

R-872
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1306 of 2016 (O&M)
Date of Decision : 02.02.2023

Neelam and OthersAppellants

VERSUS

Ranbir Singh and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anil Kumar Gahlawat, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate &
Ms. Yogyashree, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the claimant-appellants against the award dated 30.05.2015 passed by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as the ‘Tribunal’) whereby the Tribunal has awarded the following compensation while holding the deceased equally responsible for the accident and awarded 50% of the amount :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.12000/-
2	Annual dependency of the claimants after deduction of 1/3 th	Rs.96000/-
3	Multiplier of 13	Rs.1248000/-
4	Funeral and transportation etc. Expenses	Rs.25000/-
5	Loss of love and affection	Rs.26000/-
6.	Loss of consortium	Rs.25000/-
	Total Compensation	Rs.1324000/-
	Compensation as per contributory negligence	Rs.662000/-

The factum of the accident is not in dispute and hence the facts are not being reproduced for the sake of brevity.

Learned counsel for the claimant-appellants would contend that it is an admitted case that a dumper (Trolla) bearing registration No.HR-61A-4928 was standing in the middle of the road without any indicator/parking light. The time of the accident was about 8.00 PM. It has been averred in the claim petition that due to the heavy lights of other vehicles coming from the opposite side, the Trolla could not be seen and the Aactiva hit the stationary Trolla. The Tribunal without any discussion has held the contributory negligence on the part of the deceased. It is further the contention of the learned counsel that the award is not as per the law laid down by the Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**; **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**; and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**. Though the deduction of 1/3rd has rightly been applied, no amount has been awarded towards the future prospects. Learned counsel has further submitted that the multiplier has rightly been applied keeping in mind the age of the deceased but the amounts awarded under the conventional heads and the head consortium are on the lower side.

Per contra learned counsel for respondent no.3-Insurance Company has contended that the Tribunal has rightly come to the conclusion that there was contributory negligence on the part of the deceased inasmuch as it has been stated in the claim petition itself that due to the heavy lights of

other vehicles coming from the opposite side the deceased could not see the stationary Trola and hit his Aactiva against the stationary Trola.

I have heard learned counsel for the parties.

In the present case the admitted facts are that the dumper (Trola) bearing registration No.HR-61A-4928 was standing in the middle of the road without any indicator/parking lights; the accident took place around 8:00 PM. Merely because the deceased was blinded by the lights of the oncoming vehicles would not be a ground to hold that there was contributory negligence on the part of the deceased. A perusal of the award passed by the Tribunal reveals that there was no discussion whatsoever as to how the contributory negligence has been attributed to the deceased. Since, it is an admitted position that the dumper (Trola) was standing in the middle of the road without any indicator/parking lights and it was about 8:00 PM and there can be no contributory negligence attributed to the deceased. The finding is, therefore, reversed. A perusal of award further reveals that amount awarded is not as per the settled law. Accordingly, the income of the deceased is upheld as Rs.12,000/- per month. Deduction of 1/3th has rightly been applied. 25% future prospects would be applicable as per the law laid down in the case of **Pranay Sethi** (supra). Multiplier of 13 has rightly been applied. Amounts awarded under the conventional heads and the loss of consortium are on the lower side in view of the law laid down in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra). Under the conventional head, Rs.33000/- (16500+16500) are granted. The two minor children of the deceased would be entitled to Rs.44,000/- (each) towards parental consortium and the widow

of the deceased would be entitled to Rs.44,000/- towards spousal consortium.

The re-worked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	Rs.144000/-
2	Deduction of 1/3 th share	Rs.96000/- (144000-48000)
3	Future prospects @ 25%	Rs.120000/- (96000+24000)
4	Multiplier of 13	Rs.1560000/-
5	Loss of Estate	Rs.16,500/-
6	Funeral Expenses	Rs.16,500/-
7	Loss of Consortium Parental : Rs.88,000/- ((R.44000x2) Spousal : Rs. 44,000/-	Rs.132000/-
	Total Compensation	Rs.1725000
	Amount Awarded by the Tribunal	Rs.662000
	Enhanced amount	Rs.1063000/-

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 8% from the date of filing of the claim petition till realization of the entire amount. The amount shall be apportioned amongst the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

February 02, 2023

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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO