IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **FAO No.7396-2018 (O&M)**
Date of decision: 24.01.2023

Anjuman & Others **...Appellant(s)**

Vs.

Jumme Khan & Others **...Respondent(s)**

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FAO No.6788-2018 (O&M)
Date of decision: 24.01.2023

IFFCO TOKIO General Insurance Company Limited **...Appellant(s)**

Vs.

Anjuman & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashish Gupta, Advocate for the appellants.
(In FAO-7396-2018)

Mr. Vishal Aggarwal, Advocate for the appellant.
(In FAO-6788-2018)

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<u>NIDHI GUPTA, J.</u>

This common order shall dispose of cross-appeals bearing FAO No.7396 of 2018 filed by the claimants, and FAO No.6788 of 2018 filed by the Insurance Company, both appeals arising out of Award dated 31.07.2018 passed by Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as "the learned Tribunal") in MACP Case No.259 of 2017 filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are widow, three minor daughters, one minor son, and parents of deceased-Anis Khan. For the sake of convenience and with the consent of learned counsel for the parties, facts have been noticed from FAO-6788-2018 filed by the Insurance Company, which are even otherwise common. As both appeals hinge on common questions of law and fact, both are being disposed of by common order.

Brief facts of the case are that the learned Tribunal upon appraisal of all the materials in form of pleadings and evidence placed before it came to the conclusion that deceased-Anis Khan had died due to the injuries suffered by him in a motor vehicular accident that took place on 03.12.2014 due to rash and negligent driving of truck bearing registration No.HR-55K-4821 (hereinafter referred to as "the offending vehicle") being driven by respondent No.8 and owned by respondent No.9. Learned Tribunal awarded a total compensation of Rs. 28,11,760/-. However, learned Tribunal held the present to be a case of contributory negligence and therefore, deducted 50% of the total compensation. Thus, claimants were held entitled to Rs.14,05,880/- along with interest @ 8% per annum from the date of filing the petition till realization. Learned Tribunal further held Insurance Company as well as respondents No.8 and 9 (driver and owner respectively of the offending vehicle), to be jointly and severally liable to pay the compensation to the claimants however, recovery rights against respondents No.8 and 9 were granted to the appellant/Insurance Company in view of the fact that respondent No.8 did not have a valid and effective driving licence on the date of accident.

Learned counsel for the Insurance Company inter alia submits that the accident in question had occurred due to the fact that tyre of the offending vehicle burst as a result of which respondent No.8 herein had to apply brakes suddenly. It is submitted that thus, there was no negligence on part of the driver-respondent No.8, and the offending vehicle has been wrongly involved just to get compensation when there is nothing on record to show that the driver of the offending vehicle was negligent. It is submitted that in view of the sudden tyre burst of the offending vehicle, the driver/respondent No.8 was left with no choice except to apply brakes. It is stated that in fact, there was negligence on part of the deceased who was driving behind the offending vehicle and who failed to maintain safe distance and therefore, no negligence can be attributed to the offending vehicle and hence liability imposed upon the appellant/Insurance Company is erroneous. It is further submitted that even in criminal proceedings initiated against respondent No.8/driver, cancellation report had been filed by the police.

Learned counsel for the Insurance Company further assailed the Award on the ground that income of the deceased has been taken as Rs.12,000/- per month which is on the higher side and it should have been taken as Rs.5,812/- which is the minimum wages for an unskilled labourer in the relevant year of 2014. It is submitted that the learned Tribunal is in error in taking income of the deceased as Rs.12,000/- per month only on the basis of marked documents which have not been proven in accordance with law. It is submitted that it was incumbent upon the claimants to have proved income of the deceased by filing Income Tax Returns by producing his ITRs by way of evidence.

In response, learned counsel for the claimants has submitted that the accident in question had occurred on 03.12.2014 at about 4 am because the offending vehicle suddenly applied brakes because of which the truck being driven by the deceased rammed into the offending vehicle. It is submitted that there is no dispute regarding the fact that the driver of the offending vehicle had suddenly applied brakes and therefore, in view of this admitted position, learned Tribunal is in error in holding the present case to be a case of contributory negligence.

