



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

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**FAO-972-2011 (O&M)
Date of Decision : 25.10.2024**

MANJU CHOPRA 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 of 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 the deceased i.e. Raj Kumar Chopra son of Likhmi Chand Chopra along with Arun Jain son of Ram Avtar Jain, 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 a 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	₹3,000
2.	Annual income	[₹3,000 x 12] = ₹36,000
3.	Deduction 1/3 rd _	[₹36,000 – ₹12,000] = ₹24,000
4.	Multiplier of ‘14’	[₹24,000 x 14] = ₹3,36,000
5.	Funeral expenses	₹5,000
6.	Loss of estate	₹5,000
7.	Medical expenses	₹1,46,016
8.	Loss of consortium	₹10,000
9.	Total Compensation	₹5,02,016
	Interest	@7.5% per annum

Further, claimant-appellant No.1, namely, Manju Chopra was held entitled to the compensation to the tune of ₹1,57,605; claimant-appellant No.2, namely, Kirti Jain was held entitled to ₹2,95,209 and claimant-appellant No.3, namely, Bhanwari Devi was held entitled to ₹49,202. 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. The learned counsel would further contend that though the deduction to the extent of 1/3rd as well as multiplier of '14' was correctly applied by the Tribunal, however, income of the deceased, namely, Raj Kumar Chopra has wrongly been assessed as ₹3,000 per month. The learned counsel has referred to the statement of PW-3, namely, Harsh Ranka, Clerk-cum-Receptionist, Jain Vishaw Bharti, Ladnun to contend that the said witness had brought the salary record of the deceased as per which the deceased was drawing a salary of ₹6,200 per month. The salary sheets for the period April 2005 to January 2006 were produced on the record as Ex.P-13/A to Ex.P-13/M. Further, Rahul Kumar Jindal, who was Organizing Secretary of the Jain Swetamber 13 Panth Maha Sabha, Punjab, had stepped into the witness box as PW-4 to prove the

salary of the deceased as ₹5,000 per month. Receipts (Ex.P-17 to Ex.P-26) were produced on the record. The learned counsel would further contend that the gross salary from both the institutions was ₹11,200 per month which stood duly proved. The learned counsel has further contended that no addition has been made towards future prospects which should have been 25% and that the amount awarded under the conventional heads as well as under the head loss of consortium is on the lower side. Learned counsel would further contend that an amount of ₹1,46,016 was incurred by the claimant-appellants on account of medical expenses. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **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.4-Insurance Company is not in a position to dispute the proposition of law as laid down in the case of **Khenyei** (supra). However, qua the income of the deceased the learned counsel has vehemently contended that there was more than 50% increase in the salary from September to October. It is further the contention of the learned counsel that the deceased, who is stated to have been earning ₹11,200 per month cumulatively from both the organizations, was admittedly not filing his income tax returns and no account statement of the deceased was produced. It is further the contention that the amounts which are stated to have

been paid in cash could not have been paid in cash and that too without deduction of TDS. The learned counsel would further contend that the qualification of the deceased was not proved on the record. It is further the contention of the learned counsel that the deceased could possibly not have been working in two different organizations at the same time.

5. Heard.

6. In the present case 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. Qua the income of the deceased, the learned counsel for the claimant-appellants has relied upon the statement of PW-3, namely, Harsh Ranka, Clerk-cum-Receptionist Jain, Vishaw Bharti, Ladnun who had brought the record from Jain Vishaw Bharti, Ladnun showing the salary being paid to the deceased. A perusal of the statement and the cross-examination of PW-3 reveals that no suggestion was put to the said witness that the deceased who is stated to be working as an accountant could not work in two organizations simultaneously. In view thereof, the argument of the learned counsel for respondent No.4-Insurance Company that the deceased could not have worked in two organizations simultaneously is rejected. The argument of the learned counsel for respondent No.4-Insurance Company regarding the exponential increase in the salary and hence the salary register could not have been relied upon, also deserves to be rejected. Qua the salary being received by the deceased from Jain Vishaw Bharti, Ladnun, Ex.P-13/A to Ex.P-13/M were produced on the record. A perusal of the same reveals that the said are extracts from a register and the name of the deceased figures at Sr. No.1. It is hard to believe that the same could be a forged document inasmuch as neither there is any overwriting nor has the entry been made in between or at the end,

rather the name of the deceased is reflected at Sr. No.1, hence, there is no reason to doubt either the statement of PW-3 or the extracts from the register. PW-4, namely, Rahul Kumar Jindal, Organizing Secretary of the Jain Swetamber 13 Panth Maha Sabha, Punjab had stepped into the witness box and placed on the record Ex.P-17 to Ex.P-26 which were the receipts showing the payment to the deceased. No evidence has been brought on the record by the respondents to show that the receipts were forged and fabricated. Once the receipts and the extracts from the register were produced by the claimant-appellants, the onus shifted on the respondents to show that the said documents could not have been relied upon being forged and fabricated. In the absence of any such evidence having been led, there is no reason to disbelieve the said documents. In view thereof, the salary of the deceased is assessed as ₹11,200 per month. 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), 25% addition is made towards future prospects. The deduction of 1/3rd as well as the multiplier of '14' have rightly been applied. 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 (wife, daughter and mother of the deceased) would also be entitled to ₹48,000 each (₹40,000 +

20% increase) towards loss of consortium. There is no dispute so far as the medical expenses incurred by the claimant-appellants are concerned and so awarded by the Tribunal. Accordingly, the same are maintained i.e. ₹1,46,016.

8. Learned counsel for the parties are *ad idem* that the amount towards income tax would have to be deducted. Accordingly, an amount of ₹4,000 is deducted towards income tax.

9. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹11,200
2.	Annual income	[₹11,200 x 12] = ₹1,34,400
3.	Less income tax	[₹1,34,400 - ₹4,000] = ₹1,30,400
4.	Deduction 1/3 rd	[₹1,30,400 – ₹43,467] = ₹86,933
5.	Future prospects @ 25%	[₹86,933 + ₹21,733] = ₹1,08,666
6.	Multiplier ‘14’	[₹1,08,666 x 14] = 15,21,324
7.	Loss of estate	[₹15,000 + 20% increase] = ₹18,000
8.	Funeral expenses	[₹15,000 + 20% increase] = ₹18,000
9.	Loss of Consortium : (i) Parental (ii) Filial (iii) Spousal’s	₹48,000 ₹48,000 ₹48,000 [Total ₹1,44,000]
10.	Medical expenses	₹1,46,016
	Total Compensation	₹ 18,47,340

10. 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.

11. 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