

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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FAO-1488-2014 (O&M)

Date of Decision : 03.04.2024

VERSHA DEVI & ANR

.... Appellants

VERSUS

SHERU KHAN & ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Atul Yadav, Advocate for the appellants.

Service of respondents No.1 and 2 exempted
vide order dated 15.01.2016.

Mr. Diwan S. Adlakha, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants challenging the award dated 23.05.2013 passed by the Motor Accident Claims Tribunal, Gurgaon on two counts. Firstly, on the ground that it has wrongly been held to be a case of contributory negligence and secondly, on the quantum of compensation which has been awarded for the death of a 4-year old child.

2. The brief facts relevant to the present case are that on 25.02.2012 Baby Tulsi (since deceased) along with her mother, namely, Smt. Versha Devi and Manoj Singh (brother of Smt. Versha Devi) and other relatives were travelling in a Maruti Car bearing registration No.DL-2CL-2038. They started their journey from Village Jakhora for Bullandshehar (UP). The car was being driven by Sanjay son of Ajab Singh at a moderate speed. It was around 10:00 am when they reached near Shekhupur Gathwa

in the area of Police Station Khanpur (Bullandshehar) when a bus bearing registration No.UP-15F-8464, being driven by the driver at a very high speed and in a rash and negligent manner, came from the side of Bullandshehar and hit the Maruti Car as a result of which all the occupants of the Maruti Car sustained serious multiple injuries. Baby Tulsi was shifted to Ajay Hospital, Bhopal Vihar and the other injured were shifted to a Hospital at Bullandhsehar by the villagers. On the statement of Manoj Singh (maternal uncle of the deceased) a case bearing FIR No.24 dated 25.02.2012 under Sections 279, 337, 338, 427 and 304-A Indian Penal Code, 1860 was registered at Police Station Khanpur, District Bullandshehar (UP). The child succumbed to her injuries after remaining hospitalized from 25.02.2012 to 28.02.2012. Respondents No.1 and 2 i.e. the driver and the owner of the offending vehicle admitted the factum of the accident. However, they asserted that the accident had occurred due to the negligence of the driver of the Maruti Car. It was further averred that respondent No.1 was holding a valid driving licence and the offending vehicle was insured with respondent No.3. Respondent No.3-Insurance Company filed a separate written statement taking a stand that the conditions of the policy had been violated and hence there was no liability of respondent No.3-Insurance Company.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the accident in question was caused by respondent No.1 while driving vehicle bearing

registration No.UP-15F-8464 in a rash or negligent manner, resulting into death of Tulsi, as alleged ?
OPP

2. If issue No.1 is proved, whether the claimants are entitled to any compensation and if so, to what extent and from whom ? OPP
3. Whether respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy ? OPR-3
4. Relief.

4. The Tribunal, holding that it was a case of a head-on collision, held it to be a case of contributory negligence. The Tribunal had assessed a lump sum compensation to the tune of Rs.2,40,000/-; Rs.37,400/- towards medical expenses and Rs.10,000/- for funeral expenses (Total Rs.2,87,400/-) and since it was held to be a case of contributory negligence, it was held that Rs.1,43,700/- is to be paid as compensation to the claimant-appellants and recovery rights were also given to respondent No.3-Insurance Company.

5. Learned counsel for the claimant-appellants would contend that the child was only a passenger in the Maruti Car and hence could not have been held to be in any manner contributed to the accident. In support of his argument, learned counsel for the claimant-appellants has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Mohammed**

Siddique & Anr. vs. National Insurance Company Limited & Ors. [AIR 2020 SC 520]. It is further contended by the learned counsel for the claimant-appellants that the amount of compensation awarded is on the lower side. In support of his argument, learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Kusmi Devi vs. Mohd. Kasim & Anr. [2024 (1) PLR (49)]** to contend that an amount of Rs.6,00,000/- was granted as compensation in the case of death of a 3-year old child in an accident which occurred in the year 1994. The accident in the present case took place in the year 2012.

6. Per contra, learned counsel for respondent No.3-Insurance Company would contend that it is a case of contributory negligence. In support of his arguments, learned counsel for respondent No.3-Insurance Company has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Kurvan Ansari @ Kurvan Ali & Anr. vs. Shyam Kishore Murmu & Anr. [2022 (1) RCR (Civil) 165]** to contend that though it was a case under Section 163-A of the Motor Vehicles Act, 1988, however, notional income of the child was fixed as Rs.25,000/- per annum for an accident which took place in the year 2004. Further reliance has been placed upon a judgment of this Court in the case of **Ravinder Kaur & Anr. vs. Roop Lal & Ors. [2006 (4) RCR (Civil) 329]** to contend that in the case of death of a 4-year old child the compensation awarded was Rs.2,00,000/-.

7. Heard.

8. In the present case, firstly dealing with the contention regarding contributory negligence. Even if it was a case of contributory negligence, the child who was 4-year old and was travelling with her mother in the car could not be have been held to have contributed to the accident in any manner. Being a mere passenger there was no role played by the child which could have in any manner contributed to the accident. The Hon'ble Supreme Court in the case of **Mohammed Siddique** (supra) has held as under :

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him 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 wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, 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. It may so happen at times, 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 have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, 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 itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding

recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that 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 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

In view of the above the finding qua contributory negligence cannot be sustained and the same is accordingly set aside.

9. Learned counsel for respondent No.3-Insurance Company has vehemently argued that the Hon’ble Supreme Court in the case of **Kurvan Ansari @ Kurvan Ali** (supra) in the case of death of a 7-year old child had assessed the notional income as Rs.25,000/- though it was a case under

Section 163-A of the Motor Vehicles Act, 1988. Though in the case of **Kusumi Devi** (supra) an amount of six lakhs was awarded by the Hon’ble Supreme Court, this Court is inclined to assess the income as per the dictum laid by the Hon’ble Supreme Court in the case of **Kurvan Ansari @ Kurvan Ali** (supra) fixing a notional income for the deceased child. Since the Act is a beneficial piece of legislation, the Courts are always inclined to see where the claimants can get maximum benefit within the four corners of the law as laid down. The accident in the case of **Kurvan Ansari @ Kurvan Ali** (supra) pertains to the year 2004 and the accident in the present case pertains to the year 2012. For an accident which had taken place in the year 2004 their Lordships have assessed the notional income of the deceased as Rs.25,000/- per annum and applied a multiplier of '15' and also awarded funeral expenses and filial consortium. Keeping in view the fact that the present accident took place in the year 2012, the notional income of the child is assessed as Rs.50,000/- per annum. Multiplier of '15' would have to be applied since the deceased was a child of 4 years. The claimants would also be entitled to funeral expenses of Rs.18,000/- and filial consortium of Rs.48,000/- each (being parents of the deceased).

10. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Notional income	Rs.50,000/-
2	Multiplier 15	(Rs.50,000/- x 15) = Rs.7,50,000/-
3	Funeral expenses	(Rs.15,000+20% increase) Rs.18,000/-
4.	Loss of Consortium : (i) Filial	Rs.96,000/- (48,000 x 2)
5	Total Compensation	Rs.8,64,000/-

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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 amount shall be apportioned between the claimant-appellants as directed by the Tribunal. Recovery rights, as given by the Tribunal, are maintained.

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.

03.04.2024
Aman Jain

(ALKA SARIN)
JUDGE

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