

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

231

FAO-528-1995 (O&M)

Date of decision : 17.11.2023

Krishna Wanti

.....Appellants

Versus

Virender Singh Etc.

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Manoj Makkar, Advocate for the appellant

Brig. BS Taunque, Advocate for the Insurance company

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, Rohtak (for short 'the Tribunal') vide award dated 26.10.1994, on account of death of Krishan Lal 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 the last more than 29 years, both the counsel have no objection, in case the same is decided on basis of the available record.
3. Learned counsel for the appellant submits that from the statement of PWs, it is proved on record that due to negligence of the driver of the offending truck death of Krishan Lal, son of the appellant had occurred. However, the Tribunal has committed grave error while deciding the issue against the appellant by ignoring the said facts. Further, the

deceased, 29 years old at the relevant time, was employed as a casual labourer by respondent No.2 and while he was unloading the truck, respondent No.1, driver, reversed the truck, which touched an electric wire, on account of which Krishan Wanti received heavy electric shock and died in the hospital. He contends that the compensation granted on account of no fault liability is on the lower side, it being only Rs. 25,000. The Tribunal did not take into account the income of the deceased and nothing has been awarded towards future prospects of increase in income, loss of consortium, loss of love & affection and funeral expenses. He, thus, prays for enhancement of compensation to the tune of Rs. 2,50,000/-.

4. On the other hand, the learned counsel for the insurance company opposes the prayer and submits that the Tribunal has rightly granted the amount, as it was not proved that the death of the deceased had taken place due to rash and negligent driving of the truck by respondent No.1, driver.

5. Heard the learned counsel on either side and perused the record.

6. It would be apposite to refer to the award of the Tribunal, whereby the issue regarding accident was discussed as follows:

“10. From the above evidence, it is clear that deceased Krishan Lal died on account of electric shock and motor vehicle was involved in the accident. However, there was no definite evidence that the vehicle was being driven rashly and negligently. The two alleged eye witnesses, namely, P.W. 3 Satyawar and P.W. 4 Satish Kumar did not make any effort to lodge the report with the police. Their names did not appear in the Daily Diary Report, whether they were present at the time of occurrence. The electricity department (Haryana State Electricity Board)

was not impleaded as a party. Therefore, it is not proved on the record whether the death of Krishan Lal took place due to rash and negligent driving of truck no. HR-12-6005. Therefore, this issue is held against the claimant.”

7. Bare reading of the above makes it explicit that the liability of the truck driver could not be proved so as to award compensation. Thus, the Tribunal rightly awarded only a sum of Rs.25,000/- under ‘no fault liability’, to the petitioner-mother of the deceased.

8. This Court has however even considered the case as per the amendment of 1994 made in the MV Act, 1988 whereby the amount of compensation for no fault liability has been increased to Rs.50,000/-, but, the claimant-appellants are not entitled to the enhanced amount in wake of judgment by Hon’ble the Supreme Court in **State of Punjab vs. Bhajan Kaur**, (2008) 12 SCC 112, wherein the amendment was not held to be having a retrospective character. The relevant paras whereof read thus:-

“13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1-7-1989.

14. xx

xx

xx

Section 6 of the General Clauses Act, therefore, inter alia saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6 applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated

otherwise.

15. Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

16. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.

XX

XX

XX

26. ...We, therefore, are clearly of the opinion that the 1988 Act does not have any retrospective operation.”

9. Though, the amount payable on account of no fault liability prior to the amendment was Rs.15000/-, however, the Tribunal has granted Rs.25000/-, which this Court keeping in view the peculiarity of the facts and circumstances of the case, the MV Act being a beneficial legislation and it having been granted about three decades ago, deems appropriate not to reduce.

10. In view of the above, the present appeal being bereft of merit is dismissed.

17.11.2023
gsv/ashok

(AMAN CHAUDHARY)
JUDGE

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