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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2530-2019 (O&M)
Reserved on : 01.03.2023
Date of decision : 14.03.2023

Gurnam Singh & Anr. ... Appellant(s)

Versus

Ankit Mitterwal & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinay Kumar Arya, Advocate for
Mr. Anshul Mangla, Advocate for the appellants.

Mr. Sanjay Gupta, Advocate for respondent Nos.1 and 2.

Mr. V. Ramswaroop, Advocate for respondent No.3.

ALKA SARIN, J.

The present appeal has been preferred by the claimant-appellants aggrieved by the award dated 19.01.2019 passed by the Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as 'Tribunal') to the extent where the contributory negligence of the deceased has been held to be 50%.

The brief facts relevant to the present *lis* are that at about 01:15 AM on 31.12.2014, the deceased along with Jatin, Aniket, Vishesh and Ajay were going to Shimla in a car bearing Registration No.HR-26V-0369 and on the way near Parwanoo, the driver - Aniket, could not control the car as he was driving the car in a rash and negligent manner and the car struck with the parapet of the road and on account of that the occupants of the car sustained injuries. Parmeet succumbed to his injuries. FIR No.1 dated 01.01.2015 under Sections 279/337/304-A of the Indian Penal Code, 1860 was registered at Police Station Parwanoo, District Solan. The deceased was 24 years of age and had completed his B.Tech in Electronics and Communication Engineering and was also diploma holder of BCA and was also having diploma in PHP/Web Designing and was hopeful of getting a good job. It was averred in the claim petition that he was earning Rs.50,000/- per month and on account of his death, the claimant-appellants, who are his parents, had suffered physically, mentally and economically. On notice, respondent Nos.1 and 2 appeared and filed their written statement stating therein that the vehicle (HR-26V-0369) was insured with respondent No.3. Rest of the contents of the claim petition were denied. Respondent No.3 filed the written statement stating therein that there was no accident which took place with the vehicle (HR-26V-0369). It was further stated that the claimant-appellants were not financially dependent on the deceased. Further, objections were taken to the validity of the Driving Licence and that the vehicle was being driven in violations of the terms and conditions of the insurance policy.

On the basis of the pleadings, the following issues were framed:

1. Whether the accident in question causing death of Parmeet son of Shri Gurnam Singh took place due to rash and negligent driving of car bearing registration No.HR26V-0369 driven by respondent No.1 ? OPP

2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom ? OPP

3. Whether there is violation of the terms and conditions of the insurance policy and respondent No.3-Insurance Company is not liable to pay any compensation ? OPR-3

4. Relief.

The Tribunal on issue No.1 returned the finding that all 6 occupants of the car, including the deceased and the driver (respondent No.1 herein) were found to have consumed alcohol and that too in excess of the permissible limit and further that respondent No.1 was found to have consumed alcohol in excess leading to impaired judgment and held the deceased also to have contributed in causing the accident and his contribution was assessed as 50%. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.10,000/-
2	Annual income	[10000 x 12] =Rs.1,20,000/-
3	Deduction 1/2	[120000-60000] =Rs.60,000/-
4	Future prospect @ 40%	[60000+24000] =Rs.84,000/-
5	Multiplier of 18	[84000x18] = Rs.15,12,000/-
6	Loss of estate	Rs.15,000/-
7	Funeral expenses	Rs.15,000/-
8	Filial consortium	Rs.40,000/-
	Compensation	**Rs.15,82,000/-**
	50% contributory negligence	**[1582000-791000] =Rs.7,91,000/-**
	Interest	**7.5% per annum**

Learned counsel for the claimant-appellants would contend that the deceased was not the driver of the vehicle (HR-26V-0369) and merely because he was found to have consumed alcohol would not hold him to have contributed to the accident in any manner. Learned counsel for the claimant-appellants has relied upon the judgment in the case of **Khenyei Vs. New Indian Assurance Co. Ltd. & Ors. [2015 (2) RCR (Civil) 1019]** to contend that there is a difference between contributory negligence and composite negligence. Not being the driver of the vehicle, it could not be said that there was any contributory factor which would be attributed to the deceased.

Per contra, learned counsel for respondent No.3-Insurance Company has contended that since all 6 occupants of the car were found to have consumed alcohol in excess of the permissible limit, hence, the deceased also, though not being a driver, would be responsible and has rightly been held to have contributed to the accident.

Heard.

Hon'ble Supreme Court in the case of **Khenyei** (supra) has held as under :

> *"14. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of*

combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan & Ors. [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. The relevant portion is extracted hereunder:

> *"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent*

of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the *negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."*

The deceased, in the present case, was not the driver of the vehicle but was only a co-passenger. There cannot be any contributory negligence which can be attributed to the deceased even though he may have been found to have consumed alcohol beyond the permissible limit. However, by no stretch of imagination it could be held that he was responsible or could have contributed in any manner to the accident.

In view of the above, the finding returned by the Tribunal qua contributory negligence is set aside.

In the present case, the income of the deceased has rightly been assessed as Rs.10,000/- per month and a multiplier of '18' has rightly been applied keeping in view the age of the deceased. Further, future prospects @ 40% have also been added. Deduction to the extent of 50% has rightly been made keeping in view the fact that the deceased was a bachelor. However, the Tribunal has awarded only an amount of Rs.44,000/- towards consortium. As per the judgments of the Supreme Court in the cases of **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. Vs. Cholamandalam MS General Ins. Co. Ltd. [2021 ACJ 2685],** both the claimant-appellants would be entitled to Rs.44,000/- each towards consortium and an amount of Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses.

Accordingly, the reworked out compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.10,000/-
2	Annual income	[10000 x 12] =Rs.1,20,000/-
3	Deduction 1/2	[120000-60000] =Rs.60,000/-
4	Future prospect @ 40%	[60000+24000] = Rs.84,000/-
5	Multiplier of 18	[84000x18] = Rs.15,12,000/-
6	Loss of estate	Rs.16,500/-
7	Funeral expenses	Rs.16,500/-
8	Loss of Consortium : (i) Filial	Rs.88,000/- (44000 x 2)
	Total Compensation	**Rs.16,33,000/-**
	Amount Awarded by the Tribunal	**Rs.7,91,000/-**
	Enhanced amount	**Rs.8,42,000/-**

Both the claimant-appellants shall be entitled to the compensation in equal proportions. The enhanced amount over and above the amount awarded by the Tribunal shall carry interest @ 7.5% per annum from the date of filing the claim petition till realization.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

14.03.2023
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO