



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2912-2010 (O&M)

Date of Decision: August 09, 2024

Jasbir Kaur and others

...Appellants

VERSUS

Kuldip Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Gaurav Kalsi, Advocate for
Mr.H.S.Baath, Advocate
for the appellants.

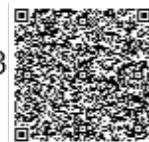
Mr.Munish Goel, Advocate
for respondent No.4.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, on account of death of Surjit Singh, in a motor vehicular accident, which took place on 14.05.2002.

The facts germane, to be noticed, are as follows:-

That, on 14.05.2002, Jaimal Singh, Surjit Singh along with Balwant Singh, were coming on motorcycle bearing registration No.PB-63A-2922, after changing the electric pole of Gram Panchayat in village Mari Megha. At that time, Paramjit Singh and Heera Singh were also coming from that village, after discharging their duties on scooter. They were followed by

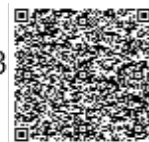
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Paramjit Singh and at that time, motorcycle was driven by Surjit Singh, whereas, Jaimal Singh and Balwant Singh were the pillion riders of the same. When they reached near Octroi Post Bhikhiwind, at about 3.30 p.m., respondent No.-1 Kuldeep Singh, while driving bus bearing registration No.PB-02F-9462, came from opposite side. This bus was driven in a rash and negligent manner and Kuldeep Singh struck the bus into the motorcycle of Surjit Singh, as a result whereof, all the occupants of the motorcycle fell down and received multiple injuries. Jaimal Singh and Surjit Singh succumbed to their injuries instantaneously. Paramjit Singh arranged for a vehicle and got admitted Balwant Singh in Vijay Hospital, Bhikhiwind. FIR No.79 of 2002 was registered in police station Bhikhiwind, under Sections 279, 337, 338 and 304-A IPC.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place, on account of rash and negligent driving of bus bearing registration No.PB-02F-9462, driven by respondent No.1-Kuldeep Singh and the same resulted into death of one Jaimal Singh as well as Surjit Singh.

So far as, the factum of the accident and manner of taking place of the same, as well as the liability, fastened upon the respondents is concerned, suffice to consider that no appeal, as such, has been filed by the respondents, to dispute the same. Hence, there is no necessity to further dwell upon these aspects.

Paramjit Singh, one of the employee of PSEB, who had witnessed the accident and author of the FIR, had stepped into witness box as AW-3 and deposed about death of Surjit Singh, in a motor vehicular



accident. Even, Jasbir Kaur, wife of deceased Surjit Singh, stepped into witness box as AW-4 and she deposed about the age as well as his employment. The salary certificate of the deceased has been proved as Mark 'A', which reveals that the salary of the deceased was Rs.6261/- per month and carry home salary was Rs.5623/-.

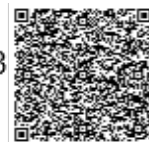
Considering the age of the deceased to be 38 years and also considering the carry home salary of Rs.5623/- per month, multiplier of '13' was applied. After deducting 1/3rd, on the count of 'personal expenses', the monthly loss of dependency was taken as Rs.3900/- and the compensation was worked upon as $\text{Rs.}3900 \times 12 \times 13 = \text{Rs.}6,08,400/-$.

Since, there were three occupants of the ill-fated motorcycle, at the relevant time, contributory negligence was concluded to be there, to the extent of 20% and therefore, on this count, the compensation to the extent of 20% was deducted and the appellants-claimants were awarded compensation to the extent of Rs.5,86,720/-. The liability was held to be joint and several of the respondents.

However, the computation of compensation aforesaid, do call for re-determination, as per settled prevalent law.

On the computation of compensation, which is payable, we are guided by the judgment of the Constitution Bench of Hon'ble Supreme Court passed in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*.

From the evidence adduced, it stands established that Surjit Singh was serving as T.MATE in Punjab State Electricity Board and as per salary certificate Mark 'A', he was drawing salary of Rs.6261/- per month.



As per Pranay Sethi's case, the established income minus tax component, is to be taken into consideration, for making assessment of the compensation, to be awarded. Thus, it is the total gross-income of Rs.6261/- per month, which ought to be taken into consideration, the annual whereof, comes to be Rs.75,132/-.

As per income tax slab existing at the relevant time, the tax on the initial income of Rs.50,000/- was 'nil'. The tax for the next amount from Rs.50,000/- to Rs.60,000/-, was 10% i.e. Rs.1000/-. For the next Rs.60,000/- to Rs.1,50,000/-, the tax payable was 20%. In the present case, the taxable amount was Rs.15132/- (Rs.75,132-Rs.60,000), the tax payable whereof, fall in the bracket of 20%, which comes to be Rs.3026. Thus, the total tax payable comes to be Rs.4026/-. After deduction of this amount, the residue annual earnings of the deceased comes to be Rs.75132-4026=Rs.71,106/-.

Considering the age of the deceased to be 38 years, as per ***Pranay Sethi's case (supra)***, addition of 50%, ought to be made, on the count of 'future prospects'. Thus, the annual income of the deceased is worked upon as Rs.71106+35553(50%)=Rs.1,06,659/-.

