2023:PHHC:063676

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3274/2017(O&M)
Date of decision: 03.05.2023.

Smt. Harbans Kaur

……Appellant

Vs.

Rajneesh Kumar and others

……Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naveen Gupta,Advocate for the appellant.

Mrs.Madhu Sharma, Advocate for Resp.no.3-Ins.Co.

Nidhi Gupta, J.

1. Present appeal has been filed by the claimants seeking enhancement of Rs. 4 lacs granted by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide Award dated 9.12.2016 passed in MACP No.39/2015 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants were mother, brother, and sister of deceased Sandeep Singh. Sole appellant before this court is the mother of the deceased.

2. Ld. Tribunal on the appraisal of facts, 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 11.04.2014 due to rash and negligent driving of Mahindra Bolero Govt. Vehicle bearing registration No. HR-68-8508 (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 @

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7.5% per annum from the date of filing of the claim petition till realization. Respondents were held jointly and severally liable to pay the compensation.

3. Ld. counsel for the appellant assails the Award on the ground that the ld. Tribunal has held the deceased liable for contributory negligence to the extent of 50%. It is submitted that the said finding of the Tribunal is contrary to the facts and evidence on record as there was nothing to suggest that the deceased was liable for contributory negligence. Ld. counsel for the appellant refers to the impugned Award to submit that in returning the finding that the deceased was guilty of contributory negligence, ld. Tribunal has relied upon Site Plan Ex.R4. It is submitted that as per judgment of the Hon'ble Supreme Court in **Jiju Kuruvila and others v Kunjujamma Mohan and others, 2013(9) SCC 166,** it has been held that contributory negligence cannot be ascertained merely on the basis of site plan/ scene *mahazar*, and direct and corroborative evidence has to be produced to establish contributory negligence. It is submitted that in the present case there was no direct or corroborative evidence before the ld. Tribunal to hold as above. It is further submitted that respondent no.1-driver of the offending vehicle in his written statement has not taken the plea of contributory negligence. It is stated that respondent no.1 was in the bigger vehicle and ought to have exercised greater care and caution than the deceased who was riding motorcycle and therefore, could not be held liable for 50% contributory negligence.

4. Ld. counsel further submits that compensation awarded by the ld. Tribunal deserves to be enhanced as the ld. Tribunal has granted nothing by way of future prospects. It is submitted that the deceased was employed as a Peon on contract basis in the Public Health Engineering Department, Government of Haryana and was earning Rs.7700/- per month. It is submitted

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that the income, and age of the deceased as 26 years are not in dispute. It is submitted that accordingly multiplier of 17 ought to have been applied whereas ld. Tribunal has applied multiplier of 13 on the basis of age of the mother of the deceased. It is submitted that as per judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, 40% ought to have been added on account of future prospects and further as per judgment of Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** multiplier of 17 ought to have been applied.

5. It is submitted that the deceased was married at the time of his death and therefore, ld. Tribunal could not have made a deduction of 50% towards personal expenses.

6. In response, it is submitted by the ld. counsel for the respondent-Insurance Company that the evidence on record establishes that the offending vehicle was being driven on the extreme left side of the road, and it was duty of the deceased to have ascertained that there was no vehicle on the main road before entering the highway. It is submitted that accordingly, finding of the ld. Tribunal qua contributory negligence on part of the deceased is correct and as per record.

7. As regards future prospects, it is admitted that the ld. Tribunal ought to have made addition of 40% towards future prospects, and multiplier of 17 is applicable. As regards deduction of 50% towards personal expenses, it is submitted that the widow of the deceased has not joined the claim petition filed by the appellants and therefore deduction of 50% was correctly made.

8. No other argument has been raised.

9. Heard ld. counsel.

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10. Perusal of the record of the case shows that respondents No. 1 and 2 herein/being the driver and owner of the offending vehicle, did not put an appearance despite service and were therefore, proceeded against ex-parte vide order of this Court dated 22.7.2019.

