

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

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FAO-506-1987 (O&M)

Date of decision : 06.11.2023

Suraj Kanta @ Sudarshna Rani and others

.....Appellants

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for the appellants

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. The present appeal has been filed by the claimant-appellants for enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Jalandhar (for short 'the Tribunal') vide award dated 08.10.1986, on account of death of Subhash Chander Jain in a motor vehicular accident.
2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch. Since the case is pending for more than 36 years, counsel for the State has no objection, in case the same is decided on basis of the available record.
3. In the grounds of appeal, it has been stated that the learned Tribunal has committed error by holding the deceased liable for contributory negligence. Respondent No.3-bus driver, while overtaking, had gone to his extreme left side and ran over the deceased. Further, the deceased, 43 years old at the relevant time, was working with Leader Engineering Works, Jalandhar and earning Rs.1400/- per month. He left behind a wife, three daughters and one son, despite that the deduction of Rs.800/- towards his personal expenses has been made, which is

incorrect. The compensation granted is on the lower side.

4. On the other hand, the learned State counsel has vehemently opposed the present appeal and states that just and reasonable compensation has already been awarded to the appellants.

5. Heard the learned State counsel and perused the record.

6. There is no dispute with regard to the death of the deceased-Subhash Chander Jain, occurred in a vehicular accident. The Tribunal after appreciating the evidence, has recorded a categoric finding with regard to the aspect of contributory negligence, which does not require any interference and the same reads thus:

“15. As observed above, it has neither been alleged nor stated in evidence that the bus was being driven rashly and negligently. According to Puran Chand, AW6, the only witness, the accident took place when the bus was over taking a car. The photographs Ext.RW1/A to Ext. RW1/D also show that the accident took place on the right hand side of the driver. This aspect also goes to show that the accident took place as some vehicle was being overtaken, otherwise there was no question of the accident having taken place towards the right hand side of the driver of the bus.

16. Having all these things in view, the position comes out that the deceased was coming from the side of Jalandhar Cantt. on his left hand side and the bus was going from Jalandhar City side towards Jalandhar Cantt. side and was on its left hand side. When the bus, however, overtook the car it naturally turned towards its right hand side and caused the accident. It is a matter of common observation that the deceased must also have seen that the bus was overtaking the car. In that circumstance, the deceased being on a cycle, it was his duty also to take the cycle towards its extreme left or to come down the cycle to allow the bus to pass. The driver of the bus was obliged to be very careful while overtaking the car to see that no person coming from the front side either on foot or on vehicle is affected. So, the accident having taken place while the bus was overtaking the car it will have to be said that both the driver of the bus and the deceased himself were negligent on their parts and the negligence of both of them led to the accident. This is why the petitioners had not alleged in the petition that the bus was being driven rashly and negligently and no satisfactory evidence was also led to that effect. It has also not been mentioned in the evidence as to what damage had been caused to the cycle by the accident. The bus being a

heavy vehicle and the cycle being very light as compared to the bus, I feel that the deceased should also have been more careful while passing the bus when it was overtaking the car.

17. In view of what has been discussed above, I am of the opinion that the death of Subhash Chander took place not because solely of rash and negligent driving of respondent No.3 but because of negligence on the part of the deceased also. It is, therefore, a case of death of Subhash Chander Jain by contributory negligence of the deceased also.” (emphasis supplied)

7. The next averment was for enhancement of the compensation, there being no proof of income, the Tribunal has rightly assessed the carry home salary of the deceased as Rs.1000/- per month. However, no amount has been awarded towards future prospects and the conventional heads, as is apparent from the Award. In this regard, a reference can be made to **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and also **Janabai vs. ICICI Lombard Insurance Co. Ltd.**, (2022) 10 SCC 512 and thus, the appellants are held entitled to grant of future prospects to the extent of 25% of income, the deceased being in a private job and Rs.2,15,000/- (for funeral expenses Rs.15,000/-, loss of love and affection to children Rs.40,000/- each and for loss of consortium to wife Rs.40,000/-). Since the deceased, a 43 years old, was survived by his wife and four children, the deduction to an extent of 1/4th towards his personal expenses and multiplier of 14 is required to be applied.

8. Accordingly, the total compensation comes to Rs.3,72,500/- (1000+ 25% (future prospects) - 1/4th (deduction towards personal expenses) x 12 x 14 (multiplier) + 2,15,000 (conventional heads. However, it being a case of contributory negligence, the appellants are entitled to Rs.1,86,250/-. Thus, the enhanced amount of Rs.1,28,650/- over and above the amount of Rs.57,600/- already awarded, alongwith interest at the rate of 7.5% per annum from the date of

filing of the present appeal shall be paid to the claimants-appellants in the same ratio as per the award, within a period of 2 months from the date of receipt of a certified copy of this judgment, failing which, the amount shall accrue an interest as awarded by the Tribunal.

9. Modifying the award to the aforesaid extent, the present appeal is disposed of.

10. Registry is directed to send a copy of the order to the concerned Tribunal for necessary compliance.

06.11.2023
gsv/ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No