

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

FAO No.1499 of 2013

Date of decision : May 05, 2022

Harbhajan Kaur and others

....Appellants

Versus

Harbhajan Lal Arora and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gurmeet S. Saini, Advocate
for the appellants.

Mr. Rajbir Singh, Advocate
for respondent No.2/Insurance Company.

PANKAJ JAIN, J.

Claimants are in appeal seeking modification of the Award passed by the Motor Accident Claims Tribunal, Ferozepur (for short, the Tribunal) whereby they have been awarded compensation of Rs.4,67,636/- on account of death of Ajit Singh in a motor vehicular accident dated 30th December, 2010.

2. As per the claim petition, on 30th December, 2010 deceased Ajit Singh was coming back to his house on his scooter bearing registration No.PB-47-B-9046. When he reached near the shop of Gyan Kabaria of Ferozepur Zira road, a Swift Car bearing registration no.PB-08-AP-6156 driven by respondent No.1 in a rash and negligent manner struck scooter of the deceased. As a result of which, he received multiple injuries. Later he succumbed to the injuries suffered in the accident.

3. On the basis of the pleadings of the parties, the Tribunal framed the following issues :-

1. *Whether the accident in question took place due to the rash and negligent driving of Swift Car no. Temp. PB-08-AP-0156 driven by respondent no.1 ? OPP.*
2. *To what amount of compensation, the claimant is entitled to receive and from whom ? OPP*
3. *Whether respondent no.1 was not holding any valid driving licence on the date of accident, if so, its effects ? OPR.*
4. *Relief.*

4. While deciding Issue No.1, the Tribunal held that the deceased was guilty of contributory negligence and decided the issue partly in favour of the claimants. While deciding Issue No.2 the Tribunal found that the deceased was 66 years of age at the time of his death and assessed his income @ Rs.21,000/- per month. Dependency was assessed by applying cut of 1/3rd. Funeral expenses as well as Loss of Estate were awarded to the tune of Rs.5,000/- each. Under the head of loss of consortium a consolidated amount of Rs.10,000/- was awarded apart from an amount of Rs.95,272/- which was reimbursed on account of medical expenses incurred.

5. Ld. Counsel for the appellants apart from claiming enhanced amounts under the conventional heads *vis-a-vis* Issue No.2 has also assailed finding on Issue No.1 whereby deceased has also been held to be a contributor to the negligence to the extent of 50%.

6. Per contra, Counsel for respondent No.2 submits that the Tribunal has relied upon the admission made by none else but the brother of the deceased to return finding *vis-a-vis* negligence and, thus, no fault can be found with the same. However, it has not been disputed that the claimants would be entitled for enhanced amounts under the conventional heads as per law laid down in **‘National Insurance Company Limited vs. Pranay Sethi and others’, (2017) 16 SCC 680.**

7. I have heard Ld. Counsel for the parties and have carefully gone through the records of the case.

8. While recording finding on Issue No.1, the Tribunal held as under :-

“12. Admissions made by Rachhpal Singh (eye witness) of the occurrence speak that it is a case of contributory negligence. He admitted that the deceased was crossing the road when the accident took place. Both the vehicles were moving in the same direction. The deceased tried to cross the road from right side to left side when he was hit by on going car. The accident took place on the left side of the road on which side the car was also going. The car driver applied breaks and there were skid marks on the road. The car got punctured as kick of the scooter hit the tyre of the car. He further admitted that the driver of the car tried his best to save the accident when he applied breaks immediately as is evident in photograph Ex.R-4 where skid marks of the car are clearly seen.

13. The aforesaid admissions prove the fact that the deceased tried to cross the road from right side to left side without seeing the car coming from back side. The car was

also being driven at a high speed and this was the reason that the respondent no.1 could not avoid the accident despite applying breaks. Had the speed of the car been normal, respondent no.1 could easily avoid the accident on applying breaks. Thus, the facts and circumstances itself speak that it is a case of contributory negligence and on account of negligency of deceased who tried to cross the road without seeing the car coming from back side as well as negligency of the car driver who was driving the car rashly at a high speed, the accident took place, as a result of which deceased Ajit Singh received injuries and died later on. Accordingly, this issue is decided partly in favour of the claimants with the findings that the accident took place due to contributory negligency of the deceased as well as respondent no.1.”

9. The Rapat Roznamcha recorded by Police is being attributed to Rachhpal Singh. However, when Rachhpal Singh entered the witness-box and was confronted with the same he denied and stated that Police took his signatures on the blank papers. The scribe of the Rapat i.e. Police Official was never summoned by the respondents to prove the contents of the Rapat.

10. Rachhpal Singh, eye-witness appeared before the Tribunal as PW-2. It goes without saying that he admitted that the deceased was crossing the road when accident took place and that the Driver of the car applied brakes to avoid accident. However, he nowhere stated in his deposition before Tribunal that, “the deceased tried to cross the road from right side to left side without seeing the car from back side”. Thus, finding to this effect cannot be attributed to Rachhpal Singh and termed as

admission on his part. From the narration of the facts in the pleadings as well as from the account of eye-witnesses, it is clear that the deceased was crossing road from right side to the left side of the road. Car was coming from back on left side and was being driven at a very high speed. Respondent No.1 was at such a high speed that despite applying brakes he could not avert the accident. Tribunal does record that “Had the speed of the car been normal, respondent no.1 could easily avoid the accident on applying brakes”, yet holds deceased a tortfeasor guilty of contributory negligence. Resultantly, the finding of the Tribunal on Issue No.1 is perverse and the same deserves to be reversed.

11. Issue No.1 is decided in favour of the claimants. It is held that the accident that took place on 30th December, 2010, which resulted in the death of Ajit Singh, was caused on account of rash and negligent driving of respondent No.1.

12. So far as compensation payable to the claimants is concerned, the Tribunal has rightly assessed the income of the deceased. Correct multiplier has been applied. The amounts of Rs.5,000/- awarded under the heads of funeral expenses and Loss of Estate are enhanced to Rs.15,000/- each. Each of the claimants shall be entitled for an amount of Rs.40,000/- as loss of consortium.

13. As a sequel of the aforesaid discussion, the Award passed by the Tribunal is modified to the aforesaid extent.

14. The total compensation be calculated accordingly and paid to

the claimants/appellants.

15. Needless to say that any amount already paid to the claimants shall be set off.

16. Appeal stands disposed off accordingly.

17. All the pending miscellaneous applications, if any, are also disposed off.

May 05, 2022

Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No