

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 26.07.2022

1. FAO-1841-2017 (O&M)

Lilu Ram and another

.... Appellants

versus

Sunil and others

..... Respondents

2. FAO-1927-2017 (O&M)

Oriental Insurance Company Ltd.

.... Appellant

versus

Jagwanti and others

..... Respondents

3. FAO-2105-2017 (O&M)

Oriental Insurance Company Ltd.

.... Appellant

versus

Lilu Ram and others

..... Respondents

4. FAO-8473-2017 (O&M)

Jagwanti and another

.... Appellants

versus

Sunil and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Girdhwal, Advocate
for the appellants in FAO-1841-2017.

Mr. Sarfraj Hussain, Advocate
for the appellants in FAO-8473-2017.

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate
for respondent No.3-Insurance Company
in FAO Nos 1841 & 8473 of 2017 and
for the appellant in FAO Nos.1927 & 2105 of 2017.

PANKAJ JAIN, J.

These are four appeals arising out of a common award passed by Motor Accidents Claim Tribunal, Jhajjar (hereinafter referred to as 'Tribunal'), dated 22.11.2016 pertaining to single accident. In the said motor vehicular accident, three persons namely Jagbir @ Jagvir, Sandeep and Bittu lost their lives.

2. Different set of petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act') were filed by the legal heirs of the deceased(s). FAO-1841-2017 and FAO-2105-2017 are cross appeals filed by the claimants and the insurer relating to compensation awarded on account of death of Bittu. The other set of appeals i.e. FAO Nos. 1927 and 8473 of 2017 are the cross appeals filed by claimants and the insurer pertaining to compensation awarded on account of death of Jagbir @ Jagvir.

3. Since all the appeals involve common question of facts, they are being taken up together for adjudication. Facts are being taken from the claim petition No.160 of 2016 i.e. Smt. Jagwanti and another vs. Sunil and others.

4. As per claim petition, on 20.03.2016 while deceased(s) Jagbir @ Jagvir, Bittu and Sandeep were going towards Khanpur Village on a motorcycle, they were hit by the offending vehicle. FIR bearing No.64 dated 20.03.2016 was registered against the driver of the offending vehicle for offences punishable under Sections 279 and 304-A of IPC. All the three boys riding motorcycle lost their lives.

5. On the basis of the pleadings, following issues were framed:-

“(1) Whether Jagbir @ Jagvir, Sandeep and Bittu (deceased) met with motor vehicular accident on

20.03.2016 due to rash & negligent driving of Bus bearing registration no.HR-63B-8442, driven by respondent no.1 Sunil? OPP.

- (2) If issue no.1 is proved in favour of the petitioners, to what amount of compensation petitioners is entitled and from whom? OPP.
- (3) Whether respondent No.1 Sunil was not holding valid and effective driving-license? OPR-3.
- (4) Whether respondent no.1 and 2 have violated terms and condition of insurance policy, if so, to what effect? OPR-3.
- (5) Relief.”

6. In the appeals preferred by the insurance company, it has been argued that the negligence cannot be attributed to the offending vehicle as admittedly three boys were riding motorcycle in violation of the traffic rules.

7. Counsel for the insurer-Mr. Neeraj Khanna has argued that in fact the motorcycle and the alleged offending vehicle i.e. bus never collided. Rather the riders of the motorcycle i.e. the deceased(s) got imbalanced and the motorcycle fell near the bus. He thus claims that there being no negligence on part of driver of the bus, the appellant-insurer cannot be burdened with the liability. He further argues that the compensation awarded under different heads is in violation of the parameters of the law laid down by the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (2017) 16 SCC 680** and the same needs to be reduced.

8. Counsel for the claimants on the other hand seeks modification of the award claiming enhancement of compensation and submits that so far as the accident is concerned, it has been proved on record that the same was caused

due to rash and negligent driving of respondent No.1 Sunil Kumar.

9. I have heard learned counsel for the parties and with their able assistance have gone through the records of the case.

