

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 27.04.2022

1. FAO-3194-2011

IFFCO-TOKIO General Insurance Co. Ltd.

..... Appellant

versus

Mamta Rani and others

..... Respondents

2. FAO-4075-2011

Mamta Rani and others

..... Appellants

versus

Pardeep and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ankur Gupta, Advocate for
Mr. Raj Karan, Advocate
for the appellant in FAO-3194-2011 and
for respondent No.3 in FAO-4075-2011.

Mr. Rakesh Nagpal, Advocate
for respondents No.1 to 4 in FAO-3194-2011 and
for the appellants in FAO-4075-2011.

Mr. Arvind Bansal, Advocate
for respondents No.5 and 6 in FAO-3194-2011 and
for respondents No.1 and 2 in FAO-4075-2011.

PANKAJ JAIN, J.

These are cross appeals preferred against the award dated 25.02.2011 passed by Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'MACT') in MACT Case No.90 of 2010. Insurance company is in appeal No. FAO-3194-2011 and the other appeal i.e. FAO-4075-2011 is at the instance of the claimants.

2. The claimants/appellants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act'), wherein it was pleaded that on 19.06.2010, deceased Anil Kumar was going to his shop at Ambala Road, Kaithal from his house by motor cycle No.HR-08-E-3974. At about 05.00 p.m., when the deceased reached Ambedkar Chowk in front of Power House Siwan Gate, Kaithal, a car bearing registration No.HR-08-E-6185 coming from the side of Kaithal City being driven by respondent No.1 in a rash and negligent manner, hit the motor cycle of the deceased. As a result the deceased sustained multiple injuries. He succumbed to the injuries. The claimants sought a compensation of Rs.30,00,000/- for the death of Anil Kumar occurred in this accident.

3. The claim petition was contested on merits. Respondents No.1 and 2, namely Pardeep and Sushil Kumar filed joint written statement and a separate written statement was filed by respondent No.3-insurance company.

4. On the pleadings of the parties, the learned MACT framed the following issues:-

- “(i) Whether Anil Kumar son of Bhagwan Dass, resident of Siwan Gate, Kaithal had died on account of the injuries sustained by him in a road side vehicular accident which had occurred on 19.06.2010 in the area of Police Station, City Kaithal on account of rash and negligent driving of car No.HR-08-E-6185 by respondent No.1? OPP
- (ii) Whether the claimants are entitled to be compensated for the death of Anil Kumar having occurred in the above accident, if so to what extent and by whom? OPP

- (iii) Whether respondent No.1 was driving the above car in violation of terms of insurance policy as pleaded by respondent No.3 in its reply? OPR-3
- (iv) Whether the petition is bad on account of non-joinder and mis-joinder of necessary parties? OPR-3
- (v) Whether the petition has been filed by the claimants in collusion with respondents No.1 & 2, if so its effect? OPR-3
- (vi) Relief.

5. Learned counsel for the appellant-insurance company in FAO No.3194 of 2011 asserts that MACT fell in error in deciding issue No.1 in favour of the claimants despite it being a case of head on collusion. He states that once it was admitted by PW-2 that it was head on collusion between the two vehicles, the MACT ought to have held the deceased as one of the tortfeasors and thus discounted the liability accordingly. He further submits that keeping in view the number of the claimants, deduction of 1/3rd should have been made from the income of the deceased while assessing the compensation instead of 1/4th.

6. Per contra, learned counsel for the respondents has stated that the deduction has been rightly made as per guidelines laid down by the Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another** 2009 (6) SCC 121 and merely because the accident was head on collusion, it will not make it a case of contributory negligence.

7. While pressing his appeal number i.e. FAO-4075-2011, learned counsel for the claimants submits that the deceased was merely 32 years of age.

He has been wrongly denied future prospects. No amount has been paid under

the conventional heads and thus, the award deserves to be modified to the said extent.

8. I have heard learned counsel for the parties and have carefully gone through the record.

9. So far as reliance made by counsel for the insurance company on the statement made by PW-2 is concerned, the same is totally misplaced. PW-2 nowhere admitted that the deceased was rash and negligent. PW-2 while appearing in the witness box stated that:-

“It was a head on collision between the two vehicles. I have seen the site plan. Copy of which is Ex.R1. But the site plan has not been prepared in accordance with the position at the spot because the accident had taken place in front of the power house on the eastern side from Kaithal to Siwan road. It is wrong to suggest that I have improved my version qua the site plan and the spot of accident just to conceal the facts or negligence of my brother. It is correct that my brother Anil Kumar was coming from Sirsa road which is in front of power house which connects to the main road. It is wrong to suggest that my brother, who was coming from link road to main road, had not waited sufficiently for passing the vehicles going on the main road and due to his own fault the accident in question took place. Volunteered my brother had already reached the main road on the left side and driver of car himself was talking on mobile phone. It is wrong to suggest that the car driver was not talking on the mobile phone.”

10. Learned MACT after appreciating and analyzing statement made by PW-2 in light of the documentary evidence on record, recorded the following reasoning:-

“He admitted that it was a head on collision between the two vehicles but that does not mean that the accident had occurred on account of the composite negligence of the deceased Anil Kumar and respondent No.1 while driving their respective vehicles. The site plan placed on file as Ex.R-1 by the respondents goes to show that respondent No.1 driving his car was going on Siwan Road. When he reached near the Power House the deceased Anil Kumar coming on his motor cycle from the left side of the road was hit by the car of respondent No.1. The accident had occurred in the city itself. In that situation, had respondent No.1 driven the car at a controllable speed, he could have easily averted this accident by applying brakes after seeing the motor cycle coming from the left side of the road, but still when the accident had occurred, respondent No.1 alone was responsible for causing this accident.”

11. It is trite law that ocular evidence has to be read as a whole and hairsplitting of the statement made by witness is not permissible. Even if the accident has occurred as a head on collision, the same cannot lead to inevitable inference that it was on account of negligence of both the drivers. The same has to be determined in light of the evidence on record in form of ocular evidence lead with respect to accident and the documentary evidence in form of site plans etc. Thus, it cannot be held as a Rule that every head on collision between the two vehicles should be taken as a case of contributory negligence. In view of the evidence on record having been correctly appreciated by the MACT, the finding recorded vis-a-vis issue of negligence needs no interference.

12. While calculating the entitlement of the claimants, learned MACT has rightly relied upon income tax return for the year 2010-2011 filed qua

income of the deceased which shows his annual income as Rs.1,59,000/- (round figure). Deceased was 32 years of age, thus, 40% of the income are to be added as future prospects. Multiplier has been rightly granted @ 16. A sum of Rs.20,000/- has been granted for loss of consortium, loss of estate and funeral expenses. Thus, award passed by the MACT deserves to be modified as per the guidelines issues by Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680**. The claimants are held entitled for Rs.15,000/- as loss of estate, Rs.40,000/- each as loss of consortium and Rs.15,000/- for funeral expenses under the conventional heads. The compensation be calculated accordingly and paid to the claimants/appellants.

13. No issue has been raised with respect to the liability of the insurance company, thus, the respondents (before MACT) are held to be jointly and severally liable to pay the compensation which shall be apportioned as per para 25 of the award passed by MACT.

14. Keeping in view the aforesaid discussion, the award passed by MACT is modified to the aforesaid extent. Both the appeals are disposed off accordingly. Needless to say any amount already paid shall be adjusted.

(PANKAJ JAIN)
JUDGE

27.04.2022

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Whether speaking/reasoned Yes

Whether Reportable : No