

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

FAO-5887-2019(O&M)

Reserved on:-15.5.2023

Date of Pronouncement:-22.5.2023

Meenu Mittal and others

...Appellants

Versus

Satish Kumar Meena and others

...Respondents

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

Present: Mr.Sagar Aggarwal, Advocate
for the appellants.

Ms.N.S. Gill, Advocate
for respondents No.1 and 2.

Brig.B.S. Taunque, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. Briefly stated, facts of the case as per the version of the claimants are that on 23.9.2017, deceased Pankaj Kumar Mittal, aged about 36 years along with his wife Meenu Mittal, minor sons Nikhil and Lokesh Mittal and his brother-in-law Manish Kumar was going from Cheeka(Kaithal) to Beas, to pay obeisance in a car bearing registration No.HR-02M-2761 make Wagon R; the car was being driven by Manish Kumar, brother-in-law of Pankaj Kumar Mittal, deceased. It was being driven on left hand side of the road at a moderate speed; Pankaj Kumar Mittal was sitting on the front seat, whereas his wife Meenu Mittal and two minor sons were sitting on the rear seat; at about 9:30 p.m., when they

had gone about 1 k.m. ahead of Ram Nagar, then a truck bearing registration No.RJ-02GA-7408 (hereinafter referred to as the offending truck) came from the back side being driven by respondent No.1 Satish Kumar Meena in a rash and negligent manner; the truck had crossed their car and thereafter the truck driver suddenly applied the brakes; resultantly the car in which the deceased was travelling went out of control and struck into rear side of the offending truck; the car got entangled into the truck and the truck dragged it to the distance of up to 70/80 feet; resultantly all the occupants of the car suffered multiple injuries; the injured were shifted to Mahavir Dal Hospital, Cheeka from where Pankaj Kumar Mittal, Meenu Mittal and Manish Kumar were referred to Amar Hospital due to their serious condition; Pankaj Kumar Mittal succumbed to the injuries in the Amar Hospital, Patiala.

An FIR No.170 dated 24.9.2017 under Sections 279, 337, 304-A, 427 IPC was registered at Police Station sadar, Samana on the basis of statement made by Meenu Mittal.

2. According to the claimants, Pankaj Kumar Mittal was running a business and he used to earn Rs.40,000 per month; the claimants were dependent upon his earnings; they had claimed Rs.1 crore as compensation.

3. The legal representatives of the deceased, namely, his widow Meenu Mittal, aged about 33 years, Nikhil aged about 7 years – minor son, Lokesh Kumar, aged 3 years – minor son, Daya Rani, aged about 58 years – mother and Harbilas aged about 59 years – father had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988

(hereinafter referred to as the Act) against respondents i.e. Satish Kumar Meena – driver, Ane Khan – owner and the Oriental Insurance Company Ltd., Patiala – insurer of the offending truck in question.

4. After contest, the claim petition was accepted by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) vide award dated 3.5.2019 and compensation of Rs.25,55,000/- along with interest @8% per annum from the date of filing of petition till realisation of the amount is awarded to the claimants, payable by respondents No.1 to 3 jointly and severally.

5. Feeling that the compensation awarded to them was on lower side, the claimants have 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 have put in appearance through counsel.

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

7. The Tribunal after consideration came to the conclusion that the accident had taken place on account of composite negligence on the part of the drivers of both the vehicles inasmuch Satish Kumar Meena – respondent No.1 driving the offending truck had suddenly applied the brakes of the truck moving ahead of the car, resultantly the driver of the car could not control the same and hit the rear side of the truck. However, the car driver Manish Kumar, real brother of claimant Meenu Mittal, who was driving the car had also shown negligence in not maintaining proper distance from the truck going ahead. In that way, the truck driver and car

driver were held guilty of composite negligence to the extent of 50% each.

