

2023:PHHC:148300

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3146-2008 (O&M)
Date of Decision: November 20, 2023

Suman Devi and others

...Appellants

VERSUS

Ran Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Hardeep Singh Punia, Advocate for
Mr.Rajesh K. Sheoran, Advocate
for the appellants.

None for respondent No.1.

Mr.David Sardana, Advocate for
Mr.Punit Sharma, Advocate
for respondent No.3.

None for respondent No.4.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the Award dated 07.12.2007, with regard to the findings recorded, about there to be contributory negligence, on the part of deceased Rajesh and also seeking enhancement of the compensation granted by learned Tribunal, on account of death of Rajesh, in a motor vehicular accident, which took place on 03.08.2004.

Vide impugned Award, learned Tribunal decided two claim

FAO-3146-2008

petitions, vis-a-vis death of Rajesh in the accident in question and with regard to the injuries sustained by Surender Kumar, in the same accident.

On appraisal of the evidence, brought on record, so far as, death of Rajesh @ Lila is concerned, learned Tribunal worked upon the compensation to the extent of Rs.5,18,400/-. However, in view of the finding recorded, about there to be contributory negligence, on the part of deceased also, in causing the accident, which was to the extent of 50%, the compensation awarded, was to the extent of Rs.2,59,200/- and besides the same, Rs.10,000/- was granted towards transportation and funeral expenses, total whereof, comes to Rs.2,69,200/-.

So far as, the fact of accident and manner of its taking place, as well as liability fastened upon the respondents of the claim petition are concerned, the same was not questioned, as no appeal, as such, has been filed by the persons, who were made liable.

However, present appeal has been filed by Suman Devi and others, who are the legal representatives of deceased Rajesh @ Lila, who have sought enhancement and have also challenged the finding of contributory negligence, on the part of the deceased.

The essential facts, to be noticed are that on 03.08.2004, at about 7.00 a.m., Rajesh @ Lila, who was employed as driver on the truck bearing registration No.DL1-GA-1208 (ill-fated truck) along with Surender Kumar, who was employed as a cleaner, were coming while on the said truck from Beowar to Delhi and the same was driven by Rajesh @ Lila at a moderate speed and in its correct side. When the truck reached near the area of bypass, near helipad Ajmer, one truck-trolla bearing registration No.HR-

FAO-3146-2008

47R-6285 (offending truck), driven by respondent-Ran Singh, came from opposite direction from Delhi side, which was driven at a high speed, in a rash and negligent manner. Such being the driving, Ran Singh, driver of the said offending truck, collided with the truck, driven by Rajesh @ Lila, as a result whereof, Rajesh @ Lila died instantaneously, whereas, Surender Kumar became unconscious. Furthermore, it is specific claim of the appellants-claimants that the accident was caused solely, due to rash and negligent driving of respondent No.1, while driving the offending truck, relating to which, FIR No.168/04 dated 03.08.2004 under Sections 279, 304-A and 337 IPC, registered against the deceased driver.

In reply also, respondent-Ran Singh had though admitted about taking place of the accident, but however, took the plea that it had in fact, occurred on account of rash and negligent driving of ill-fated truck by Rajesh @ Lila and the FIR was registered against him. However, name of respondent No.2-Shiv Ram was struck off from the array of parties.

The insurance company, in its reply, had also denied about the involvement of offending truck bearing registration No.HR-47R-6285, in the accident in question. In fact, they took the plea of false involvement of the said truck by the claimants, in collusion with respondents No.1 and 2. As such, the insurance company pleaded that the claim petition is not maintainable and the claimants are not entitled to seek compensation.

Furthermore, respondent No.5-Oriental Insurance Company, insurer of ill-fated truck bearing registration No.DL1-GA-1208, also denied about the driver of the said vehicle, to be at fault and also submitted that the claim petition, qua answering respondent deserves to be dismissed.

After the evidence was adduced on record, vide impugned Award, compensation was awarded and qua the death of Rajesh @ Lila, which forms the subject matter of the present appeal, the compensation, so worked upon was Rs.5,18,400/-. However, in view of the finding recorded, about there to be contributory negligence, on the part of Rajesh @ Lila, while driving the ill-fated truck, which was concluded to be to the extent of 50%, the compensation awarded was to the extent of Rs.2,59,200/-, plus Rs.10,000/- towards 'transportation' and 'funeral expenses'.

In this backdrop, learned counsel for the appellants submitted that it is the specific claim of the appellants-claimants that the accident had taken place solely on account of rash and negligent driving of offending vehicle, driven by Ran Singh-respondent No.1. This accident led to instantaneous death of Rajesh @ Lila and taking place of the accident, was witnessed by Surender Kumar, another occupant of the ill-fated truck. Firstly, it is pertinent to mention that the appellants-claimants, to establish the fact and manner of taking place of the accident, have examined Surender Kumar as PW-2. The said witness, in his affidavit Ex.PW2/A, has categorically deposed about himself to be occupant of the ill-fated truck, on the date of accident. He further deposed about the manner of his being occupant of the said truck along with Rajesh @ Lila, as he was cleaner of the said truck. He categorically deposed about the said truck, to be driven at a moderate speed and in its correct side by Rajesh. Furthermore, he had categorically deposed about offending truck, having come from Delhi side and at a high speed and in rash and negligent manner, due to which, the offending truck collided with the ill-fated truck, as a result whereof, Rajesh

FAO-3146-2008

@ Lila died at the spot. He further categorically deposed that accident was caused, solely due to rash and negligent driving of respondent No.1-Ran Singh. Furthermore, while facing cross-examination, he has also denied the suggestion given that accident had taken place, on account of rash and negligent driving of ill-fated truck, driven by Rajesh @ Lila. He also denied a suggestion to be correct that there was no fault on the part of respondent No.1-Ran Singh.

The MLR of the said witness has also been duly proved in evidence as Ex.P2, which categorically fixes the presence of the said witness, at the spot of accident, being occupant of the ill-fated truck, along with Rajesh @ Lila. Besides the same, certified copy of the FIR is Ex.P3, copy of post-mortem report is Ex.P5, mechanical reports are Ex.P6 and Ex.P7. Learned counsel for the insurance company has tendered into evidence, various documents, which are Ex.R1 to R17.

It should be noted that in fact, respondent No.1-Ran Singh, who was driving the offending truck, at the relevant time, was the best person to dispute about the rashness and negligence, imputed upon him by the claimants. However, he had chosen to remain away from the witness box.

Very true, as so pointed by the learned counsel for the insurance company that said Ran Singh, at whose instance, the FIR was got registered, had specifically imputed rashness and negligence on the part of Rajesh @ Lila. However, may it be so, this simply does not establish about rashness and negligence, on the part of Rajesh @ Lila, since deceased. The accident may have taken place between the vehicles coming from the opposite sides, even then, it was required upon the respondents, to establish about the

contribution made, at the instance of Rajesh @ Lila also, in causing of the accident, as concluded by learned Tribunal. However, qua the same, there is absolutely no satisfactory evidence, coming on record. As already observed, Ran Singh, who was the best person to depose, had not stepped into witness box. Besides the same, certain documents have only been tendered into evidence. FIR may have been got recorded by Ran Singh, but however, FIR is not the encyclopedia, giving the minute details of manner of taking place of the accident and rashness and negligence, so attributed to any person. It is only a document, bringing it to notice of the police, about the fact of accident. Besides the same, it was required on the part of respondents to have led satisfactory evidence, to strengthen the version, so coming forth, in the FIR. However, no such evidence, has been brought on record. Copy of the final report Ex.R3, copy of statements under Section 161 Cr.P.C. have been brought on record. But however, it matters not much. They are the copies only and objection to these documents being taken on record, was specifically made by the claimants. Things would have been different, if the respondents had examined the Investigating Officer, who would have made the things clear about the manner of taking place of the accident and rashness and negligence, so attributed to Rajesh @ Lila, since deceased. However, no steps have been initiated, with regard to the examination of the Investigating Officer. In the light of the same, the copies of the statements under Section 161 Cr.P.C., as such, cannot be taken on record. It is not evident as to whether, author of the FIR and Surender Kumar, cleaner, who had witnessed the accident, was also joined in the investigation. Copies of statements under Section 161 Cr.P.C., as such, cannot be looked into, as no

FAO-3146-2008

opportunity of cross-examination of the persons, who made the statements, was provided to the appellants-claimants.

