IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1067/2021
Date of decision: 13.04.2023

Ritu Rani and others

……..Appellants

Vs.

Sudhir Chouhan and others

………..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Manoj Makkar, Advocate
for the appellants.

Nidhi Gupta,J.

CM 8867-CII/2021

Since there is delay of 79 days in filing the present appeal, aforesaid application has been filed seeking condonation of delay.

For the reasons stated in the instant application, same is allowed and delay condoned.

CM 8869-CII/2021

Prayer in the present application is for placing on record Annexure A-1 in additional evidence.

For the reasons mentioned in the application, same is allowed and Annexure A-1 is taken on record subject to all just exceptions.

Main Appeal

1. Present appeal has been filed by the claimants seeking modification of Award dated 19.3.2020 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal')in a claim petition bearing MACT No.8/2019 under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'), whereby total compensation was assessed as Rs.16,79,400/-. However, 50% of the said compensation was deducted and only Rs.9,09,700/- was granted to the appellants/claimants as ld. Tribunal found that the accident in question that took place on 03.12.2018 at about 8.40 P.M. had occurred due to the contributory negligence on the part of the deceased Sonu and respondent No.1 herein who was driving Alto Car bearing registration No.HR-35P/2964 (hereinafter referred to as the 'offending vehicle'), which was owned by respondent no.2 herein and insured by respondent no.3 herein. Claimants/ appellants herein are the widow and two minor children of the deceased Sonu.

Ld. Tribunal awarded compensation as above alongwith interest @ 6% per annum from the date of filing of the claim petition till realization. Respondents herein were held jointly and severally liable to pay the compensation.

2. It is submitted by learned counsel for the appellants that learned Tribunal had assessed total compensation of Rs.16,79,400/- to the claimants. However, learned Tribunal had held the deceased equally at fault for the accident and had therefore, made a deduction of 50% of the said amount i.e.Rs.8,39,700/- towards contributory negligence. It is submitted that learned Tribunal had deducted 50% amount on account of contributory negligence as the learned Tribunal had held that the deceased was under the

influence of alcohol at the time of accident. It is submitted that however, this finding of the ld. Tribunal is incorrect as, as per report Annexure A-1, it was found that upon examination, no alcohol was detected in the body of the deceased.

3. No other argument has been raised by the learned counsel for the appellants.

4. Heard ld. Counsel.

5. Pleaded case of the claimants before the ld. Tribunal is that on the ill-fated day of the accident i.e. on 03.12.2018, the deceased along with pillion rider PW-2 Sunil were on their way from Rohtak to Village Moi Hooda on the motor-cycle bearing registration No.HR-11J/9594. At about 8.40 p.m. when they reached Kahni Jassia Chowk, respondent No.1 came from Gohana side driving the offending vehicle in a rash and negligent manner, struck his offending vehicle with the motorcycle of the deceased, as a result of which they fell and the deceased suffered fatal injures. The deceased and PW-2 Sunil were shifted to PGIMS, Rohtak, where the deceased died during treatment on 04.12.2018. Pursuant thereto, FIR No.641 dated 04.12.2018 was registered under Sections 279, 337, 304-A IPC at Police Station Sadar, Rohtak.

5. As noted above, learned Tribunal upon appraisal of the pleadings and evidence led before it concluded that the accident took place due to the contributory negligence on the part of the deceased as well as respondent No.1.

6. Ld. Tribunal held the deceased guilty of contributory negligence as, as per the evidence on record i.e. Ex.R2/ MLR of the

deceased, and Ex.R-5/Post Mortem Report of the deceased, the deceased was under the influence of alcohol at the time of accident. Admittedly, the said evidence remained uncontroverted before the ld. Tribunal by the appellants/claimants.

7. However, now, the appellants have placed on record Annexure A-1 before this Court, which is RFSL Report dated 21.2.2019. However, first and foremost, no explanation has been given by the appellants as to why the said document was not produced by the appellants before the learned Tribunal. In their application being CM-8869-CII-2021 all that has been stated by the appellants is that:

> "*After passing the order dated 19.03.2020 the appellants came to know that in RFSL report dated 21.02.2019, it is mentioned that in result of examination no common poison could be detected in Ex.1a, Ex.1b, Ex.1c, Ex.1d and Ex.1e after examination. Thereafter the appellants immediately applied the copy of RFSL report under RTI Act, 2005 on 26.06.2020 and the same was received on 21.07.2020*".

8. However, it has nowhere been disclosed by the appellants as to on which date and in what manner did they come to know about the said RFSL report Annexure A1, or why it was not placed on record before the ld. Tribunal. It is well established principle in law that additional evidence can be considered only where it is demonstrated that the party had exercised due diligence. In the present case, this is not so.

9. In any event, the said RFSL report cannot be relied upon as it remains unproven. Moreover, learned counsel is unable to reconcile the purported findings of Annexure A-1, with the uncontroverted evidence contained in Ex.R2 MLR and Ex.R5 Post Mortem Report of the deceased,

according to which the deceased was under the influence of alcohol at the time of accident.

10. As such, I find no ground is made out to interfere in the impugned award whereby the learned Tribunal made a deduction of 50% of the compensation amount due to contributory negligence on the part of the deceased being under the influence of alcohol at time of accident.

11. For the reasons stated above, finding no merit in this appeal, same is hereby, **dismissed.**

12. Pending application(s), if any, stand disposed of.

(Nidhi Gupta)
Judge

13.04.2023
ps-I

Whether speaking/reasoned Yes/No

Whether reportable Yes/No