

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

FAO No.1890 of 2016(O&M)

Date of Decision: 20.01.2023

Charanjit Kaur and others

.....Appellants

versus

Munish Gupta and another

.....Respondents

CORAM: Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Vishal Jassal, Advocate for
Mr. VivekSuri, Advocate
for the appellants.

Ms.Kamaljit Kaur, Advocate for
Mr.PaulS.Saini, Advocate
for respondent No.2.

Harpreet Kaur Jeewan, J.

1. Challenge in the present appeal is to the award dated 01.12.2015 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as, 'the Tribunal') whereby an award of Rs. 5,10,532/- was passed in favour of the claimants alongwith 9% interest per annum from the date of filing of the present appeal till the realization of the compensation amount. The appellants have sought enhancement of the said compensation by way of filing present appeal.

2. The brief facts as pleaded by the appellants-claimants are:

2.1 That on 29.10.2014Sanjeev Kumar who is the husband of appellant No.1 and son of appellants No.2 and 3 was going on motor

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cycle bearing Registration No. PB-39Q-5607 from Phillaur to village Bilgahad. He met with an accident, when he reached near Pritam Palace Phillaur as was hit by a car bearing Registration No.PB-10DH-5243 which came from the opposite side and was driven by respondent No.1. Sanjeev Kumar died at the spot. The accident took place due to rash and negligent driving of the car by respondent No.1.

FIR No. 283 dated 31.10.2014 was lodged under Sections 279, 337, 338, 427, 304-A IPC at Police Station Phillaur against respondent No.1.

Sanjeev Kumar was working as a Contractor on commission basis and was earning Rs.22,000/- per month at the time of his death and the appellants were totally dependent upon him.

2.2 Both the respondents contested the claim petition by way of filing separate written statements. Respondent No.1 admitted that FIR has been lodged against him but he pleaded that no accident ever took place due to his negligence. Respondent No.2 Insurance Company took a plea that the accident took place due to rash and negligent driving of the deceased Sanjeev Kumar himself who was driving the motor cycle overloaded with four persons.

2.3 The Tribunal framed issues, allowed the parties to lead evidence and allowed the claim petition by holding the income of the deceased as Rs.27,000/- per month. After deducting 1/3rd of the income for personal living expenses of the deceased, the multiplier of 16 was applied considering the age of the deceased as 31 years. A sum of Rs. 1 lakh was awarded as consortium to the wife of the deceased and a sum of Rs.25,000/- was also awarded as compensation on account of funeral expenses. However, the deceased was also held liable by way of

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contributory negligence to the extent of 50% and he was accordingly granted a sum of Rs.5,10,532/- as compensation as per the following calculations:-

Sr.NO.	HEADS	CALCULATIONS
1	Income	Rs.7,000/-
2.	1/3 rd to be deducted as personal expenses of the deceased	Rs.7,000/- -Rs.2,333/- =Rs.4,667/-
3.	Compensation after multiplier of 16 is applied	Rs.4,667/- x12x16=Rs.8,96,064/-
4.	For loss of consortium	Rs.1,00,000/-
5.	For Funeral Expenses	Rs.25,000/-
6.	Total compensation amount after deducting 50% for contributory negligence	Rs.5,10,532/-

3. Learned counsel for the appellants has submitted that the deceased has been wrongly held to be contributory negligent by the Tribunal merely on the ground that there were more than one pillion riders on the motor cycle at the time of accident. Reliance was placed on the decision of judgment of the Hon’ble Supreme Court rendered in ***Mohammed Siddique and another vs. National Insurance Company Ltd. and others, 2020(3) SCC 57.*** The Hon’ble Supreme Court has held in this case that the fact that the motorcyclist was hit by a car from behind and that the deceased was riding on a motor cycle along with driver and another, in such circumstances may not by itself, without anything more, make him guilty of contributory negligence.

4. I have considered the said submissions and gone through the copy of records. The appellants-claimants have relied upon the statement of PW-2 Krishan Kumar as an eye witness of the accident who is alleged to be one of the pillion rider of the motor cycle at the time of accident. As

per the pleadings in the claim petition, it is the case of the appellants that the offending car came from the opposite side and hit the motor cyclist. However, after examining the entire statement of PW-2 Krishan Kumar, apart from the fact that four persons were going on the motor cycle, it is observed that the motor cyclist (deceased) was also negligent. PW-2 has stated in the first part of his cross-examination which was conducted before lunch on 19.04.2020 that the accident took place on the mettled part of the road. He was the pillion rider on the motor cycle. He was able to see the car before the accident. In his cross-examination conducted after lunch on 19.04.2020, he has categorically stated that there is a single road where the accident took place and he has admitted this fact that two vehicles cannot pass straightway simultaneously on that road. Apart from this he has submitted that he has seen the car from a distance of 200-300 feet at the time of accident and the car was coming on its left side. In the cross-examination conducted on the same day before lunch, he has stated that before the accident, the motor cycle was being driven in the 4th gear and even at the time of accident it was being driven in the 4th gear.

