

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO-2212-2015 (O&M)  
Date of decision: 14.07.2022

**Harbhajan Kaur and others**

**... Appellants**

**Vs.**

**Harpreet Singh and others**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Munish Gupta, Advocate  
for the appellants.

Mr. Ram Avtar, Advocate  
for respondent No.2.

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**ARVIND SINGH SANGWAN, J. (ORAL)**

Prayer in this appeal is to modify the award dated 19.12.2014 passed by the Motor Accident Claims Tribunal, Hoshiarpur, vide which the claim petition filed by the appellants-claimants, on account of untimely death of Manjit Singh, who died in a motor vehicle accident on 22.01.2014, was partly allowed.

Brief facts of the case are that deceased Manjit Singh, while riding on scooter bearing registration No.PB-07-D-6130, met with an accident with Tata Safari vehicle bearing registration No.PB-05-N-6185, owned and driven rashly and negligently by respondent No.1. In the claim petition, it is

specifically pleaded that accident occurred due to rash and negligent driving by respondent No.1, however, while deciding issue No.2, the Tribunal recorded a finding that it is a case of contributory negligence and it was held that deceased Manjit Singh was 25% liable for the negligence, whereas respondent No.1 was held negligence to the extent of 75% and accordingly, the Tribunal, while granting compensation, deducted the amount @25% of the total compensation assessed.

The lower Court record was requisitioned.

Learned counsel for the appellants has referred to the written statement filed by respondent No.1 and in para No.23 thereof, it is specifically stated that no accident took place with the offending vehicle, owned and driven by respondent No.1. Learned counsel has further referred to written statement filed by respondent No.2-Insurance Company, wherein, in para No.9 of preliminary objections, it is stated that claim petition has been filed in collusion with respondent No.1. He also referred to FIR Ex.A5, to submit that it was reported to the police that the accident has occurred due to rash and negligent driving by respondent No.1. Learned counsel then referred to statement of AW2 Gurcharan Singh, eyewitness, who stated in his affidavit that the accident occurred due to rash and negligent driving by respondent No.1, as deceased Manjit Singh was driving his scooter on slow speed and on the correct side of the road and this witness was standing there, when the accident occurred.

Learned counsel has next referred to cross-examination of AW2 Gurcharan Singh, to submit that neither on behalf of respondent No.1/driver-cum-owner of offending vehicle nor on behalf of respondent No.2-Insurance

Company, any suggestion was given to this witness that accident occurred due to contributory negligence of deceased Manjit Singh as well as offending vehicle, therefore, the finding recorded by the Tribunal, holding deceased Manjit Singh to be liable to the extent of 25%, is patently erroneous. Learned counsel has referred to a judgment of this Court in **Sahbo widow of Jaibir and others Vs. Balwan Singh and others, 2010 (67) RCR (Civil) 560**, in which it is held that in a case where driver of the offending vehicle took a plea in the written statement that in fact, no accident occurred, the Tribunal cannot held that deceased himself was contributory negligent, once a finding is recorded that the accident took place and the finding with regard to negligent driving of the deceased himself was set aside.

Learned counsel, on the quantum of compensation, has argued that the Tribunal has not awarded just and fair compensation in this case. It is submitted that the deceased was aged about 45 years and 07 months, therefore, instead of multiplier of 13, multiplier of 14 should be applied. In this regard, learned counsel has relied upon a judgment of the Hon'ble Supreme Court in **Shashikala and others Vs. Gangalakshamma and another, 2015 (2) RCR (Civil) 510**, wherein it is held that in similar circumstances, where age of the deceased was 45 years, 05 months and 28 days, multiplier of 14 was applied.

It is lastly argued that with regard to grant of consortium, a lump-sum amount of Rs.1.00 lac was awarded, whereas in view of judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) RCR (Civil) 333**, on account of loss of consortium, amount of Rs.40,000/- each should be awarded to all legal

representatives of the deceased.

Learned counsel for respondent No.2-Insurance Company could not dispute the factual position, as pleaded in the written statement by respondent No.1 as well as respondent No.2-Insurance Company. It is also not disputed that eyewitness AW2 Gurcharan Singh has supported the case of the claimants with regard to negligence on the part of respondent No.1. However, it is submitted that there is collusion between claimants and respondent No.1.

After hearing learned counsel for the parties, I find merit in the present appeal, for the following reasons: -

- (a) A perusal of cross-examination of AW2 Gurcharan Singh clearly shows that no suggestion was given to this witness either by the driver-owner or the Insurance Company that the accident occurred partially due to rash and negligent of deceased. In view of judgment of this Court in **Sahbo's** case (supra), this Court comes to a conclusion that the finding recorded by the Tribunal regarding contributory negligence, is liable to be reversed, as it is a case, where the accident took place due to rash and negligent driving by respondent No.1/driver-cum-owner of the offending vehicle.
- (b) With regard to awarding just and fair compensation, the Tribunal awarded multiplier of 13 holding that the deceased was aged above 45 years and in view of judgment of the Hon'ble Supreme Court of India in **Shashikala's** case (supra), multiplier of 14 should have been applied.
- (c) On the question of awarding consortium, the Tribunal awarded

lump-sum of Rs.1.00 lac, which should have been Rs.40,000/- for all four claimants i.e. total Rs.1,60,000/-.

Accordingly, the award passed by the Tribunal is modified to the extent that accident in question occurred due to rash and negligent driving by respondent No.1 Harpreet Singh alone and appellants are entitled to claim the entire compensation including the multiplier of 14 and total consortium of Rs.1,60,000/- (Rs.40,000/- each for all four appellants). The appellants are also entitled to interest @9% per annum as awarded by the Tribunal on enhanced amount till the date of its realization.

With the aforesaid modifications, present appeal is partly allowed.

**[ ARVIND SINGH SANGWAN ]**  
**JUDGE**

14.07.2022  
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No