

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

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FAO-3419-2016 (O&M)
Date of decision: 18.04.2022

Kamaljit Kaur and othersAppellants
Versus
Satpal Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. N.S. Dandiwal, Advocate
for the appellants.

Mr. Vipul Sharma, Advcate
for respondent No.3-Insurance Company.

MANJARI NEHRU KAUL, J. (ORAL)

The instant appeal has been preferred by the appellants-claimants, who are widow and two minor daughters respectively of deceased Harbinder Singh, (hereinafter called deceased) to impugn the compensation awarded to them vide award dated 02.02.2016 passed by learned Motor Accidents Claims Tribunal, Moga (for short, 'the Tribunal') in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988.

The deceased Harbinder Singh died in a motor vehicular accident on 13.10.2013 while he was riding his motorcycle bearing registration No.PB-29/P-3740. The offending oil tanker bearing registration No.PB-10/W-9803 being driven rashly and negligently by respondent No.1 hit against his motorcycle as a result of which deceased sustained injuries and lateron succumbed to them. On the basis of material and other evidence led, the Tribunal awarded the following compensation to the appellants-claimants:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.15,549/-

2.	Future prospects	30% of the basic salary (Rs.10,710/-) which comes to Rs.3,213/-
3.	Income after adding future prospects	Rs.15,549/- + Rs.3,213/- = Rs.18,762/-
4.	Deduction towards personal expenses (1/3rd)	Rs.6,254/-
5.	Monthly dependency	Rs.18,762/- - Rs.6,254/- = Rs.12,508/- (rounded off to Rs.12,500/-)
6.	Annual dependency	Rs.12,500/- x 12 = Rs.1,50,000/-
7.	Multiplier (14)	Rs.1,50,000/- x 14 = Rs.21,00,000/-
8.	Funeral expenses	Rs.25,000/-
9.	Loss of estate	Rs.25,000/-
	Total compensation	Rs.21,50,000/-

Since the deceased was riding the motorcycle along with three children sitting behind with him on the motorcycle, the Tribunal concluded and held that the deceased was guilty of contributory negligence in the accident in question and thus the appellants-claimants were entitled to only 50% of the total compensation i.e. in the sum of Rs.10,75,000/- only out of total of Rs.21,50,000/-. Out of Rs.10,75,000/-, appellant-claimant No.1 widow of the deceased was held entitled to 50% of the share, appellants-claimants No.2 and 3 were held entitled to 15% of the share while proforma respondent No.4- mother of the deceased was held entitled to 20% of the share. The compensation amount was ordered to be paid jointly and severally.

Learned counsel for the appellants-claimants submits that the deceased, who was 37 years of age, was working as a clerk in the Punjab School Education Board and drawing a salary of Rs.27,730/- which was duly proved by way of documentary evidence, however, learned Tribunal gravely erred in assessing the income of the deceased

as Rs.15,549/-. It has also been submitted that even a wrong multiplier i.e. '14' was applied which in fact should have been '15' as the deceased was 37 years of age. Learned counsel further submits that it was a matter of record that the deceased was a Government employee and hence he was entitled to 50% as future prospects whereas the Tribunal erred in just giving 30% as future prospects which was against the settled law. It has also been further submitted that appellant-claimant No.1 i.e. widow of the deceased would be entitled to Rs.40,000/- for loss of consortium while the two minor children of the deceased would be entitled to parental consortium in the sum of Rs.40,000/- each which yet again had not been awarded while passing the impugned award. Furthermore, submits that the oil tanker which was being driven in a rash and negligent manner hit the motorcycle of the deceased which led to the accident in question. The Tribunal failed to appreciate that there was no fault much less negligence on the part of the deceased in the accident in question and rather he was riding the motorcycle slowly and cautiously as there were minor children sitting behind him. Hence, the Tribunal erred in concluding that it was a case of contributory negligence.

Learned counsel for respondent No.3-insurance company while opposing the prayer and submission of the counsel opposite submits that the net salary of the deceased i.e. Rs.15,549/- was rightly taken into account by the Tribunal and it did not warrant any interference. He, however, has not been able to controvert that the Tribunal erred in granting only 30% with respect to the future prospects and even the correct multiplier applicable in the case would be '15'.

Learned counsel has also not been able to controvert that the appellants-claimants are entitled to compensation on account of loss of consortium which admittedly has not been considered and given by the Tribunal while awarding compensation. Learned counsel has controverted the submission made by the counsel opposite with respect to the deceased riding his motorcycle cautiously and not being at fault. He has argued that the Tribunal had rightly concluded that it was a case of contributory negligence, on the basis of evidence led.

