

655

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-3406-2012 (O&M)
Reserved on : 01.02.2024
Date of decision : 26.02.2024**

Shrija and Others

... Appellant(s)

Versus

Anil Kumar and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellants.

Mr. R.C. Gupta, Advocate for respondent No.3.

ALKA SARIN, J.

1. The present appeal has been preferred by the claimant-appellants challenging the award dated 24.02.2012 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') on two accounts - firstly on the count of holding it to be a case of composite negligence and awarding only 50% of the compensation as the driver, owner and the insurer of the Maruti car were not impleaded and hence only 50% of the amount awarded was directed to be paid to the claimant-appellants; and secondly on the ground of quantum of compensation.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for

the sake of brevity.

3. Learned counsel for the claimant-appellants has contended that the deceased in the present case was admittedly a passenger in the Maruti car and was in no manner responsible for the accident. The learned counsel has further contended that in case of composite negligence a person who has suffered and has not contributed to the accident is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as the liability of joint tortfeasors is joint and several. It is further the contention of the learned counsel that the owner, driver and insurer of one of the vehicle can be sued and it was not necessary to sue the owner, driver and insurer of both the vehicles. In support of his contentions the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Khenyei Vs. New India Assurance Company Limited & Ors. [(2015) 9 SCC 273]**. Qua quantum of compensation the learned counsel for the claimant-appellants has contended that admittedly the income of the deceased has rightly been assessed by the Tribunal as Rs.16,010/- per month and the deduction has also correctly been applied as $1/3^{\text{rd}}$, however, no addition has been made towards future prospects which ought to have been 40%. It is further the contention of the learned counsel that multiplier of '17' has wrongly been applied by the Tribunal, whereas it ought to have been '18' keeping in view the age of the deceased being 24 years at the time of the accident. It is further the contention of the learned counsel that no amount has been awarded under the head 'loss of consortium' and further that the amount awarded under the conventional heads is also on the lower side. In support of his contentions the learned counsel for the claimant-appellants

has relied upon the 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]**.

4. *Per contra*, the learned counsel for respondent No.3-Insurance Company has vehemently argued that the amount of compensation has rightly been reduced to 50% as the driver, owner and the insurer of the Maruti car were not impleaded as party. It is further the contention of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

5. I have heard the learned counsel for the parties.

6. The Tribunal in the present case has awarded 50% of the compensation determined on account of the fact that the driver, owner and the insurer of the Maruti car involved in the accident were not impleaded as a party. Hon'ble Supreme Court in the case **Khenyei** (supra) has held as under :

“22. What emerges from the aforesaid discussion is as follows :

22.1. In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the

joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the

other joint tortfeasor in independent proceedings after passing of the decree or award.”

7. It has clearly been held by the Hon’ble Supreme Court that the claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as the liability of joint tortfeasors is joint and several. In the present case the Tribunal has held that it was a case of composite negligence and since only one of the tortfeasors was impleaded as a party alongwith the insurer, the claimant-appellants would be entitled to claim only 50% of the compensation awarded. The said finding cannot be sustained in view of the law laid down by the Hon’ble Supreme Court. The same is accordingly set aside, the claimants would be entitled to the entire compensation as assessed.

8. Qua the quantum of compensation, in the present case the Tribunal has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.16,010/-
2	Annual Income	[Rs.16,010x12] = Rs.1,92,120/-
3	Deduction 1/3 rd	[Rs.1,92,120-64,040] = Rs.1,28,080/-
5	Multiplier - 17	[Rs.1,28,080x17] = Rs.21,77,360/-
6	Loss of estate and Funeral expenses	Rs.9,500/-
7	Total Compensation	Rs.21,86,860/- (rounded off to Rs.21,87,000/-)
	Interest	7.5%

9. In the present case the Tribunal has though correctly determined the income of the deceased as Rs.16,010/- per month and also correctly applied deduction to the extent of 1/3rd, however, a multiplier of

‘17’ has wrongly been applied and hence, as per the law laid down by the Hon’ble Supreme Court in the case of **Sarla Verma** (supra), multiplier of ‘18’ would be applicable keeping in view the age of the deceased being 24 years at the time of the accident. Further, no addition has been made towards future prospects and hence as per the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is made towards future prospects. Further, the amount awarded under the conventional heads is on the lower side and no amount has been awarded under the head ‘loss of consortium’ and hence as per the law laid down by the Hon’ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimant-appellants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the claimant-appellants (wife, son and parents of the deceased) would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

10. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.16,010/-
2	Annual Income	[Rs.16,010x12] = Rs.1,92,120/-
3	Deduction 1/3 rd	[Rs.1,92,120-64,040] = Rs.1,28,080/-
4	Future Prospects - 40%	[Rs.1,28,080+51,232] = Rs.1,79,312/-
5	Multiplier - 18	[Rs.1,79,312x18] = Rs.32,27,616/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium	
	(i) Parental	[Rs.48,000/-x1] = Rs.48,000/-

	(ii) Filial (iii) Spousal	[Rs.48,000/-x2] = Rs.96,000/- Rs.48,000/- (Total Rs.1,92,000/-)
	Total Compensation	Rs.34,55,616/-

11. 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. The claimant-appellant No.3 being the father of the deceased was not held entitled to the compensation. He would, however, be entitled to the filial consortium awarded. The remaining amount of compensation shall be apportioned between the claimant-appellants as directed by the Tribunal.

12. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

26.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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