11. Detailed findings of the ld. Tribunal qua contributory negligence on the part of the deceased are contained in paras 21 to 28 of the impugned Award, which are reproduced hereinbelow:-

> "21. After analyzing the evidence on record and considering the rival contentions of both the sides, I find it to be a case of contributory negligence.
>
> 22. First of all, it is to be noted that respondent no.1 i.e. driver of the offending vehicle is an Inspector in the Haryana Police; whereas respondent no.2 i.e. owner is Director General of Police, Haryana. There is difference in the stand taken by them regarding the manner of the accident. Respondent no.1 claims that no accident took place involving the vehicle i.e. Mahindra Bolero No. HR-68-8508 and that he had shifted injured Sandeep to the hospital, who was already lying on the road in injured condition. Said stand is also deposed by respondent Rajneesh when he entered the witness box as RWI.
>
> On the other hand, stand taken by respondent no.2 in the written statement is that deceased Sandeep was driving motor-cycle in rash and negligent manner and he came on the main road without caring for the traffic on the road, entered the main National Highway and himself struck against vehicle No. HR-68-8508, being driven by respondent no.1 at normal speed on correct side of the road, while coming from Chandigarh to Ambala and this way, there was no negligence of respondent no.1.

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It is, thus, clear that as per stand of respondent no.2, motor-cycle had struck against Bolero jeep No. HR-68-8508, which is contrary to the stand of respondent no.1.

23. PW3 Pawan Kumar is eye witness of the occurrence. It is on his statement that FIR was registered on 14.04.2014 i.e. three days after the accident. He has been grilled at length during cross-examination, but nothing could be elicited to disbelieve him. He has given vivid details of the manner of accident. He has explained his presence at the spot of the accident on 11.04.2014 at the time of accident and also on 14.04.2014, when he made statement to the police. After going through his entire statement, I do not find anything to disbelieve him.

24. The testimony of PW3 Pawan Kumar would reveal that there was, of course, collision between motorcycle No. HR-012-3132 being driven by deceased Sandeep; and Mahindra Bolero jeep No. HR- 68-8508, which was being driven by respondent no.1 Rajneesh. Besides, respondent no.1 is facing trial in the criminal court. He has already been charge sheeted by the court of learned JMIC, Ambala as evident from document Ex.P12. As noticed above that respondent no.1 is an Inspector police. As per his own admission in the cross-examination, he did not make any complaint regarding his false implication. Considering the fact that respondent no.1 himself is a police inspector; and offending vehicle belongs to the Haryana Police, it cannot be believed that offending vehicle could have been falsely implicated in collusion with the claimants for the sake of seeking compensation, as is contended by respondent no. 1.

25. Having regard to the fact that respondent No. 1 did not make any complaint regarding his alleged false implication; stand of respondent no.2 i.e. owner of the vehicle and testimony of PW3 Pawan, contention of respondent no.1 that his vehicle was not at all involved in the accident and that he simply admitted the deceased in the hospital, who was already lying on the road in injured condition, is rejected.

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However, question is that whether accident occurred due to sole negligence of motor-cycle; or sole negligence of Mahindra Bolero Jeep; or it is a case of contributory negligence.

26. Perusal of the site plan Ex.R4 reveals that it is National Highway, where accident took place. There is divider in between. Bolero Jeep was admittedly coming from the side of Chandigarh and moving towards Ambala. It is on the left side of Ambala-Chandigarh side that there is a side road leading towards village Sadopur. If one is coming from side of Sadopur and has to go towards Chandigarh, obviously he will have to take left turn without there being any need to come on Chandigarh-Ambala side. However, if a person coming from the side of Sadopur, has to go on Chandigarh-Ambala side, then he will have to cross Ambala-Chandigarh Road, then the main crossing and then take the right turn. The site plan reveals that location 'A', where accident took place; location 'B', where witnesses were present; and location 'C', where there were skid marks of Bolero vehicle. It is revealed form the site plan that accident occurred on the extreme left side of Chandigarh-Ambala Road. Skid marks started even prior to point 'C' and going up to point 'A'. The testimony of PW3 Pawan Kumar to be read with said site plan Ex. R4 would make it clear that motorcycle being driven by deceased Sandeep came from side of Sadopur, it crossed Ambala-Chandigarh Road, then crossed the junction and then hit Bolero vehicle coming from the side of Chandigarh.

27. In **Ravinder Kaur Vs Haryana State** (cited supra), a bus was going on the National Highway. It was held by Hon'ble Hight Court that it cannot be expected that bus should go at carts speed and keep on blowing horn all the time and that it is duty of the vehicle driver approaching from katcha path to Highway to see that his path is clear.

