

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

FAO-1694-2002 (O&M)
Date of Decision: February 24, 2023

Roshni Devi and others

...Appellants

VERSUS

Bhag Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kulvir Narwal, Advocate
for the appellants.

Mr.Suvir Dewan, Advocate
for respondent No.3-Insurance Company.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 09.01.2002 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the appellants-claimants, on account of death of Subhash, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award, had granted compensation to the extent of Rs.2,37,000/- to the appellants-claimants. Even, the respondents i.e. driver, owner and insurance company, were held liable, jointly and severally, to pay the compensation.

Being dissatisfied with the extent of compensation, so granted, the appellants-claimants have filed the present appeal, thereby, seeking extensive enhancement of the compensation.

As per the version of the appellants-claimants, on the intervening night of 26/27.04.2000, at about 12.30 a.m., Subhash was going from Rohtak to his village Jassia, on a trolley, which was being pulled by tractor bearing registration No.HRO-5480, driven by Suresh. Rajbir and Satpal were also going in that tractor trolley. At about 1.45 a.m., when they were about 1 km. before village Jassia, a truck bearing registration No.HYK-1440, came from the opposite side and rammed into the *chakli* of the tractor trolley, as a result of which, *chakli* was broken and the tractor trolley turned turtle. After striking against a *kikkar* tree, the offending truck also turned turtle. Subhash was entangled between the tractor trolley and he had died instantaneously. FIR bearing No.107 dated 27.04.2000 under Sections 279 and 304-A IPC was got registered. It is the specific assertion about the accident to have taken place due to rashness and negligence on the part of Bhag Singh-respondent No.1, while driving the truck and it resulted into the death of Subhash.

In reply, respondents No.1 and 2 have denied the accident in toto and also asserted about false case to have been got registered against respondent No.1, in collusion with the police, to grab the amount of compensation. Further, it has also been asserted that deceased was travelling the tractor trolley being registration No.HRO-5480, which was being driven by its driver, in a rash, negligent and zig-zag manner, which turned turtle, as a result whereof, Subhash had died.

Respondent No.3-insurance company resisted the claim petition and also taken the plea that the accident had taken place, due to the fault of the driver of the tractor trolley, who was driving the same in drunkard

condition. The claim petition had been filed in collusion with respondents No.1 and 2.

To substantiate the imputation of rashness and negligence, at the behest of respondent No.1-Bhag Singh, the claimants have examined PW-2 Suresh, who was driving the ill-fated vehicle, at the relevant time. He has categorically imputed rashness and negligence, on the part respondent No.1-Bhag Singh, while driving the truck bearing registration No.HYK-1440, which resulted into death of Subhash. He proved FIR got registered, qua the accident in question, which is Ex.P2. It has been rightly observed by learned Tribunal that a suggestion was given to Suresh, about not holding a valid driving licence and driving the tractor, after consuming liquor, which fact has been so denied. Even, the plea taken by the insurance company had been denied that accident had taken place due to the driver of the tractor trolley, being in a drunkard condition. However, giving of the aforesaid suggestion and plea, so taken by the insurance company, in itself, is sufficient to draw inference about the respondent, not disputing the fact of accident and even, no evidence, as such, has been brought on record by respondent No.3, to establish about the plea, so taken. A suggestion was though made to PW-2 Suresh, relating to this plea, but it has been categorically denied. In the given circumstances, the accident being result of rash and negligent driving of the truck bearing registration No.HYK-1440, by its driver Bhag Singh-respondent No.1, stands established.

In this backdrop, now let us consider the compensation, to be so granted to the appellants-claimants.

It is the specific plea of the appellants-claimants that deceased

Subhash was indulging into agriculture and was doing dairy business and was earning Rs.8000/- per month. The widow of deceased namely Roshni Devi, while deposing in the witness box, has categorically stated about deceased to be owner of 8 acres of agricultural land. However, while deposing in cross-examination, she had specifically deposed that she does not have any record or proof of income of her husband. Also, she has submitted that she has not brought any proof of 8 acres of land. Thus, the avocation, followed by the deceased, as such, do not stand established and the extent of earnings, as such, so asserted to be Rs.8,000/-, has been rightly discarded by the Tribunal.

However, learned Tribunal, while considering the earnings of a labourer to be around Rs.2,000/-, during those days and also keeping in view the eventuality of the labourer, not getting work on all days of the month, have taken the earnings of the deceased to be Rs.1,500/- per month. Considering the minimum wages, prevalent at the relevant time, this extent of earnings has been taken on lower side. In the fitness of the circumstances, the earnings of the deceased are taken to be Rs.2,000/- per month.

The monthly dependency of the appellants-claimants has been taken to be Rs.1200/- per month, which is $\frac{1}{5}$ th of the total earnings as taken by learned Tribunal. However, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, $\frac{1}{4}$ th is to be deducted as personal expenses, looking at the number of dependents of the deceased, who are four in number. As such, the monthly dependency is worked upon as $\text{Rs.}2000 - 500(\frac{1}{4}\text{th}) = \text{Rs.}1,500/-$.

From the evidence adduced, it stands established that the deceased was 29 years old, at the relevant time. Taking it to be so, now, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of future prospects, has to be made, to the earnings, so worked upon. Considering the age of the deceased, 40% addition has to be made as future prospects and thus, the amount comes to be Rs.1500+600(40%)=Rs.2100/- per month. Therefore, annual dependency comes to be Rs.2100x12=Rs.25,200/-. The suitable multiplier, as per *Sarla Verma's case (supra)*, is '17', instead of '16', as so applied by learned Tribunal. Thus, after applying the multiplier of '17', the loss of dependency comes to be Rs.25,200x17= Rs.4,28,400/-.

Besides the aforesaid, it is pertinent to mention that in *Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130* and *United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410*, it has been laid down by the Hon'ble Supreme Court that consortium is not limited to 'spousal consortium' and it also includes 'parental consortium' and 'filial consortium'. It was held that apart from spousal consortium, 'parental' and 'filial' consortium is also payable. Endorsing this view, in *The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*, the conclusion given in the impugned judgments of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

In *Pranay Sethi's case (supra)*, the extent of consortium which

should be paid is stated to be Rs.40,000/- to each of the claimant and for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the light of the same, appellants-claimants, are entitled to compensation, on the count of 'loss of consortium' to the extent of Rs.44,000/- each. Besides the same, they are also entitled to Rs.16,500/- as 'loss of estate' and Rs.16,500/- as 'funeral expenses'.

Thus, loss of dependency comes to be Rs.4,28,400/-, loss of consortium comes to be Rs.1,76,000/- (Rs.44,000/- to each of the appellant) Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.6,37,400/-**.

Out of the compensation, so now awarded, a sum of Rs.3,37,400/- shall be paid to appellant-claimant No.1-Roshni Devi and a sum of Rs.1 lakh each, shall be paid to appellants-claimants No.2 to 4, namely Naveen, Parveen and Raghbir. Any amount earlier paid to the appellants-claimants, shall be adjusted from the aforesaid amount. The interest component, shall remain the same, as ordered by learned Tribunal.

With the above observations, the present appeal stands allowed.

February 24, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No