

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

209

**FAO No. 7327 of 2015 (O & M)
Date of Decision : 22.4.2019**

Sheela and others**.....Appellants****v.****Krishan Kumar and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Balraj Gujjar, Advocate, for the appellants

Mr. Ajit Sihag, Advocate, for respondents No.1 and 2

Mr. Rajnish Malhotra, Advocate, for respondent No.3/
Insurance Co

AVNEESH JHINGAN, J. (Oral)

The award dated 10.4.2015 passed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') has been assailed by the legal representatives of deceased Rajiv Dahiya. The grievance raised in the appeal is two folds; firstly, that the Tribunal had wrongly held that negligence of the deceased contributed in causing accident and secondly, against the quantum of compensation.

The facts emanating from the record are that on 3.10.2013 Rajiv alongwith Jasmeet Kaur was travelling in a Maruti 800 car whose registration number was applied for. He was being followed by Sanjiv and Manoj in a separate car. When they reached near village Shekhpura near Hansi, the car driven by Rajiv was hit by a tractor-trolley bearing registration No. HR-16-L-8305 (hereinafter referred to as 'offending vehicle'). As a result of the impact,

Rajiv sustained injuries, he was taken to General Hospital, Hansi. He succumbed to the injuries by the time he reached hospital. FIR No. 395 dated 4.10.2013 was registered at Police Station Sadar, Hansi.

In the claim petition, it was pleaded that deceased was 36 years of age and was a Lecturer in Yashvir Memorial Technical Institute, Bhambhewa (Jind) and was drawing salary of ₹16,500/-per month. The experience certificate Ex.P-10 was produced. In the experience certificate, it was mentioned that Rajiv Dahiya was working as a Lecturer of English in the Institute from 22.7.2013 till his death and was drawing a salary of ₹16,500/-per month. The Tribunal opined that from the documents produced, it is not forthcoming that deceased was employed at the time of accident. His income was assessed as ₹10,000/-per month, 1/3rd deduction for self expenses was made and multiplier of 15 was applied. A sum of ₹13,25,000/-was awarded as compensation along with interest @ 7.5% per annum. It includes ₹5000/- towards loss of estate, ₹ 1 lakhs for loss of consortium and ₹20,000/-for funeral expenses.

The Tribunal after considering the facts and appreciating the evidence adduced, came to the conclusion that the accident was a result of contributory negligence in the ratio of 60:40, i.e. 60% negligence of offending vehicle and 40% of the deceased. The driver, owner and insurer of the tractor trolley were held jointly and severally liable to pay compensation. As the Tribunal had come to the conclusion that there was a contributory negligence, the claimants were held entitled to 60% of ₹13,25,000/-.

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

Learned counsel for the appellants argued that the Tribunal erred in holding that there was contributory negligence. The claimants had duly proved that the accident was result of rash and negligent driving of the offending vehicle. The income assessed by the Tribunal is on the lower side and no amount on account of future prospects was granted.

Learned counsel for the respondents argued that there was head on collision and the Tribunal rightly came to the conclusion that there was contributory negligence. The amount awarded by the Tribunal was defended and it was argued that the amount under the conventional heads be awarded as per the decision of the Supreme Court in the '**National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 5157**'.

From the perusal of the record, it is evident that Sanjiv was the eye witness to the accident. He deposed before the Tribunal as PW-2. It was specifically stated by him that the accident was caused due to rash and negligence driving of the offending vehicle. It was mentioned in the affidavit filed that the offending vehicle was being driven carelessly at a high speed and on the wrong side. Though the driver of the offending vehicle in his statement stated that the car was being driven on the wrong side, the same is not worth reliance, it would be pertinent to note here that the driver of the offending vehicle made a self serving statement. Moreover, FIR was registered against driver and he was facing criminal proceedings and in such event he was bound to make such a statement. There is no challenge to the fact that Sanjiv, an eye witness, who was following the car being driven by Rajiv. The Tribunal relied upon the statement of Sanjiv and there was nothing in his statement to show that there was a contributory negligence on the part of the deceased. Findings

recorded by the Tribunal that there was contributory negligence, cannot be sustained. The award is modified that the accident was result of rash and negligence driving of the offending vehicle.

The Tribunal erred in holding that there was nothing to establish that the deceased was working as a Lecturer at the time of accident. The contents of Ex.P-10, i.e. experience certificate, are reproduced as under :

“EXPERIENCE CERTIFICATE

This is to certify that Mr. Rajiv Dahiya s/o Sh. Mahabir Singh Dahiya had worked here as Lecturer in English in our institute from 22.7.2013 to till his death (3.10.2013). His monthly salary was Rs.16,500/-(Sixteen Thousand Five Hundred Only). He was very hardworking and sincere Man. His behavior and conduct was very good.

Sd/-
Principal
YMTI, Bhambhewa (Jind)”

From the experience certificate it is forthcoming that deceased was employed as a Lecturer of English with Yashvir Memorial Technical Institute. In view of the certificate, the contents of which were not rebutted by the respondents, the monthly income as given in the certificate is taken for arriving at a just and equitable compensation. Moreso, when there is no challenge to the fact that the deceased was a Lecturer.

The deceased was in the age group of 30 to 40 years and was having fixed wages, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra) and **Hem Raj v. Oriental Insurance Company Ltd. 2018 (2) PLR 480**, 40% on account of future prospects are awarded.

There is no dispute with regard to 1/3rd deduction and applying of multiplier of 16.

As compensation is being re-visited, 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 ₹15,000/-each for funeral expenses and for loss of estate, ₹40,000/-is awarded to the widow for loss of consortium.

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

Sr. No.	Particulars	Amount awarded in ₹
1	Monthly Income	16500
2	40% Future prospects (plus)	6600
		23100
3	1/3 rd deduction for self expenses (minus)	-7700
		15400
4	Multiplier of 15 (15400x12x15)	2772000
5	Under conventional heads	70000
	Total Compensation	2842000

The compensation awarded by the Tribunal is enhanced from ₹13,25,000/- to ₹28,42,000/-. The claimants shall be entitled to the balance amount along with interest as awarded by the Tribunal.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

22.4.2019
Ashwani

Speaking/Reasoned : Yes
Reportable : Yes