

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

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**CM-24557-CII-2019 in/and
FAO-7592-2015 (O&M)
Date of decision: 26.04.2022**

Subhash and another

.....Appellants

Versus

Naresh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vipul Sharma, Advocate for
Mr. Neeraj Khanna, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Suvir Dewan, Advocate
for respondent No.3-Insurance Company.

MANJARI NEHRU KAUL, J. (ORAL)

CM-24557-CII-2019

Prayer in the application is for revival of the appeal as the matter was adjourned *sine die* vide order dated 01.03.2018.

For the reasons mentioned in the application, the same is allowed and the appeal is taken up for hearing today itself.

FAO-7592-2015 (O&M)

The instant appeal has been preferred by the appellants-claimants, who are parents of deceased Rohtash, seeking enhancement of compensation awarded to them vide award dated 19.08.2015 by learned Motor Accidents Claims Tribunal, Hisar (for short, 'the Tribunal') in their claim petition filed under Section 166 of the Motor Vehicles Act, 1988. The learned Tribunal on the basis of the material and evidence led, awarded the following compensation to the

appellants-claimants for the death of Rohtash in the accident in question which occurred on 15.05.2014:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.7,500/-
2.	Annual Income	Rs.90,000/- (Rs.7,500 x 12)
3.	Deduction	50%
4.	Dependency	Rs.45,000/- (Rs.90,000 x 50%)
5.	Multiplier	14
6.	Compensation after applying multiplier	Rs.6,30,000/- (Rs.45,000 x 14)
7.	Loss of love and affection	Rs.1,00,000/-
8.	Transportation and funeral expenses	Rs.25,000/-
9.	Litigation Charges	Rs.25,000/-
	Total compensation	Rs.7,80,000/-

Learned Tribunal concluded that since the accident had taken place due to the contributory negligence of both the offending vehicle i.e. the tractor-trolley bearing registration No.HR-16E/5422 as well as the driver of the motorcycle, it was a case of contributory negligence and hence respondents No.1 to 3 being driver, registered owner and insurer of the offending vehicle were liable to pay compensation to the extent of 50% of the total amount of compensation awarded, jointly and severally

Brief facts of the case are that the deceased was stated to be a pillion rider along with Shankar and Mahender Singh on a motorcycle which was being driven by Shankar. The offending vehicle i.e. HR-16E-5422 while being driven rashly and negligently by respondent No.1 came and hit the motorcycle on which the deceased was pillion riding as a result of which he sustained multiple injuries.

Rohtash, however, lateron succumbed to his injuries in General Hospital, Hansi.

On the basis of evidence led by the parties, the learned Tribunal awarded the compensation as already detailed above.

Learned counsel for the appellants has impugned the award passed by the Tribunal primarily on the following grounds:-

(1) That it could not be said to be a case of contributory negligence and at best it could be termed to be a case of composite negligence.

(2) That the deceased was 19 years of age and hence the correct multiplier which should have been applicable in his case would be '18' and not '14' which was erroneously applied by the Tribunal.

(3) That the income of the deceased was wrongly assessed as Rs.7,500/- per month even though it had come in the deposition of PW4 Bhanu Parkash Kabari, Proprietor of Bhanu Parkash Kabari Company, Hansi that the deceased was employed with him and drawing a salary of Rs.10,500/- per month.

(4) That the Tribunal erred in not awarding future prospects.

(5) That under the conventional heads also the Tribunal had granted inadequate compensation.

Learned counsel for respondent No.3-Insurance Company while disputing and opposing the submissions made by the counsel opposite has submitted that since it was the admitted case of the appellants-claimants also that the deceased along with two others was riding on the motorcycle at the time of accident in question, it left no manner of doubt that they too had been negligent and had contributed

to the accident in question. It was, thus, submitted that the Tribunal had rightly fastened only 50% of the liability to be paid by the respondents in respect of the compensation awarded. Learned counsel for the respondents, however, fairly conceded that since the deceased was 19 years of age, the correct multiplier applicable would be '18' and not '14' as had been erroneously applied by the Tribunal. Learned counsel was also unable to controvert that the appellants-claimants were also entitled to future prospects which admittedly was not taken into consideration while passing the impugned order.

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

The submissions made by the learned counsel for the respondents that it was a case of contributory negligence which had rightly been held by the Tribunal is bereft of any merit. The Hon'ble Supreme Court in the case of ***Mohammed Siddique and another Vs. National Insurance Company Ltd. and others : 2020(1) RCR (Civil) 689*** while dealing with the contributory negligence wherein also the deceased was pillion riding, 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."

Hence in the wake of the above, the findings recorded by the Tribunal are erroneous. No evidence has come forth from which it could be inferred that it was on account of any wrongful act on the part of deceased Rohtash, who was pillion riding on the motorcycle, that he contributed in any manner to the accident in question. This Court, therefore, sets aside the finding of contributory negligence recorded by

the Tribunal.

This Court is unable to agree with the submissions made by learned counsel for the appellants that the income of the deceased has been wrongly assessed at Rs.7,500/- per month. It is a matter of record that no documentary evidence was produced before the Tribunal by the appellants-claimants to support the factum of the deceased earning a salary of Rs.10,500/- per month while working in a *kabari* shop. Hence, the Tribunal cannot be faulted with on the said ground.

As per the settled law in *National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*, the appellants-claimants would also be entitled to 40% on account of future prospects as also the compensation require to be reassessed under the conventional heads. 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 and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344*. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses and Rs.44,000/- each for loss of consortium.

Resultantly, the compensation awarded by the Tribunal is

reassessed as follows:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.7,500/-
2.	Annual Income	Rs.90,000/- (Rs.7,500 x 12)
3.	Future prospects (40%)	Rs.90,000x40%= Rs.36,000/-
4.	Total Income including future prospects	Rs.1,26,000/-
5.	Deduction towards personal expenses (1/2)	Rs.63,000/-
6.	Loss of annual future earnings	Rs.63,000/-
7.	Multiplier	18
8.	Loss of future earnings	Rs.63,000/-x18 =Rs.11,34,000/-
9.	Loss of consortium (filial)	Rs.44,000/- x 2 = Rs.88,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
12.	Total compensation	Rs.12,55,000/-

The appellants-claimants are, therefore, entitled to a total compensation of Rs.12,55,000/- along with interest at the rate of 9% 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.

26.04.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned

Whether reportable

:
:

Yes/No
Yes/No