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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4159-2022
DATE OF ORDER: 23.12.2022

Ramandeep Kaur and AnotherAppellants

Vs.

Gaurav Kumar Jangra and OthersRespondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

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

Nidhi Gupta, J.

This is a claimants' appeal against Award dated 24.05.2022 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as "the learned Tribunal") in MACT Case No.17 of 2020.

Brief facts are that the appellants/claimants are widow and mother of the deceased. On basis of pleadings and evidence led by the parties, learned Tribunal concluded that deceased-Lovepreet Singh had died due to injuries received by him in an accident that took place on intervening night of 2/3.12.2019 due to rash and negligent driving of Canter bearing registration No.PB-11-CQ-8710 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1-driver of the offending vehicle. Learned Tribunal awarded a total compensation of Rs.76,23,116/-. Learned Tribunal further held that the deceased, who was travelling in a car behind the canter/offending vehicle which suddenly applied brakes, due to which the car hit the canter from behind as a result

of which the accident took place. Learned Tribunal further observed that had the car in which the deceased was travelling kept proper distance from the offending vehicle and the deceased been vigilant and applied brakes at safe distance, the accident may not have happened. Accordingly, 40% of the total compensation amounting to Rs.30,49,246/- was deducted on account of contributory negligence on the part of the deceased. The appellants/claimants are aggrieved of finding of contributory negligence returned by the learned Tribunal. It is stated that this finding of the learned Tribunal is erroneous and contrary to the facts on record.

It is submitted by Id. counsel for the appellants that there is nothing on record to prove the above finding of the learned Tribunal, and no contributory negligence is made out on part of the deceased. In this regard, learned counsel refers to testimony of CW-3 Jasvinder Singh, who is stated to be an eyewitness to the accident who, in cross-examination, on suggestions put to him has interalia, stated that car of the deceased collided on the back portion of Canter/offending vehicle; That it is wrong to suggest that speed of car in which deceased was travelling as Driver was more than 70 –80 km/h; that it is wrong to suggest that accident in question took place due to negligent driving of deceased himself; That it is wrong to suggest that the driver of Canter has no fault of any type.

I have heard learned counsel for the appellants.

A perusal of the said testimony also reveals that admittedly CW-3 was not a summoned witness; that there is heavy traffic

on Gagan Chowk, Rajpura where the accident occurred; that the said witness was unable to tell distance between the offending vehicle and the car in which the deceased was driving; that after the accident the said eyewitness did not go to Police station, Rajpura and he left the place of accident for his residence; and that he did not go to hospital with the deceased.

It is undisputed that the car which the deceased was driving struck the offending vehicle from behind, as the driver of the offending vehicle suddenly applied brakes. However, it is therefore, also apparent that the deceased was driving at a considerable speed that he hit into the offending vehicle in front with such impact that it led to the death of the deceased. Accordingly, I am in concurrence with the findings of the learned Tribunal to the effect that had the deceased been vigilant, he would have kept proper distance and would have applied brakes at safe distance.

As such, I find no ground is made out to interfere in the finding of the learned Tribunal that there was contributory negligence on part of the deceased to the extent of 40%. No other ground is raised by the counsel for the appellants. Present appeal is accordingly dismissed.

23.12.2022

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No