

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

FAO-582-1991
Date of decision: 15.01.2024

Vivek Khanna and others ...Claimant-Appellant
Versus

Karnail Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Amandeep Rana, Advocate for the appellants.

Service of respondent No.1 dispensed with
vide order dated 09.09.2019.

Mr. Aman Sharma, Advocate
for respondent Nos.2 and 3.

AMAN CHAUDHARY, J.

1. By way of the present appeal, the claimants-appellants has challenged the award dated 02.05.1988 passed by the learned Motor Accident Claims Tribunal, Faridkot (for short ‘the Tribunal’) vide which the claim petition filed on account of death of Asha Khanna in a motor vehicular accident, was partly accepted and a sum of Rs.15,000/- vide awarded on account of no-fault liability.
2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for more than 33 years, the counsel for the parties have no objection, if the same is decided on the basis of the available record.
3. Learned counsel for the appellants would contend that the Tribunal has erred in holding the driver of the bus not liable for causing the accident, as it was based on conjectures and surmises. The bus was being driven at a high speed and in a rash and negligent manner, which is evident from the fact that after the accident, it could not stop immediately. No horn or signal was given by the bus driver at the cut in the divider from where the scooter was coming. Reliance is

placed on the judgments in **Hemlata Devi and another vs. Gurudayal and others** 1987 ACJ 820 as well as **M/s Sachdeva Rice Mills vs. Raj Anand** 1986(2) PLR 577. Further, as per the claim petition, the deceased, 43 years old at the relevant time, was earning Rs.1000/- per month from tuition work. She left behind her husband and two sons. However, only the compensation under 'no fault liability' has been granted to them.

4. On the other hand, learned counsel for respondent Nos.2 and 3 submits that the Tribunal after appreciating the evidence on record has rightly come to the conclusion and granted only no fault liability compensation. Reliance is placed on the judgments in **Pepsu Road Transport Corpn. Patiala, through its General Manager vs. Kulwant Kaur and others** 2009(4) SCC 32 as well as judgment of this Court in **FAO-496-1986** titled as **Kalawanti and others vs. Daljit Singh and others** decided on 09.11.2023.

5. Heard learned counsel on either side.

6. Evidently, the scooter was being driven by Vineet Kumar, whereas Asha Khanna was a pillion rider. The vehicle on which they were travelling is stated to have struck against the bus near the emergency door towards the rear portion of its right side when it was passing the Kaler Tent House near the Fountain Chowk, Kotkapura on 21.12.1986. Asha Khanna died in the accident. Admittedly, the house of Vineet Kumar was towards the right side of the road, from where he was approaching the main road through the gap between the divider meant for the said purpose. As a thumb rule, the traffic coming from the right side has to be given due deference. Had the bus driver slowed down upon seeing the scooterist coming from his right, as it cannot be presumed that he could not see him, the accident could have well been averted. The offending bus must have been driven at a fairly high speed and that its driver did not have sufficient control over it, as is evident from the fact that the deceased was dragged up to a

stretch of about 15-20 ft on the road after the collision took place with the offending bus. The driver of the offending bus should have been aware that he was driving the heavy motor vehicle and taken sufficient caution. Be that as it may, it was equally the responsibility of Vineet Kumar, who also ought to have been cautious when trying to come on the main road.

7. 'Negligence' means a breach of duty caused by the omission to do something which a reasonable man, guided to those considerations, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Since no absolute rule can be laid down by which negligence or its absence can be judged in a given case, 'negligence' would necessarily vary in different cases and, for judging the same, all the attending and surrounding facts and circumstances of a particular case have to be taken into account.

8. As regards to 'negligence' and 'contributory negligence', Hon'ble the Supreme Court in **Municipal Corporation of Greater Bombay vs. Laxman Iyer** (2003) 8 SCC 731 has observed thus::

“To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the others negligence. Whichever party could have avoided the consequence of the others negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defense to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of

such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence , 3rd Edn., para 328.) It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage is reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise.”

9. The mere happening of the accident itself may be more consistent with negligence on the part of the driver than with other causes and, in that event, the Court may find negligence on the part of the driver unless he gives a reasonable explanation to show how the accident may have occurred without negligence on his part. The Maxim "res ipsa loquitur" is not a rule of law, but only a rule of evidence affecting onus. It is based on commonsense and its purpose is to enable justice to be done when the facts, bearing on causation, and the care, exercised by the driver, are at the outset unknown to the claimant and ought to be within the knowledge of the driver. [See:**U.P. State Road Transport Corporation vs. Amit Kumar Rastogi**, 2013 SCC OnLine All 14068].

