

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204

FAO No.1506 of 2008
Date of Decision : 05.01.2024

ICICI lombard General Insurance Co. Ltd.Appellant

VERSUS

Rajbala and OthersRespondents

204-1

FAO No. 4938 of 2008
Date of Decision : 05.01.2024

RajbalaAppellant

VERSUS

General Manager, Haryana Roadways and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Punit Jain, Advocate
for the appellant-Insurance Company in FAO-1506-2008 and
for respondent No.4 in FAO-4938-2008.

Mr. J.P. Dhull, Advocate
for the appellant in FAO-4938-2008 and
for respondent No.1 in FAO-1506-2008.

Mr. Saurabh Girdhar, AAG Haryana
for respondent Nos.2 to 4 in FAO-1506-2008 and
for respondent Nos.1 to 3 in FAO-4938-2008.

ALKA SARIN, J. (Oral)

1. The present appeals have been filed by the Insurance Company as well as the claimant being FAO-1506-2008 and FAO-4938-2008 respectively, challenging the award dated 02.01.2008 passed by the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as the ‘Tribunal’).

2. The brief facts relevant to the present case are that the claimant, who is mother of Manoj Kumar, had filed a claim petition on account of death of Manoj Kumar (hereinafter referred to as the 'deceased') in a motor vehicular accident on 07.07.2006. It was averred in the claim petition that the deceased, along with Vikas and Ajay Kumar on one motorcycle and Naresh Pal and Sanjay Kumar on another motorcycle, went to their relation at Bilaspur and in the evening when they were returning on their respective motorcycles and had just crossed village Badhehri at about 05.30 pm, a bus bearing registration No.HR-58-8847 (hereinafter referred to as the 'offending vehicle') of Haryana Roadways Yamunanagar Depot came from Jagadhari side, which was being driven by Mohinder Singh (arrayed as respondent No.3 and respondent No.4 in both the appeals) in a rash and negligent manner and struck against the motorcycle of the deceased. In the accident, Manoj Kumar (the deceased) and Vikas died at the spot and Ajay Kumar received serious and multiple injuries. Regarding the said accident a criminal case was also registered. Written statement was filed on behalf of respondent Nos.1 and 2 i.e. General Manager, Haryana Roadways Yamunanagar Depot and the State Transport Commissioner/Controller, Haryana wherein it was averred that as per the statement of the driver of the offending vehicle, no accident was caused with the offending vehicle. Rather, the offending vehicle was on its route from Jagadhari to Pammuwala via Dadhaura on that day and at the time of the alleged accident a motorcyclist with two pillion riders was driving his motorcycle in a rash and negligent manner at a high speed and while trying to over take a truck he lost control over the motorcycle and fell down on the right side of the road itself. The distance between the offending vehicle and the motorcycle was very

little and the driver of the offending vehicle tried to avoid the accident and took the offending vehicle to the extreme left hand side of the road towards the *katcha* portion for about 5 feet but the rear tyre of the offending vehicle ran over the motorcyclists. It was further averred that the accident, if any, took place was due to the negligence of the motorcyclist and the truck driver. A separate written statement was filed by the driver of the offending vehicle taking a preliminary objection that the claim petition was not maintainable and denied the factum of the accident.

3. On the basis of pleadings of the parties, the following issues were framed by the Tribunal :

1. Whether the accident resulting into the death of Manoj Kumar son of Dharam Pal took place on 7.7.2006, at about 5.30 p.m., in the area of village Badsui due to rash and negligent driving of bus No.HR-58-8847 by respondent No.1 ? OPP
2. Whether the claimants are entitled to compensation, if so to what amount and from whom ? OPP
3. Whether the respondent No.3 was not holding the valid and effective driving licence at the time of alleged accident ? OPR-4
4. Relief.

