203

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3845-2008 (O&M)
Date of decision: 24.02.2022

Kusum Devi and others …Appellants

V/S

Joginder Kumar and others …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S. Yadav, Advocate,
for the appellants.

Mr. Varun Sharma, Advocate for
Mr. Ashwani Talwar, Advocate,
for respondent No.3-Insurance Company.

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ARUN MONGA, J. (ORAL)

Aggrieved by the award dated 20.05.2008 rendered by Motor Accidents Claims Tribunal, Gurugram, claimants have preferred the instant appeal for enhancement of compensation.

2. Briefly stated, the facts of the case are that on 10.12.2005, Jaswant Singh, aged 34 years and working as Operator since 1994, was coming back to his native village Bhora Kalan after attending a marriage ceremony at Badopur in Toyota Innova vehicle of Satish Kumar. When they reached near village Khor at around 11.30 p.m, a bus bearing registration No. HR-61A-0775 owned by respondent No.2 and being driven by respondent No.1 at a very high speed, rashly and negligently came from Ateli side and after coming on its wrong side hit the Toyota vehicle being driven by Satish Kumar. After causing the accident, the respondent No.1 fled away from the spot leaving the bus at the spot. Jaswant Singh sustained grievous and serious injuries. Immediately after the accident, injured Jaswant Singh was removed to General Hospital, Rewari but then he was shifted to AIIMS, New Delhi on 11.12.2005. During treatment there, he died

on 21.12.2005. FIR No.121/2005 dated 11.12.2005 under Sections 279/337/ 304-A IPC was lodged against respondent No.1 at Police Station, Ateli, District Mohindergarh. Heirs of Jaswant Singh filed claim application for compensation.

3. Upon notice, respondents No.1 and 2 appeared and filed written statements resisting the claim. On merits, it was averred that accident was not caused by respondent No.1.

4. Respondent No.3-Insurance Company filed separate written statement taking preliminary objections regarding maintainability; locus standi; cause of action; concealment of material facts; non-involvement of bus; not holding of valid and effective driving licence etc.

5. From the pleadings of parties, following issues were framed by the learned Motor Accident Claims Tribunal:-

> 1) *Whether the accident in question resulting in death of Jaswant Singh was caused because of rash and negligent driving of bus No. HR-66A-0775 by its driver-respondent No.1?OPP*
> *2. If issue No.1 is proved, whether the claimants are entitled to get compensation. If so, to what amount and from whom? OPP*
> *3. Whether the respondent No.1 was not holding a valid and effective driving licence to drive the offending vehicle at the time of alleged accident. If so, its effect? OPR-3.*
> *4) Relief.*

6. On the basis of evidence adduced by both the parties, Issues No.1 and 2 were decided in favour of the claimants whereas Issue No.3 was decided against respondent No.3. Accordingly, vide Award dated 20.05.2008 passed by the learned Tribunal, a total compensation of Rs.8,30,000/- along with 7.5% interest from the date of filing of the claim petition till realization was awarded to all the claimants.

7. Learned counsel for the appellants argues that the appellants are entitled to enhanced amount of compensation in view of the judgments

rendered by Apex Court in case titled as "***National Insurance Company Limited Vs. Pranay Sethi 2017 (4) RCR (Civil) 1009 SC***" and "***Megma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018 (4) RCR (Civil) 333 SC***".

8. Per contra, learned counsel appearing on behalf of the insurance company opposes the appeal, *inter alia*, on the ground that it is a case of contributory negligence on the part of the driver of the Innova Vehicle as also the driver of the offending bus. However, the learned Tribunal completely ignored the factual position duly established on record and held that the driver of the bus was solely responsible for causing the alleged accident. Further, the insurance company would not be liable to pay any sort of compensation since the licence of the driver was not valid at the time of accident.

9. Heard learned counsel for the parties and perused the paper book.

10. The issue of contributory negligence is no more *res integra* in view of ratio of law laid down in <u>***Mohammed Siddique and another Vs. National Insurance Company Limited and others, 2020 AIR SC 520***</u>. Therein Supreme Court held as under:

> *"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 194C 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 bu t 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.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

11. In present case, the learned Tribunal repelled the plea of contributory negligence observing as under :

"15. The learned counsel for the respondent No.3 contended that the witness Surender Singh (PW8) had stated in the cross-examination that Rewari-Narnaul road was straight Highway and it was sufficiently wide and complete road and two vehicles could easily pass each other at a time and all the vehicles were on the metalled road and as such there was contributory negligence of both the drivers i.e. the drivers of the vehicles Innova car and the bus. There is no merit in this contention because when Surender Singh is stating that the accident took place due to sole rash and negligent driving of the bus driver and when the bus driver i.e. the respondent No.1 Joginder is facing trial for causing the said accident. In such

circumstances there is no other alternative except to hold that the accident took place due to sole rash and negligent driving of the respondent No.1 while driving bus bearing registration No. GR-66A-0775. This issue is accordingly decided in favour of the claimants.
xxx"

To my mind, the said conclusion was rightly drawn.

12. The other argument of learned counsel for the Insurance Company is that licence of the driver was not valid and effective, is also without substance. Under Issue No.3, a firm finding of fact was recorded by the learned Tribunal that a valid driving license of respondent No.1 had been produced on record.

13. However, with regard to quantum of compensation, having addressed the rival contentions for some time, both the learned counsels are now *ad idem* that the award under challenge be modified in view of the judgment rendered by Apex Court in case titled as "***National Insurance Company Limited Vs. Pranay Sethi 2017 (4) RCR (Civil) 1009 SC***" read with "***Megma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others 2018 (4)RCR (civil) 333 SC"*** as below:

Deceased	Sh. Jaswant Singh, 35 years old
Salary	13,932/- Gross
Future prospects @40% increase, self employed or fixed salaries (Being less than 40 years of age)	5,572/-
Total P.M.	19,504/-
Deduction towards personal expenses (Being 5 dependents)	1/4th =4,876/-
Dependency	14,628 X12=1,75,536/-
Multiplier (Being less than 40 years)	15
	26,33,040/-
Consortium of claimants	40,000/-
Funeral charges	15,000/-
Loss of estate	15,000/-

Loss of Love	1,00,000/-
Medical expenses	20,000/-
Total	28,23,040/-
Awarded amount	8,30,000/-
Amount to be enhanced	19,93,040/-

14. In the premise, on the joint consent of learned counsels, the impugned award is modified to that extent as computed aforesaid.

15. Accordingly, remittance be made in terms of the above computation. After adjustment of amount, if any already paid, balance of enhanced amount be remitted within a period of two months from today along with interest @ 6% per annum from the date of claim petition till the actual realization.

(ARUN MONGA)
JUDGE

February 24, 2022
Vandana

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No