10. The judgments relied upon by the learned counsel for the appellant being distinguishable on facts, are thus not applicable.

11. On the conspectus evaluation of the matter keeping in mind the principles laid down in the case referred to above, this Court arrives at the ineluctable conclusion that it indubitably is a case of ‘contributory negligence’ at the hands of the drivers of both the vehicles in the ratio of 50:50.

12. The present appeal being pending before this Court for almost three decades, thus, the interest of justice demands it be not remanded to the Tribunal, solely for assessing the compensation payable to the appellants, **Urviben Chiragbhai Sheth vs. Vijaybhai Shambhubhai Joranputra**, (2011) 12 SCC 582 and **Vanlalhriata vs. Malsawmtluanga Chawngthu**, 2020 SCC OnLine Gau

4917.

13. From the statement of claimant-Vineet Kumar, it transpires that the deceased was a tutor and earning Rs.1,000/- per month. However, there was no proof of it and thus, the Tribunal discarded the same. However, in case, she is considered to be a homemaker, in the said eventuality, for the gratuitous services rendered by wife/mother to the husband and children, it would in the interest of justice, to assess the income of the deceased as above.

14. For the aspect of enhancement of compensation, this Court can make a profitable reference to the law laid down in **Sarla Verma vs. DTC**, (2009) 6 SCC 121, involving an accident with a bus belonging to the Delhi Transport Corporation, on 18.04.1988, causing the death of a Scientist, working in the Indian Council of Agricultural Research, and vide award dated 06.08.1993, Motor Accidents Claims Tribunal, New Delhi partly allowed the claim and granted compensation of Rs. 5,79,000/-, which, when challenged before the High Court was enhanced to Rs. 7,19,624/- in a judgment dated 15.02.2007. Being not satisfied therefrom, when the claimants approached Hon'ble the Supreme Court, which after considering a catena of judgments, increased the same to Rs. 8,84,870/- and observed that an objective approach should be adopted for arriving at just compensation and elaborating thereupon it was held that there should be a uniformity while calculating the same, relating to increase in future prospects, deduction towards personal expenses of the deceased, multiplier to be applied and also grant of lump sum amount under the heads of (a) loss of estate, (b) loss of consortium and (c) funeral expenses. In **Janabai vs. ICICI Lambord Insurance Co. Ltd.**, (2022) 10 SCC 512, an accident occurred on 01.06.2007, causing the death of the deceased, who was riding a motorcycle and got struck by a car, the Tribunal awarded the claimants compensation amounting to Rs.8,90,000/-, which was challenged by the Insurance company, and the claim was

dismissed. However, on approaching Hon'ble the Supreme Court, the judgment was set aside and they were granted Rs. 11,63,000/- as enhanced compensation in view of **National Insurance Co. Ltd. vs. Pranay Sethi**, (2017) 16 SCC 680, wherein it had been additionally held that, "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

15. Consequentially, the claimant-appellant Nos.1 and 2 are hereby held entitled to grant of future prospects to the extent of 25%, she being self-employed and also for compensation under the conventional heads i.e. Rs.36,000/- for funeral expenses and loss of estate; Rs.96,000/- (48,000 x 2) for filial consortium to two children and Rs.48,000/- loss of consortium to husband. Since, the deceased was 43 years of age, the multiplier of 14 should be applied and there were no dependents.

16. As a corollary, the total compensation under the head of dependency comes to Rs.2,10,000/- (1000 (monthly income) + 25% (towards future prospectus) 12 x 14 (multiplier), out of which, as it being a case of contributory negligence, the claimant-appellants are entitled to Rs.1,05,000/- (50%) +1,80,000/-(conventional heads). Thus, the enhanced compensation of Rs.2,70,000/-, over and above the amount of Rs.15,000/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum, in view of the judgment in **Dharampal vs. U.P. SRTC**, (2008) 12 SCC 208, from the date of the passing of the award, till its realization, shall be deposited, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment, failing which, it shall accrue an interest as awarded by the Tribunal.

17.

The said amount be kept in FDR, earning the maximum rate of interest till its disbursal to the claimant-appellants.
18.

The Tribunal is directed to make earnest efforts to release the amount to the claimant-appellants at the earliest, in accordance with law.
19.

Modifying the award to the aforesaid extent, the present appeal is disposed of.

15.01.2024
Hemant

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No