IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-585-2006(O&M)
Reserved on:-17.5.2023
Date of Pronouncement:-24.5.2023

Smt.Santosh and others

...Appellants

Versus

Pala Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Tushar Gera, Advocate
for the appellants.

Mr.Rupinderjeet Singh, Advocate for
Mr.A.K. Bishnoi, Advocate
for respondents No.1 and 2.

Mr.S.C. Pathela, Advocate with
Ms.Kavita Arora, Advocate
for respondent No.3 – insurance company.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on 11.11.2003, one Vijay and Bahadur were proceeding from their village Nangthala riding scooter bearing registration No.HR-24-C/5022 (hereinafter referred to as the ill-fated scooter) going towards Agroha Mor; the scooter was being driven at a moderate speed; at about 8:00 p.m., an oil tanker bearing registration No.HR39A-0855 (hereinafter referred to as the offending vehicle) was parked near Agroha Mor without the parking lights being on or any indication being there with regard to the tanker being parked on the road, as such the scooter hit the tanker from behind; both the riders of the

scooter fell down and suffered grievous injuries and they died at the spot.

The accident was witnessed by Dev Raj and Rajinder.

2. The legal representatives of both the deceased had brought separate claim petitions. The legal representatives of Bahadur, namely his widow – Santosh aged about 25 years, minor daughter – Pooja aged about 7 years, minor son - Ravi aged about 6 years, minor daughter – Aarti aged about 5 years, minor daughter – Sonia aged about 4 years, minor son – Rohtash aged about 2 years as well as his parents i.e. father - Mangat Ram @ Bhagat Ram aged about 55 years and mother – Smt.Kali Devi, aged about 50 years, all residents of village Nangthala, Tehsil and District Hisar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Pala Ram – driver, M/s Adampur Service Station, Mandi Adampur, Tehsil and District Hisar – owner and the Oriental Insurance Company Ltd., Fatehabad – insurer of the offending vehicle, claiming compensation.

3. On notice, all the three respondents had appeared and offered a contest.

4. After hearing arguments, the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the Tribunal) vide impugned award dated 28.7.2005 had accepted both the claim petitions holding that it was a case of contributory negligence. The negligence of the scooter driver was quantified as 25% and that of the offending tanker as 75%. The compensation awarded to the parents of deceased Vijay Kumar @ Vijay Singh comes out to Rs.1,10,020/-, however since the scooter driver was

guilty of contributory negligence, 75% of that amount come to Rs.82,515/-, which was awarded to them. With regard to the claim petition filed by claimants/petitioners Santosh and others, the compensation payable was assessed as Rs.3,40,068/- and only 75% of that amount was made payable to the claimants for the reason of it being a case of contributory negligence. The amount calculated as Rs.2,55,051/-. The liability to pay this amount being joint and several of all the three respondents along with interest @ 6% per annum from the date of filing of the petition till actual realisation.

5. Feeling that the compensation awarded to them was on lower side, the petitioners/claimants Santosh and others had approached this Court by filing the present appeal seeking enhancement of the compensation awarded to them, notice of which was issued to the respondents, who put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. The Tribunal after considering the facts and circumstances of the case and analysing the evidence brought on record, has held it to be a case of contributory negligence quantifying the negligence of offending oil tanker to the extent of 75% and that of scooter driver 25% for the reason that the scooter had hit the tanker from behind and the driver was expected to drive the scooter with care and caution and scooter driver had not exercised that care and caution.

8. With regard to the rashness and negligence attributed to the tanker driver, it was observed that the tanker was parked on the road

without any indication. The caution lights were not switched on. It is not case of driver that vehicle had developed some snag immediately before the accident or that it could not be shifted to the kachha portion of the road. Furthermore, the FIR registered against the tanker driver and the site-plan prepared by the police at the time of inquest report also show the fault on the part of the tanker driver. As such issue No.1 framed in that regard was adjudged accordingly and the claimants being legal representatives of the deceased were found entitled to get compensation from the respondent i.e. Pala Ram – driver, M/s Adampur Service Station, Mandi Adampur, Tehsil and District Hisar – owner and the Oriental Insurance Company Ltd., Fatehabad – insurer of the oil tanker.

9. While quantifying the compensation payable, the Tribunal had taken the age of deceased Bahadur to be 27 years. Though it was case of the claimants that Bahadur was running a poultry farm and used to earn Rs.10,000/- per month but that assertion was not believed for want of cogent and convincing evidence. Therefore, his income was assessed by guess-work considering that a labour at that time could earn Rs.2,500/- per month. The income of the deceased was taken as such.

10. But the Tribunal has not awarded any amount towards future prospects. In terms of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, when the deceased was self-employed and was below the age of 40 years, an addition of 40% is to be made towards future prospects. Doing that the monthly income of the deceased comes out to Rs.3,500/-(2500 + 1000).

11. The Tribunal has deducted 1/3rd of the amount towards

personal and living expenses of the deceased. Whereas in terms of judgment ***Smt.Sarla Verma and others Versus Delhi Trans;port Corporation and another, 2009(3) RCR(Civil)77,*** where number of dependent family members exceed six, the deduction should be 1/5th. Doing that, the monthly dependency of the claimants comes out to Rs.2800 (3500 – 700) and annual dependency comes out to Rs. 2800 x 12 = Rs.33,600/-.

12. The Tribunal has used multiplier of 17, which is correctly done in terms of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and another(supra).*** Doing that the compensation payable comes out to Rs. 33,600 x 17 = 5,71,200/-.

13. Since the liability of the deceased has been taken to be 25%, that amount much amount is to be deducted from the total compensation payable. Doing that the compensation comes out to Rs.4,28,400/-(571200 - 142800).

14. The Tribunal has not awarded any amount towards conventional heads. As per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

15. Doing that the compensation comes out to be Rs.4,98,400/- (428400 + 40,000 + 15,000 + 15,000).

16. The Tribunal has awarded compensation of Rs.2,55,051/-

17. In this way, the enhanced amount comes out to be Rs.2,43,349/- (4,98,400 –2,55,051).

18. The Tribunal has awarded interest @ 6%, which I find to be on lower side. The claimants would be entitled to get interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till actual realization of that amount. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award. Since the claim petition relations to year 2003, the minor claimants No.2 to 6 might have attained majority by now. As such on furnishing of proof of majority, their shares be released to them straightway instead of depositing those in the form of FDR in some nationalized bank.

19. With such modification, the appeal is allowed partly with costs.

Since the main appeal stands partly allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

24.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No