4. The Tribunal awarded the following compensation after assessing the income of the deceased as Rs.3000/- pm :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.3,000/-
2	Annual income	[3,000 x 12] = Rs.36,000/-

3	Deduction 1/3 rd	[36,000-12,000] = Rs.24,000/-
4	Multiplier of 15	[24,000x15] = Rs.3,60,000/-
5	Loss of love and affecting	Rs.20,000/-
6	Last rites and transportation charges	Rs.20,000/-
	Total Compensation	Rs.4,00,000/-
	Interest	7.5% per annum

5. Learned counsel appearing on behalf of the Insurance Company would contend that the Tribunal has applied a deduction of 1/3rd which ought to have been 50% inasmuch as the deceased was a bachelor and in any case there is only one claimant in the present case and hence 1/3rd deduction applied by the Tribunal is erroneous. It has further been contended that it is an admitted case that it was a case of triple riding on a motorcycle and that by itself would amount to contributory negligence. In support of his argument he has relied on a decision of this Court in the case of **Zile Singh alias Dile Singh vs. Krishan Lal & Ors. [2014(39) RCR (Civil) 511]**.

6. *Per contra*, learned counsel appearing on behalf of the claimant has contended that the deceased was a graduate and hence he ought to have been treated as a skilled worker and the salary of a skilled worker at the relevant point of time was Rs.3,000/- per month. Learned counsel for the claimant would further contend that no addition was made towards loss of future prospects and even the multiplier has wrongly been applied by the Tribunal as ‘15’ which ought to have been ‘18’ keeping in view the age of the deceased who was 21 years of age. It has further been contended that no amount has been awarded towards loss of estate and the amount granted under the head ‘loss of consortium’ is also on the lower side. In support of his contention he has relied upon judgments of the Hon’ble Supreme Court

in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**, **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

7. I have heard learned counsel for the parties.

8. The argument raised by the learned counsel for the Insurance Company that since there were two pillion riders on the motorcycle and that by itself would amount to contributory negligence, deserves to be rejected in view of the judgment of the Hon'ble Supreme Court in the case of **Mohammed Siddique & Anr. vs. National Insurance Company Limited & Ors. [Civil Appeal No.79 of 2020 decided on 08.01.2020]** which was a case where the victim was one of the two pillion riders on a motorcycle and it was held as under :

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle

drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor

cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

9. In the present case there is no evidence on the record to show that the accident took place due to triple riding. The learned counsel for the insurance company has not been able to point to any evidence which would even remotely suggest that the accident was the result of triple riding. That being so, the argument of the learned counsel for the insurance company deserves to be rejected.

10. The deceased in the present case was admittedly a graduate and in the absence of any income proof he is treated as a skilled worker. The income of a skilled worker at the relevant point of time was Rs.3,000/- per month. The claim petition was filed by only one claimant i.e. mother of the deceased and hence a deduction of 50% ought to have been applied. Further, no amount has been awarded towards loss of future prospects. The claimant would be entitled to addition of 40% towards future prospects. The deceased was 21 years of age and the Tribunal has wrongly applied the multiplier of ‘15’ which ought to have been ‘18’. The claimant would also be entitled to compensation under the conventional heads as well as under the head of loss of consortium as per the law settled in the cases of **Magma General Insurance Company Limited** (*supra*) and **N. Jayasree** (*supra*).

11. In view of the above, the enhanced amount of compensation to which the claimant-appellants are held entitled to is re-calculated as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.3,000/-
2	Annual income	[3,000 x 12] = Rs.36,000/-
3	50% Deduction	[36,000-18,000] = Rs.18,000/-
4	Future prospects @ 40%	[18,000 + 7,200] = Rs.25,200/-
5	Multiplier of 18	[25,200x18] = Rs.4,53,600/-
6	Loss of estate	Rs.18000/-
7	Funeral expenses	Rs.18000/-
8	Loss of Consortium : (i) Parental	Rs.48,000/-
9	Total Compensation	Rs.5,37,600/-

12. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

13. In view of the above, the appeal filed by the Insurance Company is allowed partly whereas the appeal filed by the claimant stands allowed and the impugned award is modified to the extent stated above. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

05.01.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO