



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4741-2008 (O&M)
Date of Decision: December 20, 2024

Saravjit Kaur and others
...Appellants

VERSUS

Shaurab Beg alias Raju and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Jagdish Manchanda and Mr.Devyansh, Advocates
for the appellants.

Mr.Suvir Dewan, Advocate
for respondent No.9-insurance company.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants to assail the finding of contributory negligence to the extent of 50%, fastened upon the deceased and also for seeking enhancement of the compensation awarded by learned Tribunal, on account of death of Kulwant Singh, in a motor vehicular accident, which took place on 30.06.2006.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about there to be contributory negligence, on the part of deceased to the extent of 50%, while driving the ill-fated motorcycle.

While taking earning of deceased Kulwant Singh as Rs.3000/- per month, the compensation was worked upon as Rs.4,00,000/- and after making deduction to the extent of 50%, on account of contributory



negligence, on the part of the deceased, the compensation awarded was Rs.2,00,000/-.

Feeling aggrieved, the appellants-claimants have filed the present appeal.

At this juncture, it is pertinent to mention that the present appeal is of the year 2008. However, unfortunately, fire incident had taken place in the High Court premises in the year 2011 and the record of the present case, which was received from learned Tribunal, was destroyed and the same was never reconstructed. Even, learned counsel for the parties expressed their inability to provide any material, for the purposes of reconstruction of the record. However, they had given consent that they have no objection, if the appeal is decided, on the basis of the material coming forth.

In this backdrop, the essential facts, to be noticed are as follows:-

That, on 30.06.2006, Kulwant Singh was going from Dera, situated in village Kesri, Tehsil Barara, District Ambala, towards village Saha, on his motorcycle. A truck bearing registration No.UP-12E-5176, was going ahead of him. The driver of the said truck, applied the brakes all of a sudden, without giving any prior signal. As a result of application of brakes, by the driver of the truck, the motorcycle of Kulwant Singh rammed into the truck, from behind. Consequently, Kulwant Singh suffered injuries and died instantaneously. One Mandeep Singh, who was following the truck and the motorcycle of Kulwant Singh, reached the spot and FIR No.100 dated 30.06.2006 under Section 279 and 304-A IPC, Police Station Barara, was got registered. Post-mortem on the body of deceased Kulwant Singh was



conducted at Civil Hospital, Ambala Cantt.

Further, it is evident from the Award that the deceased was asserted to be 31 years old and was an agriculturist and also indulged in dairy farming. He was asserted to be earning Rs.20000/- per month. On the basis of the aforesaid facts, the claimants had sought compensation, on account of death of Kulwant Singh.

However, respondent No.1-driver of the offending truck had denied the accident in question and also controverted all the other averments. The owner of the truck had died and his LRs were brought on record. However, they adopted the written statement filed by respondent No.1.

Likewise, the insurance company also denied about the factum of accident and took various pleas about driving of the offending truck, to be not holding valid and effective driving licence, on the day accident and also there to be violation of terms and conditions of the insurance policy.

Respondents No.10 and 11(Respondents No.4 and 5 before Tribunal) are the parents of deceased Kulwant Singh and they had also prayed for compensation, as they were dependent upon the deceased.

After framing of the issues, the evidence was adduced. On appraisal of the same, vide impugned Award, learned Tribunal had concluded about the motorcycle to be coming from behind and having struck into the truck, when allegedly, the driver of the truck applied brakes, all of a sudden and thereupon, concluded that the deceased, while being occupant of the ill-fated motorcycle, had not maintained sufficient distance, so as to, able to stop the same in contingency and therefore, it was concluded that Shaurab Beg @ Raju, could not be held solely responsible for the accident and



therefore, Kulwant Singh was also held to be to have contributed towards taking place of the accident to the extent of 50%.

However, from the assertion and the fact, which is not disputed by learned counsel, during the course of arguments, it stands established that ill-fate motorcycle came from behind the truck and struck into the same.

