IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6341-2013 (O&M)
Date of decision: 24.02.2022

Suman and others ...Appellants

V/S

Gurnam and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakshit Gupta, Advocate for
Mr. Rakesh Gupta, Advocate,
for the appellants.

Mr. Rajbir Singh, Advocate,
for respondent No.3-Insurance Company.

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ARUN MONGA, J. (ORAL)

Part aggrieved by an award dated 25.07.2013 rendered by Motor Accidents Claims Tribunal (for short Tribunal), Kaithal, claimants are in appeal seeking enhancement of compensation.

2. Succinct facts first. One Harjinder Singh S/o Sewa Singh, Mahipal S/o Jogi Ram and Rishpal Singh s/o Gurdev Singh were riding on a motorcycle on 02.05.2012. Harjinder Singh was driving while Mahipal and Rishpal Singh were riding pillion. When they reached near the field of Mahma in the area of village Habri, suddenly a Mahindra tractor without number plate (engine and chassis No. NAF 8636) having trolley attached, hit the motorcycle from front side. The tractor was allegedly being driven by respondent Gurnam Singh rashly and negligently. All three riders of the motor cycle were injured. Jitender Singh son of Sewa Singh, then working in the nearby fields, saw the accident and rushed to the spot. Harjinder Singh succumbed to accidental injuries at the spot. In the melee, respondent No. 1, drove away the tractor. Mahipal was taken to Dr. Parveen Garg Hospital, Karnal but on 03.05.2012, he too died due to injuries sustained in the accident. Rishpal Singh was injured and was taken to Virk Hospital, Karnal.

He remained admitted there from 02.05.2012 to 11.05.2012 and was twice operated upon by the doctors. Respondent No. 2 Jagbir Singh is the owner while respondent No. 3 is the insurer of the offending tractor.

3. Applications for compensation were filed by the heirs of Mahipal (MACT No. 150 of 2012); by the heirs of Harjinder Singh (MACT No. 152 of 2012) and by injured Rishpal Singh (MACT No. 151 of 2012). Upon notice, respondents No.1 and 2 appeared and filed joint written statements. They took several preliminary objections; pleaded that no such accident ever took place and denied liability to pay compensation. Respondent No.3-Insurance Company filed separate written statements on similar lines and pleading that respondent No. 1 was not then holding a valid driving licence .

4. Learned Tribunal consolidated all the three cases, treating MACT No. 150 of 2012 (filed by the heirs of Mahipal) as the lead case and framed following issues:-

> 1) *Whether claimants are entitled to compensation on account of death of Mahipal son of Jogi Ram in claim petition No.150 of 2012 and Harjinder Singh son of Sewa Singh in claim petition No. 152 of 2012 and Rishpal Singh son of Gurdev Singh in claim petition No. 151 of 2012 received injuries on account of alleged rash and negligent driving of respondent No.1 while driving the offending vehicle i.e. Tractor Make Mahindra 235 DI, Engine No. NAF 836, Chassis No. NAF 8636? OPP*
> 2. *If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPP*
> 3. *Whether the respondent No.1 was not having a valid and effective driving licence as alleged? OPR-3.*
> 4. *Relief."*

5. Parties led their respective evidence. On appraisal of the record, the learned Tribunal held under issue No. 1 that the accident was caused partly to the extent of 75% by rash and negligent driving of offending tractor by its driver and that driver of the motor cycle with two

pillion riders had also contributed to the accident to the extent of 25%. Issue No.2 was decided in favour of the claimants, whereas issue No.3 was decided against respondent No.3. Appellants are the heirs of deceased victim Mahipal. The learned Tribunal awarded them total compensation of Rs. 4,44,000/- .

6. Learned counsel for the appellant would argue that Tribunal erred in law by holding the driver of the motor cycle guilty of contributory negligence. Deduction of the amount of compensation to the extent of 25% was thus not sustainable. He points out that in para 24 of the impugned award, the learned Tribunal has categorically given a finding that there is nothing on record to establish that the driver of the motor cycle was rash and negligent. However, merely because three persons were sitting on the motor cycle, its driver Harjinder Singh deceased was held responsible for contributory negligence. Once the learned Tribunal gave a finding that the driver of the motorcycle was not driving the vehicle rashly, no deduction from normal compensation could be made on the ground of contributory negligence and as such the finding of the learned MACT to that extent is erroneous and liable to be set aside. He further submits that the monthly income of the deceased ought to have been assessed at Rs.6,000/- and Learned MACT erred in assessing it at Rs.4,000/- .

7. Learned counsel for respondent No.3-Insurance Company, submits that respondent No.1 was not holding a valid and effective driving licence. The said vehicle in question was being driven in violation of the rules of Motor Vehicles Act, Insurance Policy condition and fitness certificate. He submits that apart from that there were three persons riding on the motorcycle at the time of accident and Harjinder Singh driver of the

Motorcycle was responsible for causing accident due to his sole rash and negligent driving.

8. I have heard learned counsel for the parties and perused the case file.

9. The star argument of learned counsel for the Insurance company is that victims at the time of accident were triple riding. Such a wrongful act in itself shows that the accident resulted from their own negligence. Triple riding issue is already res judicata in Apex court judgment rendered in "***Mohammed Siddique and another Vs. National Insurance Company Limited and others 2020 AIR (SC) 520:*** **2020(3) SCC 5,** wherein it is 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 but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 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."

10. In the case in hand, learned Tribunal relying mainly upon the testimony of PW Rashpal Singh, who himself was injured in the accident and PW Jitender Singh eye witness held that the accident occurred due to rash and negligent driving of the tractor by respondent No. 1 Gurnam Singh. The learned Tribunal also held that there was no evidence on record to establish that the driver of the motor cycle was rash and negligent in driving. Learned counsel for the insurance company has not pointed out to any material on record to show that the wrongful act of triple riding the two wheeler by its driver Harjinder Singh or of pillion rider Mahipal deceased victim contributed either to the accident or to the nature of the injuries sustained. In my opinion, merely because they were triple riding the motor cycle, the learned Tribunal was not justified in holding that Harjinder Singh deceased driver of the motor cycle and/or Mahipal deceased had contributed to the accident to the extent of 25%. It was not, therefore, justified in making any deduction on that account from the compensation to be paid.

11. The learned Tribunal decided issue No. 3 against the insurance company observing that at the time of arguments, it could not be specifically pointed out that the driver was running the vehicle against the terms and condition of he insurance policy. No appeal or cross objection has been filed by the insurer to challenge this finding. That apart, even in this appeal, nothing has been shown on record to support the contention of the learned counsel for respondent No. 3 that respondent No.1 was not having a valid and effective driving licence. The same is, therefore, not acceptable.

12. There is substance in the submission of the learned counsel for appellant that the learned Tribunal erred in assessing the monthly income of Mahipal deceased at Rs. 4,000/- and that the same ought to have been assessed at Rs. 6,000/-. The learned Tribunal observed that PW-2 Suman (widow of accident victim Mahipal) had deposed that her husband was employed with Harjinder Singh (deceased victim of the same accident) on monthly salary of Rs. 6,000/-. Nothing to the contrary is shown on record. The deceased was a healthy man aged 32 years at the time of death. He was the breadwinner for the family of six members (widowed mother, himself, his wife and three children). Naturally, in order to make both ends meet, he would do his utmost, put in extra time and effort to maximize his earnings. Looking at his age and health condition, he had the capacity to do that in order to increase his income. The learned Tribunal did not give any reasons for discarding claimants' evidence/version about the income of the deceased. Considering the overall facts and circumstances, in my opinion, it would be reasonable and fair to accept the claimants' version in this behalf, according to which monthly income of Mahipal deceased was Rs. 6,000/-. Increase in income for future prospects of the deceased was also to be allowed, but has not been given by the learned Tribunal.

13. In these circumstances, I am of the opinion the compensation payable to the claimant-appellants ought to have been calculated as below:-

Name of deceased	Mahipal S/o Jogi Ram
Date of accident	02.05.2012
Date of death	03.05.2012
Monthly income	Rs.6,000/-
Age at the time of death	32 years
Annual income	Rs.6,000X12=Rs.72,000/-
Increase for future prospects @ 40%	Rs.28,800/-
Total income	Rs.1,00,800/-
Dependents (widow, mother, three daughters)	05
Deduction for personal expenses of the deceased 1/4th	Rs.25,200/-
Balance income (Rs.1,00,800- Rs.25,200/-)	Rs.75,600/-
Multiplier	16
Compensation for loss of dependency	Rs.75,600 X16=Rs.12,09,600/-
Loss of consortium (for five claimants)	Rs.2,00,000/-
Funeral expenses	Rs.16,500/-
Loss of estate	Rs.16,500/-
Total entitlement	**Rs.14,42,600/-**
Amount awarded by the Tribunal	Rs.4,40,000/- plus interest @ 9%
Enhanced amount to be paid	**Rs.10,02,600/-**

14. Accordingly, the award is modified in terms of the above computations. The amount awarded by the Tribunal i.e. 4,40,000/- is enhanced to Rs.14,42,600/-. Enhanced compensation of Rs.14,42,600/- shall be payable to the claimants along with interest @ 6% per annum from the date of filing the claim petition till payment. The same, after adjustment of payment if any already made, be paid to the claimants within a period of

two months of their approaching the insurance company along with web print of the instant order.

15. Disposed of in above terms.

(ARUN MONGA)
JUDGE

February 24, 2022
Vandana

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