. Doing that the dependency of claimants comes out to $\text{Rs.}3,500/-$ per month, annual dependency comes out to $\text{Rs.}3500 \times 12 = \text{Rs.}42,000/-$.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to $\text{Rs.}42000 \times 18 = 7,56,000/-$.

The Tribunal has awarded a sum of $\text{Rs.}15,000/-$ on account of transportation and $\text{Rs.}15,000/-$ on account of funeral expenses. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. $\text{Rs.}15,000/-$ on account of loss of estate and $\text{Rs.}15,000/-$ as funeral expenses, total $\text{Rs.}30,000/-$. The total compensation comes out to $\text{Rs.} 7,56,000 + 30,000 = 7,86,000/-$.

The Tribunal has further awarded a sum of $\text{Rs.}1$ lakh on account of providing treatment to the deceased. The same is kept intact. Thus the total compensation comes out to $\text{Rs.}7,86,000 + 1,00,000 = 8,86,000/-$.

The Tribunal has awarded compensation of $\text{Rs.}3,35,000/-$ along with 8% interest as mentioned in the relief clause payable by all the respondents jointly and severally. The same is enhanced to $\text{Rs.}8,86,000/-$.

The claimant No.2 would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.8,86,000/-, payable by all the respondents jointly and severally. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimant No.2 and with regard to deposit in the form of FDR shall stand modified proportionately.

With such modifications, the appeal is allowed partly with costs.

17.9.2019

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(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**