In another case titled **Gurjit Singh Vs. Ajinder Kaur** (cited supra), a motor-cycle was moving on main road and

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while entering a side road, it was dashed by vehicle traveling along the main road. The evidence of the eye witness to the effect that before entering side road, deceased had put out his hand to signal that he was turning right, was found to be not worthy of credence. The site plan showed that accident occurred on the let side of the road; whereas deceased was turning into the side road from the main road and thus, offending vehicle traveling along the main road had a right of way. The accident took place at a road junction on left side of the road and motorcyclist was turning to the right and therefore, it was held that whole aspect of negligence cannot be placed on the driver of the offending vehicle. Hon'ble High Court modified finding of Tribunal and held that it was a case of contributory negligence.

28. In the present case also, since deceased Sandeep while riding motorcycle was coming from katcha road and had to enter the main Highway, it was his duty to watch-full and see both sides of the road, before entering the road. On the other hand, driver of Mahindra Bolero Jeep coming from the side of Chandigarh was required to slow down his vehicle as he was to pass through a crossing i.e. road junction. He could have also noticed the motorcycle approaching from katcha pathway of Sadopur. In these circumstances, I find it to be a case of contributory negligence. Both the vehicles are held to be liable for causing accident to the extent of 50:50. Meaning thereby, both vehicles were equally negligent in causing of the accident".

12. A perusal of the above excerpt shows that even if the site plan were not to be considered, it is established on record that at the time of accident deceased was riding a motorcycle and was entering the main Chandigarh-Ambala Highway from a kucha road from the side of Sadopur which falls on the Ambala-Chandigarh Highway. In my view, it is needless to say that before entering from the kucha road it was duty of the deceased to slow down and see both sides of the road before entering the highway. Simultaneously, it was also necessary for

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respondent no.1 to be watchful and alert towards anyone approaching from kucha road. However, at the same time, it cannot be overlooked that respondent No.1 has not filed any complaint against his alleged false implication. Respondent No.1 has also not taken the plea of contributory negligence in his written statement. Moreover, at the site of accident, there are skid marks of the offending vehicle. It shows that the offending vehicle was being driven at great speed on the highway and upon seeing the deceased entering from the Kaccha side, breaks were applied suddenly resulting in skid marks along the road. Accordingly, in these circumstances, in my view, it will be just and fair to hold the deceased responsible for contributory negligence to the extent of 30%, and respondent no.1 to the extent of 70%.

13. Further, there is no disputing that as per law laid down by the Hon'ble Supreme Court in **Pranay Sethi's** and **Sarla Verma's** case (supra), as the deceased was 26 years of age, addition of 40% towards future prospects is required to be made, and multiplier of 17 has to be applied.

14. As regards deduction of 50% towards personal expenses, ld. counsel for the appellant is unable to controvert that widow of the deceased has not joined the present claim petition. In fact, learned counsel for the respondent Insurance Company has informed that the widow of the deceased was estranged and has also subsequently re-married. Therefore, as per judgment of this Court in **Munshi Ram v Balkar Singh (2016-2) PLR(P&H) 526,** in such circumstances, it is perfectly competent for the Court to treat the deceased as bachelor. Accordingly, I find no error in ld. Tribunal making deduction of 50%. Moreover, ld. counsel for the appellant is unable to cite any case law to the contrary.

15. In view of the above discussion, compensation payable to the claimants is re-worked as follows:

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Sr.No.	Head	MACT	Re-worked in Appeal Amount (in rupees)
1	Income	7700/-	7700/-
2	Future prospects @ 40%	NIL	3080
3	Monthly income	7700/-	10,780/-
4	Deductions @ 50%	3850/-	5,390/-
5.	Annual dependency	46,200/-	5390x12=64,680/-
6	Multiplier	46,200x13= 6,00,600/-	64,680x17= 10,99,560/-
7	Medical expenses	75,000/-	75,000/-
8	Conventional heads	75,000/-	77,000/-
9	Physiotherapy	48,000/-	48,000/-
10.	Total	7,98,600/-	12,99,560/-
11.	Less on account of contributory negligence	-50%= 3,99,300/-	-30%= 12,99,560-3,89,868=9,09,692/-
	Rounded off		9,09,700/-
12	Interest	7.5%	7.5%

16. Present Appeal is accordingly, **partly allowed** in above terms.

17. Pending Application(s), if any, stand disposed of.

03.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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