

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

FAO 8065/2016

Date of decision: 29.11.2022

Ravindra Kaur Bhatia and another

.....Appellants

Vs.

Saurabh Sharma and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naveen Gupta, Advocate for the claimants/appellants
Mr Ankur Gupta, Advocate for respondent no.3-Insurance Co.

Nidhi Gupta,J.

This appeal has been filed by the claimants/ parents of the deceased Atinder Singh Bhatia, seeking enhancement of compensation of Rs. 5,31,300/- awarded by the Motor Accident claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide Award dated 5.5.2016 passed in Claim Petition No.3(58)/MACT of 2014, filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

Brief facts of the case are that on 13.10.2013 deceased Atinder Singh Bhatia, son of the claimants/appellants along with one Bavya Saplak was going to Delhi via Meerut from Lovely Professional University, Jalandhar on his motor cycle bearing No. PB-09-R-3165-Bajaj Avenger. Atinder Singh Bhatia was driving his motor cycle on the correct side of the road at a moderate speed and when they reached near gate of Mahindra Agency near village Tepla, a car bearing No. DL-2CP-8332 being driven by respondent no.1-Sarubah Sharma in a rash, negligent and zig zag manner came from Yamuna Nagar side by coming

on the wrong side of the road and hit the motor cycle of the deceased. As a result of the collision both the riders of motor cycle fell down and received multiple grievous injuries. Jaswinder Singh PW2 eye witness noted the number of the offending vehicle, and on his statement FIR No.162 dated 14.10.2013 under Sections 279/337/338/304-A IPC was registered in PS Saha, District Ambala. Meantime, Atinder Singh Bhatia and pillion rider Bhavya Saplak were shifted injured to Civil hospital, Ambala Cantt but Atinder Singh Bhatia succumbed to his injuries on way to hospital. Post mortem of his dead body was conducted on 14.10.2013 at Civil Hospital, Ambala Cantt.

It is the pleaded case of the claimants that deceased Atinder Singh Bhatia was 24 years of age at the time of his death and was doing Diploma in Hotel Management from Lovely Professional University, Jalandhar. Side by side deceased was allegedly doing Modelling and earning Rs.20,000/- per month. Accordingly, compensation of Rs.50 lacs was sought.

Learned Tribunal after considering the evidence on record, concluded that this was a case of contributory negligence and held the respondent No. 1 and the deceased responsible in the ratio of 70:30, as under:-

“20. A perusal of the site plan Ex.R3 goes to show that accident between Alto Car bearing registration number DL-2CP-8332 being driven by respondent no.1 had taken place at place ‘A’ which is situated almost in the center of the road between Saha to Ambala Cantt. Therefore, in this case it has to be inferred that accident was caused due to head on collusion between Alto car and the motor cycle on which the deceased was travelling. Therefore, in view of the law settled in case titled as Sukhbir Singh and another v Ram Mehar and others 2011(2) Punjab law Reporter 97 (P&H) (supra) the responsibility has to be shared between the offending vehicle as well as the vehicle on which the deceased was travelling. Therefore, in view of the above said circumstances, I have no hesitation in holding that the responsibility has to be shared between the respondent no.1 and the deceased in the ratio of 70:30. Thus, this is a case of contributory

negligence. Resultantly, this issue is decided partly against respondent no.3”.

Accordingly, the Learned Tribunal computed a total compensation of Rs.7,59,000/- in the manner discussed hereinbelow; which upon deduction of 30% came to Rs.5,31,300/-, to be paid by respondent nos. 1 to 3 being the driver, owner and insurer respectively of the offending Alto Car. The liability of all the three was joint and several. Further, claimant No. 1 – mother of the deceased was held entitled to the entire compensation being Class I heir; whereas Claimant no.2-father of the deceased- was held not entitled to anything

Learned counsel for the appellants submits that perusal of the record shows that no case of contributory negligence is made out and Tribunal is in patent error in holding as such. In this regard, ld. Counsel refers to judgment of the Hon’ble Supreme Court in **(2013) 9 SCC 166 Jiju Kuruvilla & others vs. Kunjujamma Mohan & others**. It is further submitted that nothing has been granted by the Tribunal by way of future prospects; and multiplier has also not been applied correctly; as also no filial consortium; and sums awarded under other heads are also on the lower side.

Learned counsel for the respondent Insurance Company states that site plan Ex. R3 shows that the accident took place in the middle of the road and therefore, the Tribunal was correct in attributing contributory negligence to the deceased. Further states that in a case of contributory negligence, facts and circumstances of every case have to be examined and it is not a criminal trial by the Tribunal. It is not in dispute that as per prevailing law, the claimants are entitled to future prospects, as also the multiplier has not been correctly applied.

I have heard learned counsel for the parties.

Perusal of the record shows that the Tribunal has recorded in the impugned Award that respondent no.1, driver of the offending vehicle has appeared in person before the Tribunal on 21.1.2015 but later on on 6.4.2015 neither respondent no.1 nor respondent no.2 appeared despite publication in the newspaper (Hindustan Times-English) dated 28.3.2015 and accordingly vide order dated 6.4.2015 both the respondents were proceeded against ex parte.