8. On the basis of evidence available on the record, the Tribunal had taken the age of deceased to be 36 years in view of his date of birth as 8.1.1981 mentioned in Adhar Car, copy Ex.C3. Considering the income tax returns of the deceased for the year 2015-16, copy Ex.C7 and for the year 2016-17, copy Ex.C8 showing his income during the said financial year to be Rs.3,53,704/- and Rs.3,65,850/- respectively and other supporting documents, the monthly income of the deceased was assessed to be Rs.30,000/-. An addition of 40% was rightly made towards future prospects, arriving at total Rs.42,000/- being monthly income of the deceased. The Tribunal has made deduction of 1/3rd from this amount towards personal and living expenses of the deceased, considering the widow and two minor children of the deceased to be dependent upon his earnings. Whereas with regard to his aged parents, they were not taken to be dependent upon earnings of the deceased for the reason that deceased was having two brothers as admitted by claimant Meenu Mittal in her cross-examination. Therefore, the parents could not be said to be solely dependent upon the deceased.

9. I do not find myself in agreement with such reasoning given by the Tribunal. The conduct and attitude of every child towards his/her parents is not the same and rather it varies. It is specific case of the claimants that parents of the deceased were dependent upon earnings of the deceased. Merely because such parents have got two other sons, does not mean that those two sons have been providing financial support to their parents. Except for such admission in the statement of claimant

Meenu Mittal regarding deceased having two more brothers, there is nothing to show that parents of the deceased have been residing with their other two sons and are being looked after and financially supported by them. Therefore, in my considered view Daya Rani aged about 58 years – mother and Harbilas aged about 59 years – father of deceased Pankaj Kumar Mittal ought to be taken as dependent upon his earnings making the number of dependent family members to be five. In terms of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and another, 2009(3) RCR(Civil)77**, when the dependent family members are 4 to 6, the deduction should be 1/4th. Doing that, the monthly dependency of the claimants comes out to Rs.31500 (42000 – 10500) and annual dependency comes out to Rs. 31500 x 12 = Rs.3,78,000/-.

10. The Tribunal has used multiplier of 15, 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. 3,78,000 x 15 = 56,70,000/-.

11. Since it was held to be a case of composite negligence, therefore, the claimants are entitled to get 50% of that amount. Doing that the compensation comes out to Rs.28,35,000/-(56,70,000 - 28,35,000).

12. The Tribunal has rightly awarded a sum of Rs.70,000/- under the conventional heads to the claimants. Adding that amount, the total compensation comes out to Rs.29,05,000/-(28,35,000+70000).

13. The claimants are entitled to recover this amount from the respondents No.1 to 3. As has been rightly observed by the Tribunal, the remaining amount of 50% is recoverable from the driver and owner of the

car in question. The driver of the car is real brother of claimant Meenu Mittal. The claimants have not given particulars of owner of the car though as has been observed by the Tribunal, it seems to be owned by the family of claimants. The Tribunal had considered the request that the entire amount be recovered from the respondents and then they could recover 50% of the amount from owner, driver of the car in question. The claimants have neither impleaded the driver nor owner and insurance company of the ill-fated car.

14. Learned counsel for the appellants had referred to judgment ***Khenyei Versus New India Assurance Co. Ltd. & Ors.***, Civil Appeal No.4244 of 2015 decided on 7.5.2015 wherein while dealing with a claim petition under Section 166 of the Motor Vehicles Act, 1988, it was observed by the Apex Court that when injuries were sustained by the claimants when two vehicles bus and trailer-truck collided with each other answering question whether it is open to a claimant to recover the entire compensation from one of the joint tortfeasors, it was observed that in case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several. It was further observed that in case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them. It was further observed that determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to

the plaintiff/claimant to the extent it has satisfied the liability of the other.

It was further observed that in case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

15. This judgment does not help the case of the claimants in recovering the entire compensation amount awarded from the respondents for the reason that the driver, owner and insurance company of the car have not been impleaded in the claim petition and if the respondents No.1 to 3 are made to pay the entire payment, then how could they recover the 50% amount so paid by them and from whom. They cannot possibly be asked to search the particulars of the driver, owner and insurance company of the car and then to get involved in litigation between them so as to recover 50% of the compensation amount from them. The Tribunal has given opportunity to the claimants to recover 50% of the compensation amount awarded from owner and driver of the car and if the car was insured, the insurance company of the car would have to meet such liability.

16. The Tribunal has awarded compensation of Rs.25,55,000/-

17. In this way, the enhanced amount comes out to be Rs.3,50,000/- (29,05,000 – 25,55,000).

18. 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. Other terms and conditions in the original award shall remain the same. The share of the claimants

shall be increased proportionately.

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.

22.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No