

113

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-35-2023

DATE OF ORDER: 06.01.2023

Mahindro Devi and Others

.....Appellants

Vs.

Mohinder Pal and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTAPresent: Mr. Rajesh K. Sharma, Advocate
for the appellants.**Nidhi Gupta, J.**

Present appeal has been filed by the claimants seeking enhancement of Rs.15,10,800/- granted to them by way of compensation by Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali (hereinafter referred to as "the learned Tribunal") in MACP Case No.62 of 2020 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimant No.1 is the mother, claimant No.2 is the father and claimant No.3 is sister of deceased Vikas Kumar @ Vicky.

Brief facts of the case are that on 30.12.2019 at about 11:00 pm, deceased Vikas Kumar @ Vicky was driving Splendor motorcycle bearing registration No.HR-04-H-3129 along with his friend Lovepreet Singh @ Lovely who was pillion riding with him on National Highway No.72. It is the pleaded case of the claimants that the deceased was riding at moderate speed on his motorcycle when they hit into Arjun Ultra-1, 555 DI Tractor-

113

Trolley bearing registration No.HR-04E-4726 (hereinafter referred to as “the offending vehicle”), which was parked on mettled road without any precaution such as placing bricks, stones, branches of tree, safety cones, reflectors etc. As such, deceased could not notice the said stationary tractor trolley and hit into the said parked tractor-trolley. As a result of the collision both occupants of the motorcycle fell on road and deceased Vikas Kumar @ Vicky fell underneath the said tractor trolley. Both suffered multiple grievous and simple injuries and the deceased suffered grievous head injury in the said accident.

The learned Tribunal on basis of the materials placed before it came to the conclusion that deceased died due to the injuries suffered by him in the roadside accident on 30.12.2019. However, Id. Tribunal held this to be a case of contributory negligence and accordingly, 50% of the total compensation was deducted and claimants were held entitled to Rs.7,55,400/- only as total compensation.

It is submitted by learned counsel for the appellants that the learned Tribunal is in grave error in deducting 50% of the compensation amount on account of contributory negligence as the offending vehicle was admittedly parked on the mettled portion of the road without any indication or using parking lights or using any other precautions or measures because of which it could be visible to the deceased. It is further submitted that the learned Tribunal is in error in awarding contributory negligence only on account of the fact that the deceased was not wearing helmet. No other argument was raised on behalf of the appellants.

113

I have heard learned counsel for the appellants.

A perusal of the record of the case shows that admittedly, the deceased had suffered grievous head injury in the roadside accident that took place on 30.12.2019, as a result of which he was declared brought dead by the doctors of Civil Hospital, Ambala City. As per the post-mortem report of the deceased, there was an injury on the head of the deceased, which was sufficient to cause death in ordinary course of nature. However, admittedly, the deceased was not wearing helmet at the time of accident. Even PW2-Lovepreet Singh @ Lovely who was pillion riding on the said motorcycle and was eyewitness to the accident, has admitted in his cross-examination that both of them were not wearing helmet while driving/riding the motorcycle.

Further, the following issues were framed by the Id.

Tribunal:-

- 1. Whether Vikas Kumar @ Vicky son of Jarnail Singh had died in the accident which took place due to the rash and negligent act of the respondent No.1 as he has parked the tractor trolley bearing registration No.HR-04-E-4726 in the stationary form in the middle of the road? OPP*
- 2. Whether the claimants are entitled to compensation, if so to what extent and from whom? OPP*
- 3. Whether respondent No.1 was not having a legal and valid driving licence at the time of accident, if so its effect? OPR3*
- 4. Whether respondent No.2 has committed the breach of any other condition of insurance policy? OPR3*

113

5. Relief.

Accordingly, onus to prove issue No.1 was on the claimants/appellants. However, it has been found by the learned Tribunal that the claimants failed to prove that the offending vehicle was parked without giving any precaution. Even now nothing has been produced by Id. Counsel for the appellants to show that offending vehicle was parked on the mettled road without any indication. Even otherwise, it was the motorcycle being driven by the deceased that hit into the stationary offending vehicle. Clearly, it must have been driven by the deceased at considerable speed that the impact was such that both the riders fell on the road and received grievous injuries, including grievous injury on the head of the deceased leading to his death.

Further, it has even come on record that the deceased was not having driving licence at the time of accident. Even at the time of evidence, claimant/appellant No.1 Mahindro Devi, mother of the deceased did not bring on file the driving licence of the deceased. Mohit Diwan, who had tendered into evidence his affidavit Exhibit RW1/A though has stated that the offending vehicle was standing in the middle of the road at mettled portion, but has also admitted that the deceased was not having any driving licence and was not wearing helmet.

Learned counsel for the appellants is unable to controvert the above facts established on the record.

Accordingly, I find no error in the Award passed by the learned Tribunal whereby it has been held to be a case of contributory

113

negligence and the claimants have been held entitled to only Rs.7,55,400/-

as compensation. The appeal is accordingly dismissed.

06.01.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No