Further, as noticed above the Tribunal upon appraisal of the evidence and contentions made on behalf of the claimants and the respondent-Insurance Company concluded that the accident in question was caused due to head on collision between the offending Alto Car and the motor cycle on which the deceased was travelling. Accordingly, Tribunal held that responsibility has to be shared between the offending vehicle as well as the vehicle on which the deceased was travelling to the extent of 70:30.

However, a perusal of the impugned Award shows that important testimony and evidence in this regard has not been appreciated in the correct manner in reaching the above conclusion. It is not in dispute that PW2 Jaswinder Singh has stated in the FIR that accident was caused by the driver of the offending vehicle while coming from the front side and *going on the wrong side*. PW2 Jaswinder Singh eyewitness has also stated that on the date of the accident 13.10.2013, when he reached near village Tepla, an Alto car was going ahead of him which was being driven by its driver at a very high speed and in a rash and negligent manner. When the said car reached in front of Mahindra agency, then the driver of the said Alto car hit a motorcycle coming from front side *after going on the wrong side* and on which two boys were travelling and fell down on the road and *the front wheel of the driver side was burst*. In my view, the above testimony of eyewitness PW2 Jaswinder Singh is categorical in making two facts

clear – that the driver of the offending vehicle went on the wrong side of the road, and the impact of the offending vehicle was such that the front wheel of the driver-side burst, which goes to show that the car was being driven at a very high speed. In my considered view, the above facts show that the conclusion of the Id. Tribunal in holding this to be a case of contributory negligence is erroneous.

Further, the Tribunal has held it to be a case of contributory negligence on the ground that the “*accident between Alto Car bearing registration number DL-2CP-8332 being driven by respondent no.1 had taken place at place ‘A’ which is situated almost in the centre of the road between Saha to Ambala Cantt*”. However, Hon’ble Supreme Court in **2013(9) SCC 166 Jiju Kuruvila and others v Kunjujamma Mohan and others** has held that:

“mere position of vehicles after accident as shown in ‘scene mahazar’ cannot give a substantial proof of negligence on the part of one or the other 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 the absence of such direct or corroborative evidence, the court cannot give any specific finding about negligence on the part of any individual”.

In the present case, from the facts narrated above, it is very clear that what to talk of corroborative evidence, there is, in fact, evidence to the contrary that shows that the offending vehicle was on the wrong side of the road, and the front tire of the car burst due to the impact with which it hit the motorcycle on which the deceased was riding, which goes to show that the car was being driven at a very high speed. Moreover, this evidence has gone un-rebutted.

Even further, it is not disputed that respondent no.1, driver of the offending car is facing trial in aforementioned FIR No.162 dated 14.10.2013 and charges have been framed against him. It is settled law that where driver of the offending vehicle is facing trial, it can be safely inferred that the accident has been caused by his rash and negligent driving.

Accordingly, in view of the above facts, the finding of the Tribunal that this is a case of contributory negligence, is found to be incorrect and contrary to the facts and law related to this case. Even otherwise, a perusal of the written statement filed on behalf of respondent no.3-Insurance Company shows that plea to this effect was not taken by the Insurance Company before the Tribunal.

Further, the Tribunal has computed the compensation in the following manner: notional income of the deceased was taken to be Rs.8000/- per month in view of the fact that he was doing Diploma in Hotel Management from a private University; 50% of which was deducted towards his personal expenses as deceased was a bachelor; and multiplier of 13 was applied thereupon on the basis of the age of the mother of the claimant which was 48 years. No future prospects were awarded by the Tribunal. Therefore, the total dependency of the claimants/appellants was assessed to be Rs.6,24,000/- (Rs. 4000x12x13). Rs. 1 lac was awarded towards love and affection; Rs.10,000/- towards loss of estate; Rs.25,000/- towards funeral expenses, and interest was awarded @ 7.5% per annum. In the considered view of this Court the aforesaid compensation as calculated by the Tribunal is not in conformity with the judgments of the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport**

Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.

There is no dispute among the parties that the claimants are entitled to future prospects @ 40% to be awarded in conformity with judgment of **Sarla Verma** (supra), as the deceased was below 40 years of age at the time of death; and also, as per the judgment of the Hon’ble Supreme Court in **Pranay Sethi’s** case (supra) multiplier of 18 has to be applied as the age of the deceased at the time of his death was 24 years; in view of the judgment of Hon’ble Supreme Court in **Magma General’s** case (supra) filial consortium has to be awarded. Accordingly, the compensation, with consent of both parties, is reworked as under:-

HEAD	AMOUNT
Income	Rs. 8000/- per month
Future prospects@40%	Rs. 3200/- = Rs.11,200/- per month
Less 50% personal deduction	Rs. 5600/-
Annual dependency	Rs.5600x12x18 = Rs.12,09,600/-
Plus consortium	Rs. 88,000/-
Plus funeral expenses	Rs. 16,500/-
Plus Loss of estate	Rs. 16,500/-
Total compensation	Rs. 13,30,600/-
Less compensation awarded by Tribunal	Rs. 5,31,300/-
Enhanced compensation	Rs. 7,99,300/-

Interest on enhanced compensation @ 7.5% per annum will be payable from the date of filing of the claim petition till realization. Respondents shall be jointly and severally liable, and compensation shall be shared equally between both appellants.

Disposed of as above.

(Nidhi Gupta)
Judge

29.11.2022
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No