Learned counsel for insurance has relied upon Regulation No. 23 of Rules of the Road Regulations of 1989 and submits that sufficient distance was required to have been maintained by Kulwant Singh, while driving motorcycle, but however, he had not maintained the said distance and therefore, it is he, who is to be held solely responsible for taking place of the accident. Rather, learned counsel for the appellants-claimants submits that in fact, it was the driver of the truck, who had applied the brakes, all of a sudden. In this regard, he makes reference to Regulation No.24 of the Regulations of 1989, which reads, as herein given:-

“24. Abrupt brake – No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons.”

No doubt, as per the aforesaid Regulations, sufficient distance ought to be maintained by the vehicle, moving behind another vehicle and at the same time, it is also evident that no driver of the vehicle, shall apply the brakes abruptly, unless it is necessary to do so, for safety reasons.

However, the measures of ‘safe distance’ has so many factors/ingredients, which ought to be taken into consideration and they ought to be proved for showing the lack of sufficient distance. In the case in hand, no such evidence, is there due to loss of record. In fact, learned Tribunal had concluded about sufficient distance, not having maintained by



Kulwant Singh and in these circumstances, when no material for the reconstruction of the record has come forth, it shall not be appropriate to disturb this finding of the contributory negligence, on the part of the deceased, more particularly, considering the fact of his following the truck from behind.

So far as, vocation of the deceased is concerned, it is categorical claim of the appellants-claimants that deceased was indulging in agricultural pursuit and involved in the business of dairy farming. Considering the same, the earnings of the deceased taken by learned Tribunal to be Rs.3000/-, is just and reasonable, more particularly, while considering the minimum wages, at the relevant time.

To the said amount, considering the age of the deceased to be 31 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% ought to be made, on the count of 'future prospects'. Thus, the income of the deceased is worked upon as $\text{Rs.}3000 + 1200(40\%) = \text{Rs.}4200/-$.

However, deduction on the count of 'personal expenses' made by learned Tribunal is not appropriate. It is ought to kept in mind that besides the claimants, the parents of the deceased are also impleaded as respondents and they have also asserted themselves to be dependent upon the deceased. Considering the same, the number of dependents comes to be five and considering the number of dependents, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the deduction on the count of 'personal expenses', ought to be made to the extent of 1/4th, instead of 1/3rd, as done by learned Tribunal. Thus, making



the aforesaid deduction, the loss of dependency comes to be Rs.4200-1050=Rs.3150/-, annual whereof, comes to be **Rs.37,800/-**.

Considering the age of the deceased, as per *Sarla Verma's case*, appropriate and suitable multiplier, to be applied is '16' as applied by learned Tribunal and while applying the same, the loss of dependency, works out to be Rs.37800x16=**Rs.6,04,800/-**. However, since the deceased is held to have contributed in taking place to the accident to the extent of 50%, the compensation comes to be Rs.604800-50%=**Rs.3,02,400/-**.

Besides the aforesaid, under the conventional heads, as per *Pranay Sethi's case (supra)*, the compensation ought to be paid, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses'. As per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required.

As per *Pranay Sethi's case (supra)*, the compensation, ought to be paid to the dependents on the count of 'loss of consortium', was to the extent of Rs.40,000/-. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the aforesaid count, works out to be, Rs.48,400/- to each of the dependents i.e. Rs.48400x6=**Rs.2,90,400/-** and on the similar pattern, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to claimants, on account of death of Kulwant Singh, is re-computed, as herein given:-



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Loss of dependency	:	Rs.3,02,400/-
Loss of consortium	:	Rs.2,42,000/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.5,80,700/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,80,700-2,00,000=Rs.3,80,700/-**. On the enhanced amount of the compensation i.e. **Rs.3,80,700/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

However, out of the enhanced amount, as now awarded, appellant-claimant No.1-Sarvjit Kaur is held entitled to Rs.1,30,700/-, appellants-claimants No.2 and 3 are held entitled to Rs.75,000/- each, whereas, respondents No.10 and 11 (parents of the deceased), are held entitled to Rs.50,000/- each. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid terms, the present appeal stands allowed.

December 20, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No