10. The argument regarding three persons riding the motorcycle and therefore falling due to imbalance deserves to be rejected. It is trite that to prove the plea of contributory negligence, tortfeasor is required to show that the person(s) injured or deceased committed an act of negligence and such act contributed to the accident. In the present case, though the three persons riding motorcycle may be violative of the traffic rules, yet, there is no material available on record to show that the accident was caused on account of negligence on the part of the deceased(s). The fact remains that mere violation of traffic rules itself is not sufficient to draw inference that there was negligence. View of this Court is fortified by view taken by Apex Court in the case of '**Mohammed Siddique and another vs. National Insurance Company and others**' reported as **2020(3) SCC 572** held as under:-

“xx xx xx

“12. It is seen from the material on record that the accident occurred at about 2:00 a.m. on 5.09.2008. Therefore, there was no possibility of heavy traffic on the road. The finding of fact by the Tribunal, as confirmed by the High Court, was that the motor cycle in which the deceased was travelling, was hit by the car from behind and that therefore it was clear that the accident was caused by the rash and negligent driving of the car. In fact, the High Court confirms in paragraph 4 of the impugned order that the motor cycle was hit by the car from behind. But it nevertheless holds that 3 persons on a motor cycle could have added to the imbalance. The relevant portion of paragraph 4 of the order of the High

Court reads as follows:

“On careful assessment of the evidence led, this Court finds substance in the plea of the insurance company. While it is correct that the offending car had no business to strike from behind against the motor-cycle moving ahead of it, even if the motor cycle was changing lane to allow another vehicle to overtake, the fact that a motor vehicle meant for only two persons to ride was carrying, besides the driver, two persons on the pillion would undoubtedly have added to the imbalance.”

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 194-C 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.”

11. So far as the denial of there being any collision between the vehicles is concerned, the same is untenable. It needs to be noticed here that driver of the offending vehicle i.e. Sunil appeared as RW-2. He admitted that he has been charged for offences punishable under Sections 279 and 304-A of IPC and is facing trial. He further admits in his cross examination that after accident, the bus remained stationed on the spot for 20-25 minutes and thereafter was seized by the police. It has also been proved on record that after the accident, the bus

dragged motorcycle for certain distance. It has also come on record that the FIR w.r.t. the accident was lodged on the narration of one Rajesh son of Daryao Singh. He appeared before Tribunal as PW-5 and has fully proved the facts leading to the accident.

12. It is trite that the claimants are not required to prove the accident beyond reasonable doubt in the proceedings before the Tribunal. Tribunal after analyzing evidence on record has rightly returned finding on issue No.1. Counsel for the insurer is not in a position to show from record that the findings recorded are perverse. Resultantly, the finding on issue No.1 needs no interference.

13. So far as issue No.2 is concerned, the age of the deceased Jagbir @ Jagvir at the time of his death has been proved on record to be 22 years. Tribunal has assessed him to be an unskilled labour. His income has been assessed as per notification issued under Minimum Wages Act at the relevant period of time @ Rs.7,621/- per month. The same is rounded off to Rs.8000/- per month. 50% future prospects awarded by the Tribunal needs to be modified to 40%. Deceased was unmarried, thus 1/2 deduction has to be made as against 1/3 applied by the Tribunal. Multiplier of 18 has been rightly applied. Loss of consortium is modified from Rs.2,00,000/- to 44,000/-. The claimants shall further be entitled to Rs.15,000/- for loss of estate and Rs. 15,000/- for funeral expenses. Compensation awarded will be paid to appellant No.1.

14. So far as compensation on account of death of Bittu is concerned, it has been proved on record that he was working as driver and was earning Rs.15,000/-. Claimants have examined Ramesh son of Mukhtiar Singh as PW-3. He has stated that Bittu was in his employment and was being paid

Rs.15,000/- per month. On being asked as to whether he can produce income tax returns to show the said payment, he answered in affirmative. However insurer opted not to call for the said record. Consequently, the income of the deceased Bittu is taken to be Rs.15,000/- per month. He has been awarded 50% on account of future prospects, which is reduced to 40%. He was unmarried thus, deduction of 1/2 has to be applied instead of 1/3 as applied by the Tribunal. Multiplier of 18 has been rightly applied. Loss of consortium is however reduced from Rs.2,00,000/- to Rs.44,000/-. Rs.15,000/- is awarded under the heads of loss of estate and funeral expenses. Appellant No.2 alone shall be entitled to the compensation awarded.

15. Consequently, the award passed by the Tribunal is modified. Compensation payable to the claimants shall be worked out as per the amounts modified herein above. The claimants shall also be entitled for 9% interest on the awarded amount from the date of filing of claim petition till the date of actual realization. Needless to say any amount already paid shall be set of and adjusted.

16. Accordingly, the appeals are disposed off.

17. Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed off.

18. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

26.07.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

Yes