

In the High Court of Punjab and Haryana at Chandigarh

FAO- 4303 of 2018 (O&M)

Date of Decision: 6.1.2020

Yogata Sharma and another

---Appellants

versus

Jagdhir Singh @ Kala etc.

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Manish Kumar Singla, Advocate
for the appellants
Mr. Tejinder Pal Singh, Advocate,
for the insurance company

Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation on account of death of Ajaib Singh in a motor vehicular accident that took place on 23.11.2016.

The Motor Accidents Claims Tribunal, Sangrur (in short “the Tribunal”) awarded Rs. 59,02,156/-, detailed hereunder:-

Gross annual income of the deceased	Rs. 7,33,496/-
Net annual income of the deceased	Rs. 6,90,196/-
Addition in income for future prospects	30%
Deduction for personal expenses	50%
Multiplier	13
Loss of dependency	Rs. 58,32,156/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-

However, the claimants have been paid 50% thereof i.e. 29,51,078/-, as 50% negligence has been attributed to the deceased.

Counsel for the appellants would argue that the Tribunal has not adverted to pleadings and evidence on record nor recorded any specific finding attributing 50% negligence to the deceased but still proceeded to hold that there was contributory negligence on the part of drivers of vehicles involved in the accident to the extent of 50% each.

With regard to compensation, it is argued that claim application has been filed by the widow and minor Prateek Joshi son of Yogata Sharma from her earlier marriage whereas mother of the deceased has been impleaded as proforma respondent. It is argued that in the given circumstances admissible deduction for personal expenses should be 1/3rd.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal attributing contributory negligence to deceased Ajaib Singh. To bring home his contention, he has pointed out observations made by the Tribunal in para 10 of the award, in view of testimony of Amarjit Singh CW2.

Yogata Sharma, one of the claimants being widow of deceased Ajaib Singh and occupant of car bearing No.PB-11-BR-2145 driven by Ajaib Singh on the ill-fated day filed her duly sworn affidavit Ex.CW1/A by way of examination in chief. A relevant extract from para 1 of the affidavit, reads as follows:-

“.....When they were reached near Gurdwara Sahib village Khurani, Balbar-Sangrur road, a white color I-20 car bearing registration No.PB-11-BH-1877 driven by respondent No.1 coming from opposite side in very high speed, driven by the respondent No.1 in rash

and negligent manner and dashed to the Eon car No.PB-11BR-2145 of Sh. Ajaib Singh from the front side, due to which Sh. Ajaib Singh died on the spot and deponent, Asha Gupta wife of Varinder Kumar and Simranjit Kaur also received multiple injuries, both the cars involved in the accident were fully damaged and fell down in the filed.

In para 2 of the affidavit, she has reiterated that accident was caused due to rash, negligent driving and fault of the car driver i.e. respondent No.1 and he is responsible for the death of Sh. Ajaib Singh and damage to Eon car aforesaid. Amarjit Singh CW2 is another witness examined by the claimants to discharge onus of issue No.1 with regard to rashness and negligence on the part of offending vehicle. Affidavit CW2/A filed by Amarjit Singh is verbatim reproduction of contents of affidavit of Yogata Sharma with regard to high speed, rash and negligent manner of offending vehicle. Both the witnesses have failed to make a factual foundation as to how driver of offending vehicle was rash and negligent in his driving. They have also not stated as to what was the speed of offending vehicle. The statement of aforesaid witnesses is an opinion formulated by them in order to attribute fault/blame to driver of offending vehicle for the unfortunate occurrence.

The accident took place on a link road leading from village Khurani to Sangrur. It is not plea of Yogata Sharma or Amarjit Singh that offending vehicle was brought on wrong side and in the process, hit the car driven by Ajaib Singh. In the given circumstances, it can safely be held that

witnesses examined by the claimants failed to establish their plea that accident is the result of exclusive negligence or rashness on the part of Jagdhir Singh @ Kala, driver of offending vehicle. No doubt, an adverse inference is liable to be drawn against respondents before the Tribunal for their failure to examine Jagdhir Singh to explain as to the circumstances under which the accident in question took place. However, keeping in view the above, I do not find any reason to interfere in findings of the Tribunal that the present is a case of contributory negligence of drivers of both the vehicles to the extent of 50:50. In this view of the matter, findings of the Tribunal on issue No.1 are affirmed. Claimants shall be entitled to compensation to the extent of 50% assessed by the Tribunal and additional compensation, if any, allowed by this Court.

Coming to compensation assessed in the case, the Tribunal has assessed Rs.59,02,156/- but claimants have been paid Rs.29,51,078/-. The application for compensation was filed by the widow and son of Yogata Sharma born out of her previous wedlock. The mother of the deceased namely Jangir Kaur was impleaded as proforma respondent. Even if Parteek Joshi is not held dependent upon the deceased, admissible deduction for personal expenses would be $\frac{1}{3}^{\text{rd}}$ as against 50% allowed by the Tribunal. The remaining criteria adopted by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs. 77,76,208/- $[6,90,196 \times \frac{1}{3} = 89,72,548 + (30\% \text{ thereof}) - \frac{1}{3}^{\text{rd}}]$

Compensation allowed under conventional heads is correct and affirmed. In this manner, total compensation is Rs.78,46,208/- and 50% thereof is Rs.39,23,104/-. Claimants shall be entitled to additional amount of

Rs.9,72,026/-, payable with interest @ 7.5% per annum from the date of
petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

6.1.2020

PARAMJIT/ASHOK

Whether speaking/reasoned : Yes

Whether reportable : Yes/No