

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

FAO-951-1991
Date of decision: 31.01.2024

Neeru and anotherClaimant-Appellants

Versus

Tara Chand and others Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for the appellants.

Mr. Vinod Chaudhari, Advocate
for respondent 3-Insurance Company.

AMAN CHAUDHARY, J.

1. By way of the present appeal, the claimants-appellants has challenged the award dated 27.02.1991 passed by the learned Motor Accident Claims Tribunal, Faridabad (for short ‘the Tribunal’) vide which the claim petition filed on account of death of Bhupinder Kumar Rishi in a motor vehicular accident, was partly accepted and a sum of Rs.50,000/- vide awarded on account of contributory negligence.
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 respondent No.3 has no objection, if the same is decided on the basis of the available record.
3. It has been averred in the grounds of appeal that the Tribunal has erred in holding the driver of the car negligent to the extent of 40 percent for causing the accident, as it was based on conjectures and surmises. From the testimony of PW3, it is well established that the accident had occurred only due to the negligence of the truck driver-respondent No.1. Further, as per the claim petition, the deceased, 7 years old boy at the relevant time, was studying in

Modern Public School, which is a premier Institution of Delhi. He was the only son of the appellants and was a very bright student. However, the Tribunal awarded a lump sum amount of Rs.50,000/-, which is inadequate.

4. On the other hand, learned counsel for respondent No. 3 submits that the Tribunal after appreciating the evidence on record has rightly come to the conclusion to hold it to be a case of contributory negligence compensation. Further, the compensation awarded is also just and reasonable, which does not deserve any further enhancement.

5. Heard and perused.

6. A gainful reference can be made to the findings recorded by the Tribunal while deciding the issue of negligence, which read thus:

“It has been pleaded in para 10 of the petition that the Maruti car came beneath the truck from front side and the rear side of the truck i.e. the front side of the Maruti car had went inside the rear portion of the truck. In my view, such things can only happen when Maruti car itself was also at a very high speed and the driver of the Maruti car could not stop the car seeing that the truck had started reversing because the truck much have started reversing when the car would be atleast 8 to 10 feet away otherwise it was not possible because in other eventuality, the driver of the car could have given a turn to his car and in that situation, whatever may have been the condition but the accident could not have been cause in such a manner i.e. the car would not have gone, beneath the rear portion of the truck. The only inference, which could be drawn from such situation is that the driver of the car was also driving the car at a very fast speed and he did not notice the reversing of the truck or it can be said that he was also negligent in not perceiving that it was dangerous to take the car so near to the truck at such a speed or to driver the car at such a high speed specially when the truck was there and in such circumstances, the negligence of both the drivers of the car and of the truck can be assessed at 40% and 60% i.e. 40% of the car driver and 60% of the truck driver.”

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. It is apparent that the Tribunal meticulously examined the evidence and no glaring defect in the procedure or any patent error has been shown to have been committed in ignorance of law, while arriving at the conclusion aforesaid, which may have resulted in flagrant miscarriage of justice. Thus, no intervention at the hands of this Court is warranted in the finding recorded that there was negligence and rashness relating to the accident between the drivers of the car and truck in the ratio of 40:60.

9. There is no dispute with regard to the death of the Varun, occurred in a motor vehicular accident. The deceased, 7 years old, was the only son of the appellant and studying in a private school. However, the Tribunal has awarded a lump sum amount of Rs.50,000/- to the claimants, which is not appropriate.

10. A gainful reference can be made to the judgment in **Lata Wadhwa and others vs. State of Bihar and others**, (2001) 8 SCC 197, wherein Hon'ble the Supreme with regard to awarding of compensation in case of death of a child in the age groups of 5 to 10 and 10 to 15 years held that such grant of compensation will not necessarily bar the parents to claim prospective loss and it will be valid. Further, in **M.S. Grewal & another vs. Deep Chand Sood & others**, (2001)8 SCC 151, an amount of Rs.5,00,000/- was awarded noticing that the death of 14 students occurred due to drowning belonged to upper middle class and in **Kishan Gopal and another vs. Lala and others**, (2014) 1 SCC 244, a case relating to the death of a child aged 10 years in a road accident on 19.07.1992, a departure was made from Schedule II of MV Act and the notional income of

Rs.30,000/- was accepted applying the analogy that value of rupee has come down drastically since the year 1994, when the above income was fixed notionally as Rs.15000/-. As per the age of parents i.e. 36 years, the loss of dependency was calculated applying the multiplier of 15 accepting the notional income as Rs.30,000/- and accordingly, an amount of Rs.4,50,000/- was assessed and in addition thereto a sum of Rs.50,000/- was awarded under conventional heads.

11. On the aforesaid anvil, this Court finds that for the ends of justice to be adequately met, the amount of compensation awarded to the appellants is required to be enhanced. Thus, the claimant-appellants are held entitled to Rs.5,00,000/- (Rs.30000 (income) x 15 + 50,000 (conventional heads) as compensation. Thus, the enhanced compensation of Rs.2,70,000/- (60% of Rs.4,50,000/-, being contributory negligence) over and above the already awarded i.e. Rs.50,000/-, 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.

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

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

14. Registry is directed to send a copy of the judgment to the concerned Tribunal for the necessary compliance.

31.01.2024
Hemant

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No