5. Keeping in view the cross-examination of eye witness, it is observed that at the time of accident the motor cyclist was going on a narrow road. The offending car was coming on its left hand side and the motor cycle is proved to be going at a high speed. Since the eye witness has submitted that it was going in the 4th gear on a narrow road and the eye witness has also admitted that it was not possible for two vehicles to pass on road, so the motor cyclist was also duty bound to slow down the speed and take all precautions especially when motor cyclist could see the car coming from the opposite side from a distance. In such circumstances, it is evident that it is not merely the fact that four persons

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were travelling on the motor cycle which lead to hold the motor cyclist as having contributed in negligence but even otherwise, it is evident from the facts that even the motor cyclist was also negligent.

6. Keeping in view the facts and circumstances of the case, and the fact that motor cycle was a two wheeler and the car was about to take more space being a four wheeler, fixing the negligence on the part of the motor cyclist 50% is on a higher side. Hence, fixing the negligence on the part of the motor cyclist to the extent of 40% is more reasonable and just in view of the facts and circumstances of the case, the finding of the Tribunal to this extent requires modification.

7. Learned counsel for the appellants has further submitted that the Tribunal has failed to take into consideration the future prospects while determining the income of the deceased.

8. I have considered the said submission and I agree with the same. It is evident that the Tribunal has failed to add any income towards future prospects, which should have been taken into consideration in terms of the ratio of the judgment of the Hon'ble Supreme Court rendered in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) R.C.R.(Civil) 1009***. The future prospects @ 40% of the monthly income are required to be added where the deceased was self employed or having a fixed salary and was below the age of 40 years in the present case. The age of the deceased has been determined as 31 years as such. The Tribunal should have taken into consideration the addition of 40% of the actual salary while determining the income of the deceased but the same has not been done. Hence, the findings of the Tribunal requires modification on this account. Therefore, the monthly income of the deceased after adding 40% of the future prospects comes to

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Rs.9800/- per month [(7000+2800(40% of 7000)]. Consequently, the annual income of the deceased comes to Rs.1,17,600/-(9800 x 12). After deduction of 1/3rd towards personal and living expenses, the net annual income of the deceased comes to Rs. 78,400/- (1,17,600 - 39,200). As already noticed, a multiplier of 16 was rightly applied by the Tribunal and therefore, after applying the same, the total annual dependency of the appellants comes to Rs. 12,54,400/-(78,400 x 16).

9. Learned counsel for the appellants has further submitted that parental consortium has not been awarded to appellants No.2 and 3 for loss of their son. I agreed to the said submissions. In view of the decision of the Hon’ble Supreme Court rendered in *The New India Assurance Company Limited v.s Smt. Somwati and others, 2020(9) SCC 644*, appellant Nos. 2 and 3 are entitled to parental consortium of Rs.40,000/- each being mother and father of the deceased, whereas respondent No.1 is entitled to spousal consortium to the extent of Rs. 40,000/- instead of Rs. 1 lakh as awarded by the Tribunal.

10. As such the amount of compensation is calculated and enhanced as under:-

Sr.No.	Head	Amount(Rs.)
1.	Annual dependency of the claimants after deduction of 1/3 rd towards personal and living expenses	78,400/-
2.	Multiplier	16
3.	Total loss of dependency (78,400 x 16)	12,54,400/-
4.	Spousal Consortium	40,000/-
5.	Filial Consortium @40,000/- each	80,000/-
6.	Loss of Estate	15,000/-

7.	Funeral Expenses	15,000/-
8.	Contributory negligence 40% (14,04,400 x 40%)	5,61,760/-
	Total	8,42,640/-

11. The Tribunal has awarded compensation of Rs.5,10,532/-, therefore, the appellants would be entitled to get an additional compensation amounting to Rs.3,32,108/- (8,42,640 – 5,10,532). The appellants-claimants would be entitled to get the additional compensation in the same ratio as directed by the Tribunal in the impugned Award. They would be entitled to interest @7.5% per annum from the date of the filing of the appeal till actual realization. The liability to pay the compensation will remain upon the insurer, however, they will be entitled to recover the same from the owner/driver as per the observations made by the Tribunal, in terms of the original Award.

12. The appeal is thus, partly allowed with the aforesaid modification.

(Harpreet Kaur Jeewan)
Judge

20th January, 2023

ShivaniKaushik

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No