

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

Date of decision: 13.02.2020

FAO No.3634 of 2013 (O&M)

Sukhdev Singh and ors.

... Appellants

Versus

Sanjeev Kumar and ors.

... Respondents

FAO No.3636 of 2013 (O&M)

Bhupinder Singh and anr.

... Appellants

Versus

Sanjeev Kumar and ors.

... Respondents

FAO No.8601 of 2014 (O&M)

Tonika

... Appellant

Versus

Harwinder Singh and ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vivek Suri, Advocate
for the claimants.

Mr. Anureet S. Sidhu, Advocate
for the owner.

Mr. Sukhdarshan Singh, Advocate
for insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3634 and 3636 of 2013

and 8601 of 2014 as these have emerged out of the same accident that took place on 30.01.2011 in which Rajwinder Kaur and Gagandeep Kaur sustained injuries that proved fatal.

FAO No.3634 of 2013 has been filed by the claimants seeking additional compensation with regard to death of Rajwinder Kaur, No.3636 of 2013 filed for the same relief qua death of Gagandeep Kaur whereas No.8601 of 2014 has been filed by Tonika, registered owner of offending vehicle i.e. truck No.HR-37-2285.

FAO No.3634 of 2013

The Tribunal assessed compensation of Rs.5,96,000/-, detailed hereunder:-

Monthly value of services of deceased	Rs.6000/-
Multiplier	12
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.5,76,000/-
Expenses on funeral	Rs.20,000/-

However, claimants have been held entitle to 50% of the amount i.e. Rs.2,98,000/- as 50% negligence has been attributed to the deceased, in view of the fact that three persons were travelling on ill-fated motorcycle bearing No.PB-11-AL-8533 driven by Gurwinder Singh, son of deceased Rajwinder Kaur.

Counsel for the appellants would argue that the Tribunal has wrongly attributed contributory negligence to the deceased on the basis whereof, 50% compensation has been deducted.

With regard to quantum of compensation, it is argued that

deceased was 42 years old and admissible multiplier is 14. No deduction for personal expenses may be made as value of services of the deceased have been assessed as a house-maker.

Counsel representing the respondents, on the contrary, has supported findings of the Tribunal attributing 50% negligence to the deceased as three persons were travelling on the motorcycle in violation of the provisions of Section 128 of the Motor Vehicles Act, 1988 (in short 'the Act').

The case set up by the claimants is that on the fateful day i.e. 30.01.2011, Rajwinder Kaur along with Gurwinder Singh and Gagandeep Kaur was coming from Rajpura side to village Chappar on motorcycle bearing No.PB-11-AL-8533 driven by Gurwinder Singh. At about 5 pm, when they reached near turn of village Chamarheri on Rajpura-Patiala road, truck bearing No.HR-37-2285 (offending vehicle) was lying parked on wrong side of the road without any indication. When Gurwinder Singh tried to cross his motorcycle from the side of stationary truck, another vehicle came from the front side due to which Gurwinder Singh struck against stationary truck resulting in sustaining multiple and grievous injuries by Rajwinder Kaur, Gurwinder Singh and Gagandeep Kaur.

The Tribunal, while deciding issue No.1 and by relying upon judgment of Hon'ble the Supreme Court in **Raj Rani and ors. VS. Oriental Insurance Co. Ltd. and ors., 2009(4) PLR 789** and that of Rajasthan High Court **Santosh Kanwar and ors. VS. Om Parkash and**

ors, 1986 ACJ 799 recorded its conclusion in para 15 of the award that the present is a case of contributory negligence. Indisputably, the motorcycle on which deceased was travelling was driven by Gurwinder Singh. If Gurwinder Singh can be attributed contributory negligence for the occurrence, it would be a case of composite negligence of drivers of aforesaid vehicles and not contributory negligence of the deceased. It appears that Tribunal failed to make out a distinction between composite negligence and contributory negligence. At the same time, merely because three persons were travelling on the motorcycle in violation of Section 128 of the Act, without anything more, is not sufficient to attribute contributory negligence to the deceased. In this context, reliance can be placed on latest judgment of Hon'ble the Supreme Court **Mohd. Siddique and anr. VS. National Insurance Co. Ltd. and ors., 2020(1) RCR (Civil) 689**, wherein the Apex Court has held in para 13, quoted thus:-

13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more

person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

In this view of the matter, findings of the Tribunal attributing 50% negligence to the deceased cannot sustain and accordingly set aside.

As a natural corollary, claimants shall be entitle to entire compensation

assessed by the Tribunal and additional amount, if any, allowed by this Court.

This brings the Court to assessment of compensation. The deceased left behind family consisting of her husband and two sons aged 19 and 18 years. A house-maker cannot be equated with a daily wager. She is available to the family round the clock and has multifarious duties to perform. Accordingly, value of services of the deceased is assessed at Rs.7000/-. No deduction for personal expenses would be made in the light of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730**. As the deceased was 42 years old, admissible multiplier is 14. In this manner, loss of dependency is calculated at Rs.11,76,000/- (7000 x 12 x 14).

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.55,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of consortium	Rs.40,000/-

Total compensation is Rs.12,31,000/- and additional amount is Rs.9,33,000/- (12,31,000 – 2,98,000), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the claimants in equal proportion.

The appeal is partly allowed in the aforesaid terms.

FAO No.3636 of 2013

The Tribunal assessed compensation of Rs.7,40,000/-, detailed

hereunder:-

Monthly value of services of deceased	Rs.6000/-
Multiplier	15
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.7,20,000/-
Expenses on funeral	Rs.20,000/-

However, claimants have been held entitle to 50% of the amount i.e. Rs.3,70,000/- as 50% negligence has been attributed to the deceased, in view of the fact that three persons were travelling on ill-fated motorcycle bearing No.PB-11-AL-8533 driven by Gurwinder Singh, husband of deceased Gagandeep Kaur.

In view of findings recorded in FAO No.3634 of 2013, claimants shall be entitle to entire compensation assessed by the Tribunal and additional amount, if any, allowed by this Court. Admissible multiplier is 18. No deduction for personal expenses is made as value of services of deceased as house-maker, has been assessed. In this manner, loss of dependency is calculated at Rs.12,96,000/- (6000 x 12 x 18).

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.15,000/- for funeral expenses.

Total compensation is Rs.13,11,000/- and additional amount is Rs.9,41,000/- (13,11,000 - 3,70,000), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the claimants in equal proportion.

The appeal is partly allowed in the aforesaid terms.

FAO No.8601 of 2014

Counsel for the appellant would argue that findings of the Tribunal on issue No.1 attributing negligence to the offending vehicle are not based upon correct appreciation of testimony of Gurdeep Singh PW1 an alleged eye-witness to the occurrence. To substantiate his contention, it is argued that Gurdeep Singh stated that truck was parked on correct left aide but thereafter added that it was parked in middle of the road.

Another submission made by counsel is that as driver had a licence and the owner/insured did not know that licence possessed by him is fake, insured cannot be held guilty of violating the terms and conditions of policy nor the insurance company can press for right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the claimants/respondents has supported findings of the Tribunal attributing contributory negligence to offending truck parked on the road without any indicators.

Counsel representing the insurance company has controverted contention of the appellant on the issue of driving licence. It is argued that since driver did not have a valid licence and the insured did not appear in the witness box to discharge his primary obligation that he had given his vehicle to a person who was duly licensed, insurance company has rightly been given right of recovery against the insured after discharging liability towards the claimants.

The Tribunal has attributed 50% negligence to Gurwinder

Singh, driver of motorcycle bearing No.PB-11-AL-8533 and accordingly, claimants have been allowed only 50% compensation of assessment made by the Tribunal. I have gone through testimony of Gurdeep Singh PW1 but find it difficult to accept contention of the appellant that entire negligence for the accident is liable to be attributed to the deceased. On the contrary, driver of offending vehicle did not appear in the witness box to counter case of the claimants with regard to parking of vehicle beyond the metaled road without indicators etc. In this view of the matter, I do not find any reason to intervene in findings of the Tribunal attributing contributory negligence to the deceased to the extent of 50% by relying upon judgment of Hon'ble the Supreme Court **Raj Rani and others's case (supra)**.

So far as contention of the appellant assailing recovery right given in favour of the insurance company, the same is not meritorious and liable to be rejected. The licence possessed by the driver was found to be fake. The insured did not discharge his primary obligation to prove that he had given the vehicle for driving to a person who was duly licensed. This apart, the appellant (insured of the offending truck) did not prefer an appeal in respect of compensation awarded for the death of Rajwinder Kaur and Gagandeep Kaur in whose cases FAO Nos.3634 and 3636 of 2013 have been filed by the claimants. That being so, findings in those cases on the question of driving licence and entitlement of the insurance company to have right of recovery against the insured after payment of compensation to the claimants would constitute res judicata for the purpose of present case.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

13.02.2020

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No

(REKHA MITTAL)
JUDGE