

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

FAO-1821-2011(O&M)

Date of decision:-1.4.2019

Prinka and others

...Appellants

Versus

Bhajan Singh and others

...Respondents

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

Present: Mr.Ramneek Vasudeva, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr.R.C. Gupta, Advocate
for respondent No.3.

H.S. MADAAN, J.

On account of death of Smt.Mamta Devi wife of Piara Singh in a motor vehicular accident, which took place on 11.8.2009 at 8:15 a.m. in the area of village Hethla Kakrala statedly on account of rash and negligent driving of bus bearing registration No.HP-12-C-5561 (hereinafter referred to as the offending vehicle) by respondent No.1 – Bhajan Singh, Baby Prinka – minor daughter and Sh.Ratta Singh – father-in-law of the deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Bhajan Singh – driver, Manoj Kumar Rana – owner and United India Insurance Company Ltd., Hamirpur – insurer of the offending vehicle, claiming compensation to the tune of Rs.15 lacs. It is pertinent to mention here that Sh.Piara Singh – husband of the deceased was missing since 22.5.2009, therefore,

he could not be impleaded as a claimant and Baby Prinka had filed the claim petition through her grandfather – Sh.Ratta Singh.

On getting notice, all the three respondents had appeared and contested the claim petition. Issues on merits were framed. The parties were given opportunities to lead evidence.

The Motor Accidents Claims Tribunal, Ropar vide Award dated 8.9.2010 allowed the claim petition and taking age of deceased to be 30 years in view of the entry in her post-mortem report Ex.P1, her notional income being a household lady to be Rs.3,000/- per month, making deduction of 1/3rd towards personal expenses, using multiplier of 16 calculated the compensation payable to claimant No.1 – Prinka – minor daughter of deceased being her dependent; a sum of Rs.5,000/- more was allowed on account of loss of estate and Rs.10,000/- on account of funeral expenses, total compensation to the tune of Rs.3,99,000/- making it round figure Rs.4 lacs. However, it was observed that rashness and negligence of respondent No.1 was to the extent of 50% and therefore, half of the compensation amount worked out was awarded to claimant No.1 payable by all the three respondents jointly and severally and Sh.Ratta Singh – claimant No.2 was not awarded any compensation.

Feeling aggrieved by the said award, the petitioners/claimants filed an appeal before this Court, notice of which was given to the respondents.

I have heard learned counsel for the parties besides going through the record and I find that the award passed by the Tribunal suffers from various illegalities and infirmities.

The accident in this case had taken place on 11.8.2009. The Tribunal has taken age of deceased to be 30 years and she being a household lady her notional income has been taken to be Rs.3,000/- per month.

Learned counsel for the appellants/claimants has referred to judgment by a Co-ordinate Bench of this Court passed in FAO-218-2014 decided on 15.1.2014 titled ***United India Insurance Company Ltd. Versus Sube Singh and others*** wherein notional income of a household woman was taken to be Rs.9,000/- per month and no deduction was allowed for personal expenses. It was noticed in that judgment that in case ***Lata Wadhwa and others v. State of Bihar and others*** reported as 2001(4) RCR(Civil) 673, the accident had taken place in the year 1981 and the Apex Court had evaluated the contribution of a house wife at ` 3000/-per month, whereas accident in that case(FAO) had taken place 23 years thereafter and a house wife is something more than a mere skilled worker and her notional income taken to be Rs.9,000/- by the Tribunal was approved.

In this case taking into account the social and economic background of the deceased, I find that her notional income should be taken to be Rs.5,000/- per month and no deduction is to be made therefrom towards personal expenses. Therefore, her contribution to the family in the form of services rendered including managing affairs at home is taken to be Rs.5,000/- per month, annual contribution comes out to Rs.60,000/-(5,000 x 12) and applying multiplier of 16, the compensation comes out to Rs.9,60,000/(60,000 x 16).

The Tribunal has awarded a sum of Rs.5,000/- on account of loss of estate and Rs.10,000/- towards funeral expenses.

In view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, the claimant No.1 – Prinka is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- towards funeral expenses. The total compensation comes out to Rs.9,60,000 + 30,000 = 9,90,000/-.

The Tribunal has found it to be a case of contributory negligence. In my view, the Tribunal fell in error in arriving at that conclusion. The Tribunal lost sight of the fact that respondents No.1 and 2 in the written statement filed by them had took up a specific plea that no accident had taken place involving the offending vehicle. They had not taken any specific plea that as a matter of fact the accident had occurred due to fault of the deceased or for that matter it was a case of contributory negligence. The respondent No.3 – insurance company in the written statement filed by it though had taken a plea that accident in question took place due to negligence of Charan Dass, however, coming up with a plea that FIR was lodged on false facts despite the fact that no accident had taken place. In that way, the respondent – insurance company took up a contradictory stand; on one hand saying that the accident had taken place on account of fault of Charan Dass, on the other hand denying that no such accident had occurred. Similarly, the Tribunal on appreciation of evidence especially deposition of PW2 Charan Dass, who having suffered injuries in the accident was a stamped witness and who had categorically

stated that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1 and he had lodged a report regarding the accident with the police within five hours of taking place of the accident, had come to the conclusion that rashness and negligence on the part of PW2 itself was also there because his motorcycle struck against back tyre of the bus. It seems that the Tribunal has come to this conclusion without any justifiable reason and without there being enough material to draw such inference. An important thing to be noticed in this case is that respondent No.1 had not stepped into the witness-box to depose on oath that he had not caused the accident due to rash and negligent driving of the offending vehicle. The respondent No.1 – owner of the offending vehicle had also not appeared to state that the bus belonging to him and being driven by respondent No.1 had not caused any accident, therefore, oral as well as documentary evidence produced by the claimant has gone unrebutted. Besides testimony of PW2 Charan Dass, the claimants had proved in evidence copy of the FIR got recorded regarding the mishap as Ex.P2. Merely because the motorcycle driven by Charan Dass had struck against the backside of the bus does not mean that he was also at fault. There could be a number of reasons for that to happen including the bus being brought to a sudden halt and finding Charan Dass to be also responsible for the accident without there being specific plea so taken by the respondents and evidence adduced by them in that regard was not justified.

The finding of the Tribunal on issue No.1 cannot be sustained. The same is modified and verdict as regard this issue is given

observing that death of Smt.Mamta Devi took place in a road side accident on 11.8.2009 at 8:15 a.m. in revenue limits of village Hethla Kakrala, which accident was caused due to rash and negligent driving of the offending vehicle by respondent No.1. Therefore, the petitioner/claimant – Prinka minor daughter of deceased is entitled to get the compensation so calculated above and 50% per the amount cannot be slashed therefrom. Claimant No.2 Ratta Singh is not entitled to get any share in the compensation as he is not found to be dependent upon the deceased and his claim was rightly rejected by the Tribunal.

The Tribunal has awarded compensation of Rs.2,00,000/-.

In this way, the enhanced amount comes out to Rs.7,90,000/- (9,90,000 - 2,00,000). The claimant/petitioner No.1 would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.7,90,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

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

1.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No