

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 9734 of 2014
DECIDED ON: FEBRUARY 28, 2019

CHAMKAUR SINGH AND OTHERS

.....APPELLANTS

VERSUS

NACHHATTAR SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gursimran Singh, Advocate for
Mr. Savinder Singh Gill, Advocate
for the appellants.

None appeared for the respondents in spite of service.

AVNEESH JHINGAN J. (ORAL)

The award dated 25.08.2014 passed by the Motor Accident Claims Tribunal, Moga (for brevity 'the Tribunal') has been assailed by the parents and sisters of Satvir Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The driver of bus bearing registration No. PB-12-C-9830 (hereinafter referred to as 'offending vehicle'); General Manager, Punjab Roadways, Jagraon Depot and owner (i.e. Punjab Govt. through Secretary Transport Department, Higher Authorities Secretariat, Chandigarh) of 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 26.03.2013, Satvir Singh was going on the motorcycle bearing registration No. PB-04-0431, which was being driven by Sukhdeep Singh and he was the pillion rider. When they reached near Tehsil Chowk Jagraon, where the over-bridge was under construction, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Satvir Singh received injuries. He was taken Civil Hospital, Jagraon where he scummed to his injuries. DDR No. 12, dated 26.03.2013 was recorded at Police Post, Bus Stand Jagraon.

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 the driver of the motorcycle and the driver of the offending vehicle. The claimants were found entitled to 50% compensation i.e. 1/2 of ₹5,75,000/- i.e. ₹2,87,500/- alongwith interest @ 6% per annum. The amount awarded included ₹25000/- for loss of love and affection and ₹10,000/- for funeral expenses.

In the claim petition, it was pleaded that the deceased was 19 years old at the time of accident and was a matriculate. It was claimed that he was giving tuitions to the primary school students and was working as an electrician at the shop of Gill Electrical Services, Dosanjh Road, Moga and was earning ₹18,000/- per month. But the claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹5000/-; 1/2 deduction for self-expenses was made and multiplier of '18' was applied.

Learned counsel for the appellants contends that the deceased was a pillion rider on the motorcycle and the tribunal erred in holding that there were contributory negligence of both the parties. Even, if the negligence is contributed to the driver of the motorcycle for causing accident, the 50% deduction cannot be made from the compensation awarded for the death of the pillion rider.

It has come on record that the deceased was a pillion rider on the motorcycle. In spite of the findings recorded by the tribunal that the accident was caused due to the contributory negligence of the driver of the motorcycle and the driver of the offending vehicle, the compensation awarded to the legal heirs of the deceased cannot be deducted on account of contributory negligence, as he was not driving the motorcycle and no negligence can be attributed to him.

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.

The Supreme Court in **Khenyei v. New India Assurance Co. Ltd. and others, 2015(9) SCC 273**, has held as under:

“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 - trailer-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.”

Learned counsel for the appellants contends that the Tribunal assessed the monthly income of the deceased as ₹5000/-, as it is even less than the minimum wages for an unskilled labourer in the State at the time accident. His grievance is that no future prospects have been awarded and the amount awarded under the conventional heads should be awarded in consonance with the decision of the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009**.

The contention of learned counsel for the appellants deserve acceptance.

In the cases where the claimants failed to prove the monthly earning of the deceased the safest yardstick would be to rely upon the minimum wages prevalent at the time of accident in the State. The minimum wages prevalent in the State at the time of accident for an unskilled labourer were ₹5695/-. For the purpose of calculation the same are rounded off to ₹5700/-.

Having due regard to the decisions of the Supreme Court in Pranay Sethi's case (supra) and **Hem Raj vs. Oriental Insurance Company Ltd 2018 (2) PLR 480**; 40% future prospects are awarded, as the deceased was 19 years old at the time of accident and is covered in the category of self employed or having fixed wages.

In consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra), claimants are also entitled to ₹15000/- each for funeral

expenses and for loss of estate. No amount is awarded for loss of love and affection.

In view of afore-said discussion, the compensation is re-calculated as under:

	Head	Compensation awarded
(i)	Monthly income	₹ 5700/- per month
(ii)	Future prospects at 40%	₹ 2280/-
(iii)	Total Income	₹ 7980/- per month
(iv)	Deduction of personal expenses	₹ 3990/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	3990x12x18= ₹8,61,840/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹8,91,840/-

The award dated 25.08.2014 is modified to the extent that amount of ₹2,87,500/- awarded by the Tribunal is enhanced to ₹8,91,840/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 28, 2019
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Whether speaking/reasoned: *Yes / No*
Whether reportable : *Yes / No*