

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

FAO No. 10558 of 2014 (O&M)

Date of decision: 2.7.2019

Manpreet Singh and others

...Appellants

Versus

Sunil Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Lalit Kumar, Advocate, for
Mr. J.S. Chathrath, Advocate,
for the appellants.

None for respondents No.1 and 2.

Mr. S.S. Sidhu, Advocate,
for respondent No.3—Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 24.3.2014 passed by the Motor Accident Claims Tribunal, Patiala, wherein the appellants herein have been allowed compensation of ₹6,15,000/- on account of death of Fakhriya @ Pakhriya @ Fakir Chand @ Fakir Singh.

In brief, the facts are that on 30.6.2012 deceased Fakhriya along with his wife, namely Smt. Rani @ Rani Kaur, was going on his scooter bearing PB-11-J-3067 and when they reached near T-point of village Khaspur of Tepla to Banur Road, they were hit by an Endeavour vehicle bearing registration No. JK-02AQ-5070, being driven by respondent No.1 in rash and negligent manner, as a result of which, both Fakhiriya and his wife

fell down on the road. Both of them received grievous injuries and ultimately succumbed to their injuries. It was alleged that the accident took place due to the rash and negligent driving of respondent No.1 and consequently FIR 67 dated 30.6.2012 under Sections 279, 304-A, 337 and 427 IPC came to be lodged with Police Station Banur. With these averments, a claim petition was filed by the children, parents and the brother of the deceased—Fakhriya claiming that they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was working as a labourer and was earning ₹9,000/- per month.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action had accrued etc. Issues were framed and thereafter evidence was led by the parties in support of their respective claims.

After scrutiny of the evidence brought on record, the Tribunal held that nevertheless respondent No.1, while driving the offending vehicle, acted in a rash and negligent manner but the scooter driver Fakhriya was also responsible for the accident though to some extent by having three riders on the scooter, which is in violation of the rules under the Motor Vehicle Act, 1988 and not having exercised enough care and caution while taking turn to the right by ensuring that traffic on the road was at a safe distance before doing so and in that way the deceased also contributed to the accident and on assessment of the facts and evidence before it assessed compensation of ₹8,20,000/-, but took the liability of the deceased to the extent of 25% i.e. ₹2,05,000/- and held the appellants entitled to compensation of ₹6,15,000/-, which has been now challenged in the instant

appeal.

Learned counsel for the appellants, while assailing the impugned award, submits that the Tribunal has wrongly held that it was a case of contributory negligence and fastened the liability to the extent of 25% on the deceased. It is submitted that it has been established on the record by way of documentary as well as oral evidence that the accident took place only on account of rash and negligent driving of the offending vehicle being driven by respondent No.1 and therefore, liability to the extent of 25% could not have been fastened on the deceased. It is further submitted that the amount of compensation awarded by the Tribunal is on the lower side and as such the same deserves to be enhanced. It is further submitted that the monthly income of the deceased—Fakhriya ought to have been taken as ₹9,000/-, as claimed in the claim petition, but the Tribunal took his monthly income as ₹6,000/-. It is further submitted that the Tribunal has not awarded any amount towards future prospects and the amount awarded under the other conventional heads is inadequate.

On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and as such no interference is called for in the appeal by this Court. It is also argued that the Tribunal had come to the correct conclusion that there was contributory negligence on the part of the deceased, since he was carrying passengers on his scooter beyond permissible limit. There was a clear-cut violation of the provisions of the Motor Vehicle Act and the rules framed thereunder.

I have heard learned counsel for the parties and with their

assistance have gone through the pleadings of the parties as well as the impugned award.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 40 years of age and was earning ₹6000/- per month. The Tribunal held that claimant—Mohinder Singh, being brother of the deceased, was not his legal heir/legal representative and as such he was not entitled to any compensation. Further, the Tribunal deducted 1/4th towards personal and living expenses of the deceased. In the absence of the documentary evidence with regard to the actual income of the deceased, the Tribunal has rightly taken the income of the deceased as ₹6000/- per month. Further, the Tribunal keeping in view the nature of the evidence brought on record arrived to the conclusion that the deceased was 40 years of age and while applying the multiplier of 15 awarded the amount of compensation, as mentioned above. However, increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. Therefore, compensation payable to the appellants is re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Fakhiriya
(ii)	Date of accident	30.6.2012
(iii)	Age of the deceased	40 years
(iv)	Monthly income of the deceased	₹ 6,000/-

(v)	40% of (iv) is to be added towards future prospects	(₹ 6000+₹2400)= ₹ 8400/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 8400-₹2100) = ₹ 6300/- per month
(vii)	Compensation calculated after applying the multiplier of 15	(₹6300X12X15) = ₹ 11,34,000/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹12,04,000

However, in view of the fact that deceased—Fakhiriya was having three riders on the scooter, which is in violation of the rules of the Motor Vehicle Act, contributory negligence to the extent of 25% has rightly been fastened on the deceased. Thus, the findings recorded by the Tribunal to that extent are affirmed.

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total amount of compensation is worked out to be ₹ 12,04,000/- and deducting the amount of ₹3,01,000/- (i.e. 25% on account of contributory negligence), the appellants No. 1 to 6 shall be entitled to compensation of ₹9,03,000/- and the amount in excess over what was awarded will also attract interest @7.5% per annum from the date of the instant appeal till the date of payment. The appellants No. 1 to 6 will share the enhanced amount in the ratio as awarded by the Tribunal.

2.7.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No