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2023:PHHC:166587

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

FAO No.622 of 2021

Date of Decision: 10.10.2023

Neelam Rani and others

... Appellants

Versus

Deepak Jindal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Jimmy Singla, Advocate, for the appellants.

None for respondent No.1.

Mr. Nitin Gupta, Advocate, for respondent No.2.

GURBIR SINGH, J.

1. The present appeal has been filed by the claimants seeking modification/enhancement in the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Sangrur, vide order dated 18.03.2021.

2. The claimants, who are wife, 3 minor children and mother of the deceased, filed a claim petition with the averments that on 11.10.2019 when Rajinder Kumar alias Rajender Kumar (since deceased) along with Vinod Kumar were riding TVS Jupiter and Manish Kumar was following them on separate motorcycle, a car bearing registration No.PB-31Q-2990, being driven by respondent No.1 in a rash and negligent manner, hit against the TVS Jupiter. As a result of accident, both the occupants of TVS Jupiter fell down and suffered multiple

Injuries on their persons. They were taken to Civil Hospital, Kaithal where Rajinder Kumar alias Rajender Kumar was declared dead. An FIR was also registered on the statement of Manish Kumar, an eyewitness.

2.1 After appreciating the evidence on record, the Tribunal assessed the award as Rs.27,70,000/- by taking the income of the deceased as Rs.20,000/- per month; 1/4th deductions were applied; multiplier of 15 was adopted by taking his age of the deceased as 36 years; Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss to estate and Rs.40,000/- towards loss of consortium. Since the deceased was not wearing helmet at the time of accident, it was taken as a case of contributory negligence and 15% deductions to the amount of award were applied and thus, the total compensation payable was assessed as Rs.23,54,500/-. Respondent No.1 being driver-cum-owner and respondent No.2 being insurer, were held liable to pay compensation to the claimants jointly and severally.

3. Learned counsel for the appellants-claimants would contend that it is not a case of contributory negligence. It is settled law that in case the deceased was not wearing helmet, the amount of compensation awardable to the claimants cannot be reduced. Reliance is placed upon in case ***Rupinder Sharma alias Komal Sharma and others Versus SPR Basant Kumar and another, 2013(35) R.C.R. (Civil) 446*** and ***Bhup Singh and others Versus Mainpal and others, 2020(1) R.C.R. (Civil) 295***, authorities of this Court. It was also contended that as per judgment

in *National Insurance Company Versus Praney Sethi and others*, (2017) 14 SCC 663, an addition of 40% in the income of the deceased on account of future prospects was required to be added, which has not been done by the Tribunal while assessing compensation. Therefore, the appellant-claimants have prayed for modification of the award and to grant compensation accordingly.

4. Learned counsel for respondent No.2-Insurance Company has argued that respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident and thus, Insurance Company be absolved from the liability to pay compensation to the claimants.

5. I have heard learned counsel for the parties and have gone through the record.

6. After going through the respective contentions of learned counsel for the parties, this Court finds that the award needs to be modified as regards contributory negligence and an addition of 40% in the income of the deceased is required to be added.

7. In case *Rupinder Sharma alias Komal Sharma and others (supra)*, it has been held that contributory negligence must be attributed to how the accident itself had taken place and not how he exposed himself to danger of death. The contributory factor must be to the extent of collision and if he was not wearing helmet, he could not be stated to be a negligent in causing the accident.

8. In case ***Andhra Pradesh State Road Transport Corporation and another Versus K. Hemlatha and others (2008) 6 SCC 767***, the Hon'ble Supreme Court held that it has to be determined who contributed to the accident and if a person was driving his vehicle negligently and rashly, blame cannot be apportioned, while further holding that in case damages are to be apportioned, it must be established that the claimant was at fault.

