

FAO No.7059 of 2018
 FAO No.7058 of 2018
 FAO No.7060 of 2018

220

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

**Date of decision: 06.09.2022
 FAO No.7059 of 2018**

Virpal alias Veer Pal alias Beer Pal Appellant

versus

Parmod and others Respondents

FAO No.7058 of 2018

Prem Chand Appellant

Versus

Parmod and others Respondents

FAO No.7060 of 2018

Bharat Lal Appellant

Versus

Parmod and others Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vishal Yadav, Advocate
 for the appellant(s) in all the appeals.

Mr. Rajneesh Malhotra, Advocate
 for respondent No.3 in all the appeals.

TRIBHUVAN DAHIYA J.

The aforesaid three appeals filed by the claimants are being decided together as they arise out of the consolidated award passed by the Motor Accident Claims Tribunal, Faridabad, dated 05.03.2018.

2. The only issue arises for consideration in the appeals is, whether the findings of contributory negligence of the appellants/claimants

FAO No.7059 of 2018
 FAO No.7058 of 2018
 FAO No.7060 of 2018

in causing the alleged accident, are to be sustained and on that basis. The appellants/claimants were held entitled to 50% of the awarded amount of compensation having been held partially negligent themselves in causing the accident.

3. The brief facts of the case are, the appellants/claimants were going on a motorcycle bearing registration No.HR-30-E-6994 on 23.05.2016; it was being driven by one of them, Bharat Lal, and the other two were riding pillion. The offending vehicle/Maruti Swift Car bearing registration No.HR-51-AQ-7005 collided with the motorcycle, causing injuries to the appellants/claimants.

4. Following issues were framed by the Tribunal, which are as under:

- “1. Whether the petitioners Bharat Lal, Prem Chand and Veer pal sustained injuries in a motor vehicular accident which took place on 23.05.2016 at about 6.45 p.m. near Heerapur mor on Mohna-Chhainsa, Tehsil Mohna, District Faridabad and the motor cycle of the petitioner Bharat Lal got damaged in the said accident due to rash and negligent driving of Maruti Swift Car bearing registration No.HR-51-AQ-7005, being driven by the respondent No.1, as alleged? OPP
2. If issue No.1 is proved, whether the petitioner Bharat lal is entitled to compensation, if so to what amount and from whom? OPP
3. If issue No.1 is proved, whether the petitioner Prem Chand is entitled to compensation, if so to what amount and from whom? OPP
4. If issue No.1 is proved, whether the petitioner Veer Pal is entitled to compensation, if so to what amount and from whom? OPP

FAO No.7059 of 2018
 FAO No.7058 of 2018
 FAO No.7060 of 2018

5. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident or that the insured has violated the terms and conditions of the insurance company? OPR-3
6. Relief.”

5. While returning finding on issue No.1, the Tribunal held that the accident in question took place on 23.05.2016 due to rash and negligent driving of Maruti Swift Car bearing registration No.HR-51-AQ-7005, which was being driven by respondent No.1/driver at the relevant time. It caused injuries to the appellants/claimants and damage to the motor cycle owned by claimant Bharat Lal. Accordingly, the issue was decided in favour of the appellants/claimants. However, while returning finding on issue No.4, the Tribunal held, as the claimant-Bharat Lal, aged 42 years, was driving the motor cycle in violation of Section 128 of the Motor vehicles Act, with two passengers on the pillion seat, there was every likelihood of his losing control over the vehicle on seeing other vehicle coming from the opposite side. Accidents occur in a fraction of second and on the slightest miscalculation of judgment. Since the motor cycle was being driven by the claimant-Bharat Lal in violation of the provisions of Motor Vehicles Act, it was a case of contributory negligence by him in view of the law laid down by this Court in ***Angrejo Devi and others vs. Jai Parkash and others***, 2013(2) RCR (Civil) 62 (P&H).

6. It needs mention here that issue of contributory negligence on account of a vehicle being driven in violation of law, has been settled by the Supreme Court in ***Mohammed Siddique vs. National Insurance Company Ltd.***, 2020 (3) SCC 57. It has been laid down therein, the fact that deceased was riding a motor cycle along with driver and another, may

not, by itself, without anything more, make him guilty of contributory negligence. Para 13 and 14 of the judgment read 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.”

6. In view of the law laid down by the Supreme Court in ***Mohammed Siddique's case (supra)***, the finding of contributory negligence recorded by the Tribunal is not sustainable, since there is no evidence on record that could establish any causal connection between the accident and the stated violation of law in driving the motorcycle with two pillion riders. It has not been held by the Tribunal either, that the riding the motorcycle in that manner caused or contributed to the accident.

7. It also needs to be noted that findings recorded by the Tribunal on issue Nos.1 and 4 are contradictory to each other. On issue No.1, it has been recorded that the accident in question took place due to rash and negligent driving of Maruti Swift Car/the offending vehicle by respondent No.1/driver on 23.05.2016. Whereas, on issue No.4, it has been recorded, since the appellant/claimant Bharat Lal was driving the motor cycle in violation of law with two passengers as pillion, there was every

likelihood of his losing control over the vehicle on seeing other vehicle coming from the opposite side. And driving of the motor cycle in violation of the provisions of Motor Vehicles Act, amounts to contributory negligence. It is, therefore, apparent that, on the one hand, only driver of the offending vehicle has been held negligent, and, on the other, contributory negligence has been attributed to the appellant/claimant, who was driving the motor cycle. The two findings are contradictory to each other. Since the finding of contributory negligence has been recorded without framing any issue for the purpose, it becomes unsustainable to the extent of contradiction. It is contrary to the finding recorded on a specific Issue framed to determine negligence.

8. There is another reason for holding the finding of contributory negligence unsustainable. The finding is not based on any evidence. Only on the basis of 'likelihood of losing control over the motor cycle by the driver', that the contributory negligence has been attributed to him. It has not been established on record that driving of motor cycle in violation of law, contributed to the accident in any manner. Contributory negligence cannot be attributed merely on 'likelihood of losing control' over the motor cycle. 'Likelihood' is a probability, that may or may not happen. Attribution of contributory negligence cannot be on such an anticipated eventuality; it can only be based on established facts and circumstances. The finding is, therefore, erroneous, being conjectural, and not based on any evidence.

9. Besides, the judgment in *Angrejo Devi case (supra)* relied upon by the Tribunal, is also not applicable to the facts of the case, since it

FAO No.7059 of 2018
FAO No.7058 of 2018
FAO No.7060 of 2018

is contrary to the law laid down by the Supreme Court in *Mohammed Siddique's case (supra)*. It cannot be cannot be relied upon to return the finding of the contributory negligence.

10. These appeals are, therefore, allowed. The finding of contributory negligence against the appellants/claimants, as recorded by the Tribunal, and their consequential disentitlement to 50% of the amount of compensation awarded under issues No.2, 3 and 4, is set aside. The appellants/claimants are held entitled to full amount of compensation awarded by the Tribunal along with interest at the rate of 7.5 % per annum from the date of filing of the claim petition till its actual realization.

06.09.2022
rittu

Whether speaking/reasoned:

Whether reportable:

(TRIBHUVAN DAHIYA)
JUDGE

Yes/No

Yes/No

RITTU
2022.09.21 12:01
I attest to the accuracy and
integrity of this document