I have heard learned counsel for the parties and perused the relevant material on record.

After hearing learned counsel for the parties and on perusing the case file, this Court is of the opinion that the compensation awarded by the Tribunal requires to be reassessed in consonance with the judgment rendered by the Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270 (Constitution Bench)***; ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram : 2018 (4) RCR (Civil) 333***; ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*** and ***Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344***.

As per the settled law only deduction towards income tax can be made while computing the monthly salary of the deceased, therefore, the Tribunal erred in deducting personal allowances from the monthly salary of the deceased. Since the deceased was aged 37 years, the correct multiplier of '15' should have been applied. The deceased was a Government employee, therefore, 50% future prospects on actual

income shall have to be awarded. The Hon’ble Supreme Court in ***Pranay Sethi’s case (supra)*** has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- for loss of consortium. Still further, it has also been held that the aforesaid amount would be further subject to 10% enhancement after every three years. Therefore, the appellants would be entitled to 10% enhancement with respect to the compensation under the conventional heads as was also held and reassessed by the Hon’ble Supreme Court in ***Rasmita Biswal’s case (supra)***. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. In the present case the widow, two minor children and respondent No.4-mother of the deceased would also be entitled to loss of spousal, parental and filial consortium respectively in the sum of Rs.44,000/- each.

Resultantly, the compensation awarded by the Tribunal is reassessed as follows:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.28,875/-
2.	Annual Income	Rs.28,875/- x 12 = Rs.3,46,500/-
3.	Income Tax	Rs.14,650/-
4.	Annual Income minus income tax	Rs.3,31,850/-
5.	Future prospects (50%)	Rs.1,65,925/-
6.	Total annual income including future prospects	Rs.4,97,775/-
7.	Deduction towards personal expenses (1/4th)	Rs.1,24,444/-
8.	Annual dependency	Rs.4,97,775/- - Rs.1,24,444/- = Rs.3,73,331/-
9.	Multiplier	15
10.	Loss of annual future earnings	Rs.55,99,965/-

11.	Loss of consortium (spousal, parental and filial)	Rs.1,76,000/- (Rs.44,000/- each)
12.	Funeral expenses	Rs.16,500/-
13.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.58,08,965/- (rounded off to Rs.58,09,000/-)

Coming to the challenge made to the findings recorded by the Tribunal qua contributory negligence on the part of the deceased in the accident in question, this Court is inclined to concur with the submissions made by the learned counsel for the appellants.

It is a matter of record that the deceased was indeed pillion riding with his three children, who too received injuries in the accident in question. Hon'ble the Supreme Court in ***Civil Appeal No.8632 of 2014 titled as 'Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others'*** decided on 11.09.2014 has held that without any direct corroborative evidence on record, the deceased cannot be said to be negligent. In the case in hand negligence of the driver i.e. the deceased has not been cogently proved. Thus, this Court can reasonably assume that the deceased, who was pillion riding with three children would have definitely taken adequate precautions while riding the motorcycle. Still further, this Court has no hesitation to conclude that the negligence could wholly be drawn on the part of the offending driver as he was admittedly driving a heavier vehicle i.e. an oil tanker. The Hon'ble Supreme Court in ***Kumari Kiran's case (supra)*** wherein also contributory negligence between the driver of the offending vehicle and the deceased had been apportioned in the ratio of 75% and 25% by the Tribunal held as under:-

"13. With regard to the apportionment of contributory

negligence at 25% on the part of the appellant-father and 75% on the driver of the offending tractor as determined by the High Court, we refer to the judgment of this Court in Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.[5] as it is applicable to facts of the case on hand. In the above case, Joy Kuruvila (the deceased) had a head-on collision with a bus approaching from the opposite side. Joy Kuruvila sustained serious injuries and died on the way to the hospital. The Tribunal found that the accident occurred due to the rash and negligent driving of the bus driver. It apportioned the contributory negligence between the driver and the deceased in the ratio of 75:25%. On the basis of the pleadings & evidence on record, in the above said case, this Court has held thus on the negligence of the driver of the bus:-

“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.””

Accordingly, the appellants-claimants and respondent No.4 are, therefore, entitled to a total compensation of Rs.58,09,000/- along with interest at the rate of 8% per annum from the date of filing of the claim petition till its actual realization which shall be jointly and severally paid in the same ratio as directed by the learned Tribunal.

With the above modifications, the instant appeal stands disposed of.

18.04.2022
Vinay

(MANJARI NEHRU KAUL)
JUDGE

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