9. In case ***Bhup Singh and others (supra)*** where 30% deductions were applied by the Tribunal to the amount of award by taking their case as contributory negligence to the accident, it has been held by this Court that breach of rules in driving two wheeler without helmet by itself cannot be treated as composite or contribution to negligence on their part. The extract of said judgment is as under:-

“18. In the instant case, there is no finding to the effect that Subhash was driving negligently. The Tribunal, while going through the evidence, noted that the cross-examination of the claimants/appellants could not be shattered and, therefore, came to the conclusion that this was a case of rash and negligent driving of the offending vehicle, which stood registered with the Insurance Company. Even the driver of the offending vehicle did not step into the witness box to dispute the fact that he was driving rashly or negligently. Therefore, merely because the claimants were not wearing the helmet at the time of accident, it cannot be held that they contributed towards the accident. Breach of rules in driving two wheeler without helmet by itself cannot be treated as composite or

*contribution to negligence on their part. Reference in this regard can be made to the judgment rendered in **New India Assurance Co. Ltd. through its Divisional Manager Meerut through its Authorised Officer Versus Smt. Sharda Devi and others 2011 (23) R.C.R. (Civil) 185**, wherein the Allahabad High Court, while following the judgment of the Hon'ble Supreme Court in **Sudhir Kumar Rana Versus Surinder Singh and others 2008 (3) R.C.R. (Civil) 265**, held as under:-*

“5. The Tribunal has taken into consideration the statement of the wife, who was riding on the pillion, that his husband Rakesh was wearing helmet. Further in view of the findings based on oral evidence, which is not disputed that the motor cycle was being driven on the left side of the road and that Indica Car suddenly took a turn towards right and collided with the motor cycle, there was no question of applying principles of contributory negligence. The negligence in wearing helmet and allowing the chidden to ride on the back seat, common with most of lower middle class families travelling on two wheelers cannot be taken as composite or contributory negligence on the part of the deceased, when it is found that he was liable for any wrong doing in driving or otherwise on account of which accident was caused. The breach of rules in driving two wheeler without helmet and driving it with three pillion riders, by itself cannot be treated as composite or contribution to negligence on his part....”

10. In the case in hand, an FIR was registered against the driver of the offending car at the instance of CW2-Manish Kumar, an eyewitness to the accident, who was present on the spot as he was following the deceased on his separate motorcycle. It was because of rash and negligent driving of respondent No.1-driver, the accident took place and resulted into death of Rajinder Kumar alias Rajender Kumar. Respondent No.1-driver-cum-onwer was the best person available to rebut the evidence of the claimants but he did not choose to step into the witness box to deny the accident and his rash and negligent driving. Though the said eyewitness admitted during his cross-examination that the deceased was not wearing helmet.

11. In view of above case law and the fact the driver of the offending car did not step into the witness box to dispute the fact that he was driving rashly and negligently and merely because the deceased was not wearing helmet at the time of accident, it cannot be held that he contributed towards the accident. Though it can be said that the deceased committed an offence by not wearing helmet, but that fact itself cannot be held liable to be a factor contributing towards the accident and as such, the deceased cannot be held responsible for causing composite or contributory negligence. Therefore, the finding of the Tribunal is wrong in deducting 15% of the total amount of awarded compensation.

12. As regard the other contention with regard to grant of an addition of 40% to the income of the deceased is concerned, since the

deceased was self-employed and at the time of his death, he was 36 years of age and as per the judgment in *Praney Sethi’s case (supra)*, 40% addition towards income of the deceased was required to be added. The award of the Tribunal to that effect is also required to be modified.

13. Accordingly, the award of the Tribunal is modified only to the extent that there shall be no deduction @ 15% towards contributory negligence and there shall an addition of 40% increase in income as future prospects. The award is recalculated as under:-

Sr. No.	Head under which amount awarded	Amount
1.	Income	Rs.20,000/-
2.	40% increase in salary on account of future prospects	Rs.28,000/- (20,000+8,000)
3.	Deduction 1/4 th as number of dependents are 5	Rs.21,000/- (28,000-7,000)
4.	Multiplier at the age of 36 years	15 (21,000x12x18)
5	Loss of dependency	Rs.37,80,000
6.	Funeral expenses	Rs.15,000
7.	Loss to estate	Rs.15,000
8.	Loss of consortium	Rs.40,000
	Total	Rs.38,50,000

14. In view of above, the appeal is disposed of and the award is enhanced to Rs.14,95,500/- (Rs.38,50,000-Rs.23,54,500=Rs.14,95,500) which shall be disbursed amongst the appellants-claimants in the manner already stated by the Tribunal in the award dated 18.03.2021.

(GURBIR SINGH)
JUDGE

October 10, 2023
sanjeev

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