Learned Tribunal had erroneously deducted 1/3rd, on the count of 'personal expenses'. However, it is not to be done so. The claimants are five in number. It is pertinent to mention that besides the widow and mother, there are three minor children of the deceased. Considering the number of dependents, the appropriate deduction, ought to be 1/4th, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***. Thus, after deducting the same, the loss of dependency is



worked upon as Rs.106659-26664(1/4th)=**Rs.79,995/-**.

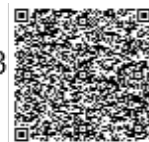
Considering the age of the deceased, as per *Sarla Verma’s case (supra)*, the appropriate and suitable multiplier, to be applied is ‘15’ instead of ‘13’, as applied by learned Tribunal, and thus, by applying the same, the loss of dependency, works out to be Rs.79995x15=**Rs.11,99,925/-**.

Besides the aforesaid, as per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', each of the appellants-claimants are entitled to ‘parental’, ‘spousal’ or ‘filial’ consortium, as required. As held in *Pranay Sethi’s case (supra)*, the compensation payable, at present, on the count of ‘loss of consortium is to the extent of Rs.48,400/- i.e. Rs.48,400x5=Rs.2,42,000/-'. Likewise, 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 appellants-claimants, on account of death of Surjit Singh, is re-computed, as herein given:-

Loss of dependency	:	Rs.11,99,925 /-
Loss of consortium	:	Rs.2,42,000/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.14,78,725/-

Further, it is pertinent to mention that plea of contributory negligence was also raised by learned counsel for the insurance company. Thereupon, certain observations were made, on the aspect of contributory negligence by learned Tribunal. It is relevant to make reference to paragraph No.17 of the Award, which for the convenience of discussion, is



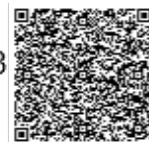
reproduced, as herein given:-

17. To some extent I agree with the contention of the learned counsel for the respondent that there was contributory negligence of the deceased on account of triple riding. However there is no definite evidence on record to show that at the time of occurrence motor cycle on which the deceased were going, in fact tumbled or got out of control resulting into collusion between the motor cycle and Bus PB02-F-9462 driven by respondent Kuldip singh. There is inherent risk in the triple riding of motor cycle leading to the presumption of contributory negligence in such a case to the extent of 20%. Amount of compensation is liable to be reduced accordingly. Thus, claimants Darshan Kaur etc in claim petition (RBT) No.5 of 2009 are awarded compensation of Rs.4,35,600/- and Jasbir Kaur etc. of claimants of Claim partition (RBT) No 6 are awarded compensation of Rs. 5,86,720/-. The respondents being owner, driver and insurer of the offending vehicle are held liable to pay the amount of compensation jointly and severally. Accordingly both these issues are decided in favour of the claimants.

However, the reasoning so given by learned Tribunal is flawed.

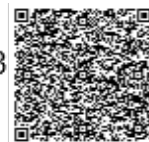
At the very outset, it is pertinent to mention that undoubtedly, as per version of the claimants, Surjit Singh was driving the ill-fated motorcycle and there were two other occupants of the motorcycle, namely Jaimal Singh, who had also died in the accident in question and third one was Balwant Singh. The fact that deceased was riding the motorcycle along with two other occupants, may not, by itself, without anything more, make him guilty of contributory negligence.

In this regard, firstly, it is pertinent to mention that the driver and owner, had filed a separate reply to the claim petition and therein, they had denied about the accident and had taken the plea of false implication. Considering the same, also it is pertinent to mention that Kuldeep Singh, driver of the offending vehicle, has also stepped into witness box as RW-1 and he had tendered into evidence, his affidavit Ex.R1. Therein, he had



categorically pleaded that on 14.05.2002, he never caused any alleged accident and he has been falsely implicated in the present case. He also further stated in the affidavit that no accident ever took place of his bus with any motorcycle. He had, neither in the pleading nor in evidence, taken the plea of contributory negligence, on the part of driver of the motorcycle. Such being the state of affairs, simply on the score of there being three occupants of the ill-fated motorcycle, do not make any one of them, to be guilty of contributory negligence. At the most, it would make them 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-wheeler, not to carry more than one person on the motorcycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was driving a motorcycle, along with two pillion riders, 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.** Many a times, it happens 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 result in a grievous injury or even death, due to the violation of



the law by the victim. In such cases, 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 occurred, as a result of three persons riding on a motorcycle. It is also not the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. In these circumstances, when there is denial of accident and involvement of the offending bus, by its driver and owner, in absence of any evidence, to show 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 20% towards contributory negligence, is clearly unjustified and the same, as such, is hereby set aside.

Thus, the enhanced compensation as now worked upon, after the deduction of compensation awarded by the Tribunal comes to be **Rs.14,78,725-5,86,720=Rs.8,91,505/-**. On the enhanced amount of the compensation i.e. **Rs.8,91,505/-**, 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.

The compensation amount already awarded shall be apportioned as ordered by learned Tribunal. However, out of the enhanced amount, as now worked upon, appellants-claimants No.2 to 5, are held entitled to compensation to the extent of Rs.1,00,000/- each and appellant-claimant No.1 is held entitled to residue amount of **Rs.4,91,505/-**.

Accordingly, the impugned Award dated 04.01.2007 stands



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modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the above observations, the present appeal stands allowed.

August 09, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No