In the light of the same, more particularly, when Surender Kumar, an eye witness, categorically stated about there to be rashness and negligence, on the part of respondent No.1-Ran Singh, who had chosen to remain away from the witness box and the fact that the accident having taken place between the trucks coming from opposite direction solely, is not sufficient to hold about there to be contributory negligence, on the part of Rajesh @ Lila, driver of the ill-fated truck.

Thus, on appraisal of the evidence, coming on record, more particularly, of Surender Kumar, who was occupant of the ill-fated truck and who had sustained injuries in the accident in question, the findings of learned Tribunal on issue No.1 are reversed and it stands amply established that the accident had taken place due to rash and negligent driving of offending truck, driven by respondent No.1-Ran Singh.

From the evidence on record, it stands established that deceased Rajesh @ Lila was 28 years old, at the time of accident, but in the post-mortem report, it was stated that he was 30 years old. In any case, he falls within the age bracket of 26-30 years, at the relevant time. It is specific claim of the appellants-claimants that deceased was working as a Driver. Even, at the relevant time of accident also, he was driving the truck. As such, he was highly skilled worker. As per minimum wages prevalent, at that time, in the State of Haryana, the income of deceased taken by learned Tribunal as Rs.3,300/- per month, is the appropriate one, which calls for no interference.

However, the compensation, as per settled prevalent law, calls for re-appraisal, as addition on the count of 'future prospects' is also to be made and also, the multiplier applied by learned Tribunal is on lesser side, being '16', which considering the age of the deceased, ought to be '17', as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*. Besides the same, under conventional heads, the compensation, as per prevalent law, has to be given.

In the light of the aforesaid, re-appraisal of the compensation is to be done. Taking the income of the deceased as Rs.3,300/- per month, as already, considering the age of the deceased, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% ought to be made, in the earnings of the deceased, on the count of 'future prospects'. Taking it to be so, the earnings comes to be $\text{Rs.}3300 + 1320(40\%) = \text{Rs.}4,620/-$.

Considering the total number of dependents upon the deceased to be six in number, as per *Sarla Verma's case (supra)*, the deduction has been made to the extent of 1/4th, on the count of personal expenses. Thus, making this deduction of 1/4th, the loss of dependency comes to be $\text{Rs.}4620 - 1155(1/4\text{th}) = \text{Rs.}3465/-$ and annual dependency comes to be $\text{Rs.}3465 \times 12 = \text{Rs.}41,580/-$

Considering the age of the deceased, as per *Sarla Verma's case (supra)* the multiplier '17', applied by learned Tribunal is appropriate one. So applying the multiplier of '17', the loss of dependency comes to be $\text{Rs.}41580 \times 17 = \text{Rs.}7,06,860/-$.

Besides the same, though, Rs.10,000/- was granted by learned

Tribunal towards ‘transportation’ and ‘funeral expenses’, but however, as per prevalent settled law, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi's case (supra)*. In *'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'*, the concept of consortium, has been dilated in detail and the dependents were entitled to compensation, on the count of ‘parental’, ‘spousal’ and ‘filial’ consortium, which view, has been further endorsed in *Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327*, and in this regard, also, reference is made to *Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85*.

In consonance with the observations made in *Pranay Sethi's case (supra)*, as per clause of addition of 10% under the heads of ‘loss of consortium’, ‘loss of estate’ and ‘funeral expenses’, after every three years from the passing of the judgment, at present, the amount payable, on the count of ‘**loss of consortium**’ comes to be **Rs.48,400/-** to each of the claimant and for the ‘**loss of estate**’ as well as ‘**funeral expenses**’, it is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to dependents, on account of death of Rajesh @ Lila, is re-computed, as herein given:-

Loss of dependency	:	Rs.7,06,860/-
Loss of consortium	:	Rs.2,90,400/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.10,33,560/-

As such, the enhanced compensation, after the deduction of

compensation awarded by the Tribunal comes to be **Rs.10,33,560-2,69,200=Rs.7,64,360/-**. On the enhanced amount of the compensation i.e. **Rs.7,64,360/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Out of the enhanced compensation, as now awarded, appellant-claimant No.1-Suman Devi is held entitled to **Rs.2,14,360/-** and appellants-claimants No.2 to 4 are held entitled to **Rs.1,50,000/-** each and appellants-claimants No.5 and 6 are held entitled to **Rs.50,000/-** each.

The impugned Award dated 07.12.2007 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

November 20, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No