

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

FAO-869-2014 (O&M)

Reserved on: 20.09.2022

Date of Decision: September 27, 2022

Santokh Singh and another Appellants
Versus
Sonam and ors. Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. S.S. Virk, Advocate for the appellants.
Mr. Ajay Saini, Advocate for respondents No. 1 to 4.
Mr. Sachin Gupta, Advocate for Insurance Company.

HARKESH MANUJA, J.

Present appeal has been filed at the instance of joint owners of the offending vehicle against the award dated 14.10.2013 passed by learned Motor Accident Claims Tribunal, Panipat, for short 'the Tribunal', whereby the liability to pay the amount of compensation has been fastened upon them.

Accident in the present case took place on 01.08.2011 when the deceased Mohd. Munshad, aged 23 years, was going from Kairana towards Panipat on his motorcycle No. UP-13-S-3114 alongwith one of his friends. At around 7.00 PM, when they reached near Malik Petrol Pump, their motorcycle struck against a stone lying on the road near the divider, resultantly, the deceased fell down on the other side of the divider and a Tractor make Eicher, bearing registration no. HR-06-A-5280 being driven by Respondent No.1 allegedly in a rash and negligent manner, mowed down Mohd. Munshad under the wheels, resulted into his death at the spot.

The claimants being widow, children and parents of deceased filed claim petition with a prayer for grant of compensation of Rs.20 lacs. Learned Tribunal vide its award dated 14.10.2013, recorded a finding that the offending vehicle i.e. Tractor bearing registration No. HR-06-A-5280 was involved in the accident. The Tribunal further recorded that the offending vehicle was being driven in a rash and negligent manner by respondent No.6, yet held it to be a case of contributory negligence to the extent of 70:30 as regards the driver of the Tractor and the deceased. While awarding compensation to the tune of Rs 4,81,280/- along with interest @7.5 % per annum from the date of filing of the claim petition till realisation, the Ld. Tribunal further recorded that since the offending vehicle was not insured, as such the appellants as well as Respondent No. 6 were jointly and severally liable to pay the amount of compensation.

In the present appeal, Id. counsel for the appellants-owners vehemently contends that considering the facts and circumstances of the present case wherein the deceased fell on the other side of the road and came under the offending vehicle, the extent of contributory negligence qua the deceased should have been fixed on the higher side.

On the other hand, Ld. counsel for Claimants-Respondents No. 1 to 4 submits that the accident in the present case took place on account of sole negligence of Respondent No. 6 as he was driving the offending vehicle at a high speed and in a rash and negligent manner, therefore, he is solely responsible to pay the compensation as assessed by learned Tribunal.

Having heard Id. counsel for the parties and going through the paper-book as well records of the case, I do not find any merit in the contention raised on the behalf of the appellants. A perusal of the statement of Respondent No.6-Driver of the offending vehicle who appeared before tribunal as RW-1 shows that he was driving the offending vehicle at a high speed. Relevant portion of the statement of RW-1 is reproduced hereunder for reference:-

“.....Empty trolley was attached with the tractor. I was driving the same at a high speed....”

A perusal of the above extracted portion shows that respondent no.6 himself admitted the factum of driving the Tractor at high speed, therefore, I find no fault with the findings recorded by the Id. Tribunal as regards the rash and negligent driving of respondent No.6 and the same is, therefore, upheld.

While deciding the liability, learned Tribunal assessed the same as 30:70 against the deceased and Tractor Driver. Relevant portion of the finding of learned Tribunal qua the abovementioned issue is reproduced hereinbelow:-

“18.The motorcycle of the deceased and the offending tractor were being driven in different lanes. There was a divider in between. The offending tractor hit the deceased because after his motorcycle hit a stone, he had fallen in the lane of the tractor. The motorcycle hit the stone because of fault on part of the deceased. At the same time, it is obvious that the offending tractor was being driven rashly and negligently because of which the driver could not control and stop the same immediately

when he saw a man falling in front of his vehicle. Thus, considering all relative facts, the ratio of negligence on the part of the deceased and the tractor driver- respondent No.1 is assessed as 30:70.....”

Based on a careful examination of the evidence available on record, I do not subscribe to the aforementioned reasoning. Mere fact, that the motor cycle driven by the deceased hit a stone lying on a state highway, he cannot be said to be at fault and thus, cannot be held to have contributed towards the accident. Rather, on the contrary it was the high speed on which the offending tractor was being driven by respondent No.6, caused the death of Mohd. Munshad.

However, since there is no appeal filed at the instance of Respondent No. 1 to 4—claimants making any challenge to the findings regarding contributory negligence, therefore, the findings of the learned Tribunal qua that aspect are not being interfered with having attained finality.

In view of what has been recorded hereinabove, the present appeal is dismissed.

Pending miscellaneous application(s) if any, shall also stand disposed of.

September 27, 2022
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No