

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

**FAO No. 4150 of 2015
DECIDED ON: FEBRUARY 25, 2019**

KASHMIR KAUR AND OTHERS

.....APPELLANTS

VERSUS

RAJIV KUMAR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vikram Bali, Advocate for
Mr. Rajesh Bansal, Advocate
for the appellants.

Ms. Monika Sharma, Advocate
for respondents No.1 and 2.

Mr. Mayank Mathur, Advocate
for respondent No.3

AVNEESH JHINGAN J. (ORAL)

The award dated 07.01.2015 passed by the Motor Accident Claims Tribunal, Rupnagar (for brevity 'the Tribunal') has been assailed by the legal heirs of Dilbag Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow, children and mother of deceased are the appellants. The driver, owner and insurer (i.e. Oriental Insurance Company Ltd) of truck bearing registration No. HP-64-3997 (hereinafter referred to as ' the offending

vehicle'); have been arrayed as respondents no. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 11.10.2013 Dilbag Singh (since deceased) alongwith his son Surinder Singh was going to Chandigarh in his Maruti Car bearing registration No. PB-12-K-3765 (for short 'car'), which was being driven by Surinder Singh. On the way the driver of the offending vehicle suddenly stopped the offending vehicle by applying brakes as a result of which the car struck against the back portion of the offending vehicle. Both the occupants of the car sustained multiple injuries. They were taken to Civil Hospital, Ropar from where they were referred to PGI, Chandigarh where Dilbag Singh was declared dead. FIR No. 79, dated 11.10.2013 was registered at Police Station Kiratpur Sahib.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to contributory negligence of respondent No.1 and claimant No.2-Surinder Singh and the ratio was attributed as 50:50. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹14,99,680/- alongwith interest @ 9% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹10,000/- for funeral expenses and ₹5000/- for transportation.

In the claim petition, it was pleaded that the deceased 57 years old and was doing agriculture work and dairy farming. It was further pleaded that he was also working as Secretary in The Bara Pind Agricultural Cooperative Society, Bara Pind, Tehsil and District Ropar. It was proved that the deceased

was getting a monthly salary of ₹26,745/-. The Tribunal assessed the monthly income of the deceased as ₹16,260/- from the agriculture and dairy farming. 1/3rd deduction for self-expenses was made and multiplier of 9 was applied. The Tribunal also considered salary of deceased from co-operative society for one year as ₹2,13,960/- after making 1/3rd deduction for self-expenses. Salary was considered for year as he was to retire after one year and the job was not pensionable.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants contends that the deceased was not the driver of the car, he was only occupant of the car and the Tribunal erred in deducting 50% compensation on the ground that the accident was caused due to contributory negligence of respondent No.1 i.e. the driver of the offending vehicle and appellant No.2 i.e. the driver of the car. His grievance is that no future prospects have been awarded and the amounts awarded under the conventional head are on lower side. He further contends that 1/3rd deduction for self-expenses has wrongly been made by the Tribunal as there were four dependants. No other issue has been raised.

Learned counsel for the insurer defends the award and submits that the son of the deceased was driving the car and the Tribunal has rightly attributed to him 50% contributory negligence in causing the accident. Further, that the deduction has rightly been made as the son is also one of the claimants and he is not dependant being major.

There is no serious objection with regard to awarding future prospects and the conventional heads as per the decisions of the Supreme Court in

National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and **Hem Raj vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.**

It is an established fact that the deceased was an occupant of the car and was not driving the car. The contributory negligence can be attributed to the driver of the vehicle and not the occupant of the vehicle. The proposition will not be affected by the fact that in the present case the driver of the car was the son of the deceased. In such circumstances, 50% deduction made by the tribunal on account of contributory negligence cannot be sustained. No negligence can be attributed to the occupants of the vehicle, therefore, no deduction can be made from the compensation on ground of contributory negligence.

The Supreme Court has even held that in case where two vehicles are involved in an accident and there is contributory negligence of both the vehicles, the claimants are liberty to claim compensation either from both or any of the tortfeasor.

Reliance has been placed upon the judgment of the Supreme Court in ***Khenyei v. New India Assurance Co. Ltd. and others, 2015(9) SCC 273***, where it was held that:-

“18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be

applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle-trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

What emerges from the aforesaid discussion is as follows :

- (i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.*
- (ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.*
- (iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint*

tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.

The contention of learned counsel for the appellants challenging the 1/3rd deduction is not well founded. There is nothing on record to show that 26 years old son was dependant on the earnings of his father. Hence, the Tribunal has rightly made 1/3rd deduction for self-expenses considering three dependants.

The contention raised by learned counsel for the appellants regarding future prospects deserves acceptance. There is no dispute between the parties with regard to the age of the deceased. There is no challenge to the loss of dependency calculated by the Tribunal as ₹ 11,72,000/-

Two income for compensation has been considered by Tribunal separately. The second income accrue for one year and the job was not pensionable. Future prospects of 15% are being awarded on both the incomes as it would take care of the fact that after retiring from job the deceased would have been able to either to do some other job or concentrate on agriculture and thereby increase his income.

Having due regard to the decisions of the Supreme Court in **Pranay Sethi's** case (supra) and **Hem Raj's** case (supra); 15% future prospects are awarded, as the deceased was in the age group of 50-60 and falls in the category of self employed or having fixed wages. 15% of ₹ 11,72,000/- is ₹ 1,75,800/-

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium. The amount under the conventional heads is reduced to ₹70,000/-.

The award dated 07.01.2015 is modified to the extent that amount of ₹14,99,680/- awarded by the Tribunal is enhanced by ₹1,30,800/-. The appellants are entitled to the enhanced amount alongwith interest as already awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 25, 2019
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Whether speaking/reasoned:
Whether reportable :

Yes / No
Yes / No