

2024.PHHC.140841



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

102-C

**FAO-932-2011 (O&M)
Date of Decision : 25.10.2024**

RAMKALI JAIN AND ORS

.... Appellants

VERSUS

MAKHAN SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajbir Singh, Advocate and
Mr. Sanjeev Goyal, Advocate for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.4-Insurance Company.

None for respondents No.1, 2 & 3 despite service.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants challenging the award dated 15.06.2010 passed by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal') qua the amount compensation as also the findings of the Tribunal whereby the claimant-appellants were held entitled to recover 50% amount from respondent No.4-Insurance Company holding it to be a case of composite negligence.

2. Brief facts relevant to the present *lis* are that on the intervening night of 04/05.02.2006, deceased i.e. Arun Jain along with Raj Kumar Chopra son of Likhmi Chand Chopra, Mohinder Bucha son of Poonam Chand, Rajinder Khatar son of Aska Ram and Rajesh Barmecha son of Chandmal Barmecha was going from Dhuri to Bhiwani in Santro Car bearing

Registration No.DL-3-CS-7980 after the closing ceremony of Jain Function at Dhuri. The car was being driven by Rajinder Khatar at a high speed and in a zig zag manner and at about 12.30 am when they reached near Grain Market, Dirba the Santro Car struck against a Truck/Trolla bearing Registration No.HR-37-6209 which was coming from Patran side and was being driven in a negligent manner. Due to the injuries received, all the occupants were admitted to Civil Hospital, Sangrur. Rajesh Barmacha and Rajinder Khater were declared brought dead by the Doctors and Arun Jain, Mohinder Bucha and Raj Kumar Chopra were admitted and after some time of admission, Mohinder Bucha and Arun Jain succumbed to their injuries and Raj Kumar Chopra was referred to DMC, Ludhiana for further treatment. However, he too succumbed to his injuries. The driver and owner of the Truck/Trolla bearing Registration No.HR-37-6209 as well as the owner of the Santro Car bearing Registration No.DL-3-CS-7980 and the insurer of the Santro Car were impleaded as parties. The Tribunal held that it was a case of composite negligence as the vehicles collided head-on and the negligence of the driver of the Santro Car was held to be fixed to the extent of 50% and that of the Truck/Trolla to the extent of 50%. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹6,448
2.	Annual income	[₹6,448 x 12] = ₹77,376
3.	Deduction (50%)	[₹77,376 - ₹38,688] = ₹38,688
4.	Multiplier of ‘13’	[₹38,688 x 13] = ₹5,02,944
5.	Funeral expenses	₹5,000
6.	Loss of estate	₹5,000
7.	Total Compensation	₹5,12,944
	Interest	@7.5% per annum

Further, claimant-appellant No.1, namely, Ramkali Jain was held entitled to the compensation to the tune of ₹3,07,768; claimant-appellant No.2 namely, Tarun Jain was held entitled to ₹1,02,588 and claimant-appellant No.3 namely, Ashok Jain was held entitled to ₹1,02,588. Still further, 50% amount of the compensation was directed to be recovered from the owner and driver of the Truck/Trolla and the remaining 50% from the insurer of Santro Car i.e. respondent No.4-Insurance Company herein. Aggrieved by the same, the present appeal has been preferred by the claimant-appellants.

3. Learned counsel for the claimant-appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Khenyei vs. New India Assurance Co. Ltd. & Ors. [2015 (2) RCR (Civil) 1019]** to contend that where it is a case of composite negligence, the claimants are at liberty to recover the entire compensation from any one of the joint tort-feasors. Learned counsel for the claimant-appellants would contend that he does not dispute the income of the deceased, namely, Arun Jain i.e. ₹6,448 per month as assessed by the Tribunal. It is further the contention that though the deduction of 50% has rightly been applied, however, no addition has been made towards future prospectus as per the judgment in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**. Even the multiplier of '13' has wrongly been applied which ought to have been '17' as per the law laid down in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**. It is still further the contention that the amount awarded under the conventional heads and under the head 'loss of consortium' are also not in accordance with the law

laid down in the cases of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**; **N. Jayasree & Ors. vs. Chola mandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]** and **Pranay Sethi** (supra).

4. *Per contra*, the learned counsel for respondent No.4-Insurance Company is not in a position to dispute the proposition of law as laid down in the case of **Khenyei** (supra). Learned counsel has, however, vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

5. Heard.

6. In the present case, the learned counsel for the respondent No.4-Insurance Company has no quarrel with the proposition of law as laid down by the Hon'ble Supreme Court in the case of **Khenyei** (supra) wherein it has been held as under :

“14. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan & Ors. [2008 (3) SCC 748] has held that in

case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. The relevant portion is extracted hereunder :

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong- doer separately. On the other hand where a person

suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was

50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

In view of the law laid down, there can be no dispute that the amount can be recovered from either of the joint tort-feasors and hence the claimant-appellants would be at liberty to recover the same from either of the tort-feasors as desired by them.

7. In the present case the income of the deceased, as assessed by the Tribunal, is not disputed and hence the same is maintained i.e. ₹6,448 per month. Though the deduction of 50% has rightly been applied, however, 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. A multiplier of ‘13’ 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 ‘17’ would be applicable keeping in view the age of the deceased being 27 years at the time of the accident. The amount awarded under the conventional heads and under the head ‘loss of consortium’ is not 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) and hence the claimant-appellants would be entitled to ₹18,000 (₹15,000 + 20% increase)

towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses and the claimant-appellants (mother and brothers of the deceased) would also be entitled to ₹48,000 each (₹40,000 + 20% increase) towards loss of consortium.

8. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹6,448
2.	Annual income	[₹6,448 x 12] = ₹77,376
3.	Deduction 50%	[₹77,376 - ₹38,688] = ₹38,688
4.	Future prospectus 40%	[₹38,688 + ₹15,476] = ₹54,164
5.	Multiplier of ‘17’	[₹54,164 x 17] = ₹9,20,788
6.	Funeral expenses	₹18,000
7.	Loss of estate	₹18,000
8.	Loss of Consortium : (i) Filial	₹1,44,000 (₹48,000 x 3) (Total ₹1,44,000/-)
	Total Compensation	₹11,00,788

9. 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 amount shall be apportioned between the claimants as directed by the Tribunal.

10. 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.

25.10.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No