

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 4121/2016 (O&M)

Date of decision: 18.04.2023.

Ranju Devi and otherss

.....Appellant

Vs.

Narender Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. SK Malhotra, Advocate for the appellants
 Mr. Ramesh Malhotra, Advocate for the respondents.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.4,83,600/- granted by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') vide Award dated 18.1.2016 passed in MACT Case NO.70/2014 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') on account of death of Nageshwar Paswan. Claimants are the widow and three minor children of the deceased.

Ld. Tribunal on the basis of pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 24.3.2014 due to rash and negligent driving of bus bearing registration No. HR-58-8848 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1,

owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

It is submitted by the ld. counsel for the appellants that the Ld. Tribunal had granted compensation of Rs.9,67,200/-, however, ld. Tribunal made a deduction of 50% of the said amount by holding that there had been contributory negligence on part of the deceased. It is submitted that the above said finding is patently illegal as deceased was an Agricultural Labourer and after doing his labour work he was travelling in a tractor-trolley which was being driven in a moderate speed on the left/ correct side of the road, when the offending bus coming at a very high speed hit the tractor trolley in which the deceased was travelling. It is submitted that due to said collision the tractor trolley turned turtle and deceased received fatal injuries. It is submitted that in this situation the ld. Tribunal could not have held deceased liable for contributory negligence. In support, ld. counsel relies upon judgment of Hon'ble Supreme Court in **Khenyel v New India Assurance Company Ltd., Law Finder Doc. Id # 669171**; and this Court in **Smt. Rajwanti Devi and others v Jitender Kumar Mishra and others, FAO 7723/2015**.

It is further submitted that ld. Tribunal framed no issue regarding contributory negligence and therefore, no opportunity was granted to appellants to lead their evidence in this respect and to prove before the ld. Tribunal that there was no negligence on the part of the deceased.

It is further submitted that nothing has been granted by the Tribunal by way of future prospects. It is further submitted that even amounts granted under other conventional heads are also on lower side.

In response, no judgment to the contrary has been cited by the ld. counsel for the Insurance Company.

No other argument has been raised.

Heard ld. counsel.

Perusal of the impugned Award shows that the ld. Tribunal has framed the following issues:-

“1. Whether Nageshwar Paswan had died in a vehicular accident and took place due to rash and negligent driving of the offending vehicle no. HR 58 8848 by respondent no.1 as alleged in the petition? OPP

2. If issue no.1 is proved, whether the petitioner is entitled to compensation? If so to what amount? OPP

3. Whether the respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident? If so its effect? OPR

4. Relief”.

Clearly, the ld. Tribunal framed no issue in respect of contributory negligence on the part of the deceased. It has further been recorded by the ld. Tribunal in para 16 of the impugned Award as under:-

"16. In the reported case the tractor and the trolley attached to it were used for transporting vegetables for sale in market and not for agricultural purposes. It is held that the tractor was meant to be used for agricultural purpose and it cannot be used as a transport vehicle because the trolley attached to the tractor would also

required to be used for agricultural purpose unless registered otherwise. Whereas in the case of Brij Mohan and Serjerao's cases (supra) labourer were travelling in the trolley. The insurance company was not held liable rather the owners of the vehicles were held liable for compensation. Though in the case the offending vehicle was the tractor-trolley but in this case the offending vehicle is bus and not tractor-trolley but as the tractor-trolley was not meant for transporting the passengers and thus, it is correct that deceased as well as injured were travelling in tractor-trolley in capacity of unauthorized passengers. Thus, finding force in the submission of learned counsel for the insurer, deceased and injured are also held negligent to the extent of 50% in view of case titled Mohan Kushwaha vs. Ghanshyam 2013 ACJ 1496 (Allahabad). In that also passengers were travelling in the tractor-trolley, suffered injuries when the trolley overturned. Insurance company disputes its liability on the ground that the tractor-trolley were used for carrying passengers and not for agricultural purposes. It was held that as tractor is not a transport vehicle and it can only be used for agricultural purpose thus the insurance company was not held liable. Leaned counsel for the petitioner has failed to produce any ruling contrary to the ruling discussed above and relied upon by the respondents. Thus it is held that injured and deceased were negligent to the extent of 50%. This issue is thus decided accordingly”.

I find the above said finding of the Id. Tribunal to be incorrect as neither any issue regarding contributory negligence was framed by the Id. Tribunal, nor claimants were granted opportunity to lead evidence in this respect. Accordingly, this finding of the Id. Tribunal cannot be sustained.

Further perusal of the impugned Award shows that Id. Tribunal has granted nothing by way of future prospects. Admittedly, the deceased was 33 years of age as proven by his post mortem report. Accordingly, future prospects of 40% ought to have been granted in conformity with the law laid down by Hon’ble

the Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.**

In view of the above discussion, compensation payable to the claimants is reworked as follows:-

S.No.	HEAD	MACT (in Rupees)	Reworked compensation in present appeal (in Rupees)
1	Income	Monthly 5500/- Annual 66000/-	Monthly 5500/- Annual 66000/-
2	Deduction	1/4 th	1/4 th
3	Future prospects	Nil	40%
4.	Multiplier	16	16
5	Loss of estate	10,000/-	16,500/-
6	Funeral expenses	25,000/-	16,500/-
7	Loss of consortium (Spousal & Parental)	Rs.1.45 lacs	Total 1,76,000/- =44000x4
8	Total compensation	4100x12x16= 7,87,000/- +1,45,000 +25,000 = 9,67,200/- (50% deducted towards contributory negligence)	5775x12x16= 11,08,800/- + 1,76,000/- + 33,000/- = 13,17,800/- (no deduction towards contributory negligence)
9.	Interest	7% p.a.	7% p.a.

Appeal stands allowed in the above terms.

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

18/04/2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No