



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

Date of decision : 05.12.2024

1. FAO-2036-1994

Roshni Devi and others Appellants

versus

Satta and others Respondents

2. FAO-1565-1994

The New India Assurance Co. Limited Appellant

versus

Roshni Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harinder Sharma, Advocate
for the appellants in FAO-2036-1994 and
for respondents No.2 and 3 in FAO-1565-1994

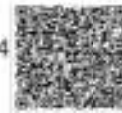
Mr. Lalit Garg, Advocate for the appellant No.1
in FAO-1565-1994 and for respondent No.4
in FAO-2036-1994.

None for respondents No.2 and 3 in
FAO-2036-1994.

PANKAJ JAIN, J.

1. These two cross appeals are directed against the same award. Insurance company is aggrieved with respect to findings recorded by the Tribunal on the issue of negligence and quantum. The claimants are in appeal seeking enhancement of compensation.

2. Counsel for the insurance company while assailing the findings recorded by the Tribunal on issue No.1 submits that the



Tribunal erred in holding that the motor vehicular accident was result of contributory negligence of driver of Maruti van as well as driver of trola. It has been contended that the accident was caused solely on account of wrong and negligent act of driver of trola who parked the same in the middle of the road. He submits that in order to prove negligence of driver of the trola, Balkar Singh-author of FIR was examined as AW-3. He was specific in his testimony that the accident took place due to non parking of trola. No evidence was adduced to rebut the same. Even driver of the trola did not appear in the witness box, yet Tribunal on the basis of premises held the negligence of driver of the van to the extent of 50%. He thus, submits that the aforesaid finding being purely conjectural in nature needs to be set aside. In order to hammer forth his contention, he relies upon observations made by Supreme Court in ***Civil Appeal No.7300-7309 of 2016***, titled as ***‘Archit Saini and another vs. The Oriental Insurance Company Ltd. and others.’***

3. *Per contra*, counsel for the respondents-claimants submits that the findings recorded by the Tribunal are based upon proper appreciation of evidence. He further submits that Tribunal erred in not granting any future prospects and nothing has been awarded under conventional head. The amount needs to be enhanced.

4. I have heard counsel for the parties and have carefully gone through the records of the case.



5. The record pertaining to the case is stated to have been burnt. Thus, it is not possible to re-appraise the evidence with respect to negligence. While returning finding on issue No.1, the Tribunal held that Balkar Singh, author of FIR claimed that loaded trailer of respondent No.1 was parked on the road. Motor vehicle came from the opposite side with dazzling headlights. Thus, the wrong parking of the vehicle was the sole reason that cause accident. Tribunal further held that though a vehicle was wrongly parked on the road, yet driver of van was not expected to drive vehicle at night at a fast speed. Virsa Singh, driver of the van in his testimony while appearing as RW-1 admitted that when the vehicle came from the opposite direction and applied dipper, he did not stop his vehicle, but only slowed the same.

6. In the considered opinion of this Court, testimony of Balkar Singh cannot be a sole basis to return the finding of rashness and negligence. Virsa Singh, driver of the van himself appeared as RW-1. He being on the wheel was more competent to explain the facts. Tribunal rightly vade the testimony of Balkar Singh in the light of testimony of Virsa Singh and came to the conclusion that rash and negligent driving on part of Virsa Singh was also a contributing factor to the accident. Thus, no exception can be taken to the findings recorded by the Tribunal and the same cannot be held to be perverted.

7. Coming to the issue of quantum, income of the deceased has been rightly assessed @ Rs.1967/- which is undisputed by both the parties. Age of the deceased was 38. Thus, 50% of future prospects need to be added in terms of ratio of laid down in '**National Insurance**



Company Limited vs. Pranay Sethi and others’, (2017) 16 SCC 680.

Tribunal erred in applying multiplier of 20. In view of ‘*Smt. Sarla Verma & others vs. Delhi Transport Corporation & another’ (2009) 6 SCC 121*, the multiplier of 15 needs to be applied. Under conventional heads, each of the claimants is entitled for Rs.48,000/- for loss of consortium. Nothing has been awarded under the heads of loss of estate and funeral expenses. Rs.18,000/- is awarded under each of the aforesaid heads. Rate of interest shall be the same as awarded by the Tribunal. The same shall be awarded for the period commencing from the date of filing of the petition till the date of actual realization. Needless to say, anything already paid shall be adjusted.

8. With the aforesaid modification, the present appeals are disposed off.

9. A photocopy of this order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

05.12.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No