It is further submitted that the deceased was driving ill-fated truck bearing registration No.RJ-02GA-4804 and Sehroon was the cleaner, and Aslam who is the brother of the deceased, were travelling along with the deceased in the said truck. Aslam is also the eyewitness-complainant on the basis of whose statement FIR was registered in the case. It is submitted that it is only upon sudden application of brakes by respondent No.8 that front tyre of the offending vehicle burst because of which, the ill-fated truck being driven by the deceased rammed into the offending vehicle from behind. It is the pleaded case of the claimants that accident happened due to sudden application of brakes by respondent No.8. It is stated that assertion of the learned counsel for the Insurance Company that respondent No.8 was constrained to suddenly apply brakes because tyre had burst, is factually incorrect and it was actually the other way around, that tyre burst upon sudden application of brakes. It is stated that is no finding by the learned Tribunal that brakes were suddenly applied because of bursting of tyre, and even no evidence has been led by the Insurance Company that accident occurred due to bursting of tyre.

It is further submitted that the learned Tribunal has taken income of the deceased on lower side as at the time of his death, deceased was earning Rs.30,000/- per month.

Learned counsel for the claimants further refers to lower Court record to submit that a perusal of Exhibit P17 to P20 at page 137 to 143 of the LCR, which is the Certificate of Registration of ill-fated truck bearing registration No.RJ-02GA-4804, shows that the said truck was registered in the name of deceased-Anis Khan and unladen weight of the said truck was 25,000 kg. It is submitted that as per notification No.F.No.225/233/2019/ITA-II dated 14.08.2019 of Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, income has to be assessed in terms of weight of the vehicle. It is submitted that as per Exhibit P17, weight of the vehicle is admittedly 25,000 kg.

It is also submitted that it is borne out from the record that the deceased was regularly paying installments of the ill-fated truck to the tune of Rs.39,024/- per month. It is stated that in view of this fact, it is clear that the deceased was earning at least Rs. 30,000/- per month and the learned Tribunal has assessed the income on grossly lower side.

In support of his submission, learned counsel refers to judgment of this Court in ***FAO-2308-2022 titled as "United India Insurance Company Limited Vs. Gurdeep Kaur & Others"*** to submit that in similar circumstances income of the deceased had been assessed by taking into account loan statements of the deceased. Relevant portion of the said judgment is reproduced hereinbelow:-

"Regarding the income of the deceased, the Tribunal held that the deceased was a taxi driver. As is evident from the statement of AW1, the wife of deceased Gurdeep Singh, she tendered in evidence Ex.A1 to Ex.A15. Ex.A12 was a letter from the Azad Taxi Stand stating that the deceased Gurdeep Singh had membership of the Taxi Stand and was owner of vehicles bearing registration No.PB-01-A-1336 (Tempo Traveller), No.PB-01-9072 (Scorpio) and No.PB-07-AX-8982 (Swift Dzire), which were being driven by the deceased himself and through other drivers. Ex.A13 to Ex.A15 are the loan statements…."

It is submitted that it is clear that income of the deceased should have been assessed accordingly and the same has been taken grossly on lower side.

Learned counsel further refers to Regulations No.23 and 24 of Rules of Road Regulations, 1989 that; ***"23. Distance from Vehicles in front. – The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."*** to submit that it has been held by this Court in ***FAO-2558-2016 (O&M) and XOBJC-139-CII of 2016 titled as "Tata AIG General Insurance Company Limited Vs. Surjeet Kaur & Others"*** *that* 'safe distance' is a relative concept which depends upon the differential speed of the vehicles, their respective mass/weight, the braking systems and technical efficacy of the braking systems, the friction quotient provided by the road surface, as well as, the aptitude of the driver towards speed, besides the natural reflex response time of individual human being. Given the appropriate balance between these factors, even a distance of one foot can be 'safe distance'; ***"24. Abrupt brake – No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons."***

No other submission is made on behalf of the parties.

I have heard learned counsel and given my thoughtful consideration to their rival contentions, as also considered the evidence and relevant law.

Upon hearing rival contentions of both sides, it emerges that the appellant/Insurance Company is inter alia seeking to absolve itself of its liability on the ground that the accident in question had occurred due to negligence of the deceased inasmuch as the deceased failed to keep safe distance from the offending vehicle. On the other hand, the claimants are inter alia seeking setting aside of the finding of contributory negligence as also, enhancement of compensation on the ground that income of the deceased has been taken on lower side.

A perusal of record of the case shows that Mark-A at page 151, Mark-B at page 155, Mark-C at page 159 and Mark-D at page 161 of the Lower Court Record, are all documents/statements of loan account, Bank account etc., pertaining to the loan availed by the deceased. All of the said documents altogether go to show that the deceased was making a payment of Rs.39,920/- per month towards repayment of loan in respect of the ill-fated truck bearing registration No.RJ-02-GA-4804. Great reliance has been placed upon documents Mark-B to Mark-N by the claimants to assert that the deceased was earning Rs.30,000/- per month. However, admittedly, the said documents were not proved in accordance with law and therefore, the same cannot be relied upon.

Further perusal of Lower Court Record, in particular, cross examination dated 02.12.2017 of PW-2 Aslam eyewitness and complainant, (at page 87 of the Lower Court Record) shows that it has been stated by the said witness as follows:-

> *"PW2- Aslam son of Sahid Khan, aged 27 years, resident of village Kharkhari, Tehsil Tijara, Distt. Alwar.*
>
> *ON SA*
>
> *Stated that I tender my duly sworn affidavit Ex.PW2/A, which maybe read into my evidence.*
>
> *XXXXXX by Sh Deen Mohd. & Sh Deepak Gupta, counsel for the respondents.*
>
> *My statement was recorded by the police on 3.12.2014 at Medical College, Jaipur. I was traveling in the vehicle which was driven by deceased. The driver of the vehicle had applied the brake, however, the <u>same had rammed from the backside on the ongoing vehicle</u>. Volunteered the ongoing vehicle had suddenly had applied the brake and the vehicle was going ahead of our vehicle. I have taken the deceased to the SMS hospital. <u>I have seen the vehicle from a distance of 50 feet.</u> I have not seen the tyres of the ongoing vehicle. <u>There was no rush on the road occurrence</u>. <u>It is correct that no criminal case has been registered against respondent no 1 and 2</u>. it is incorrect to suggest that deceased was himself responsible for the alleged occurrence. I did not received any injury in the occurrence. I was sitting on the conductor side. <u>The vehicle in which I was sitting was rammed from the driver side.</u> It is incorrect to suggest that being the brother of the deceased I have deposed falsely. It is incorrect to suggest that I have lodged a false FIR. It is incorrect to suggest that no accident occurred due to rash and negligent of driving of respondent no. 1." (Underlining is mine)*

It is therefore, undisputed that even though the accident had occurred at 4 A.M. on a winter morning on 3.12.2014, yet, the offending vehicle was visible and had been seen from a distance of 50 feet. It is further the complainant's statement that there was no traffic at the place of occurrence. In my considered opinion, in view of the above admitted position, the conclusion is inescapable that the ill-fated truck was evidently not keeping safe distance from the offending vehicle, and was being driven by the deceased at considerable speed to have rammed into rear-left of the offending vehicle so as to result in the death of the deceased.

In this regard, reference may be made to a 3-Judge Bench judgment of the Hon'ble Supreme Court rendered in case of **"Nishan Singh & Others vs. Oriental Insurance Company Ltd. Through Regional Manager & Others" Law Finder Doc. Id # 1018607,** where Their Lordships, while considering aforementioned Regulation 23 have held that:

> *"The expression, 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of 2 to 3 seconds gap in ideal conditions to avert collision, and to allow the following driver time to respond. The distance of 10–15 feet between the truck and Maruti car was certainly not a safe distance for which the driver of the Maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants."*

In the present case, even though the distance was stated to be 50 feet, and there was no traffic yet, there was a collision. Clearly, the deceased was driving at very high speed as he didn't even have time to respond to the sudden application of breaks by the respondent No. 8. It is therefore, made out that the finding of the learned Tribunal regarding contributory negligence is correct as the deceased was driving the ill-fated truck at great speed and was not maintaining sufficient distance.

The above view of the Hon'ble Supreme Court has been followed by this Court in case of **"Subhash Chand and Others versus Sathya, Rani and Others" Law Finder Doc. Id #474045**, where in, in similar circumstances, where the scooterist had rammed into the tractor/offending vehicle from behind, this Court had upheld the Award of the learned Tribunal whereby the deceased scooterist was held to be liable for contributory negligence and had therefore, deducted 50% of the amount assessed as compensation by the learned Tribunal.

Though, it has been the case of the claimants that tyres of the offending vehicle were old and not road worthy, however, it has not been proved. Further, Notification dated 14.08.2019 has not been placed on record, either before the learned Tribunal, or before this Court.

In view of the above discussion, I find no ground is made out to interfere in the impugned Award and hence, both the Appeals stand dismissed, and the Award is maintained in toto.

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

24.01.2023	**(Nidhi Gupta)**
Sunena	**Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No