

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2537-2015 (O&M)
Date of Decision: May 07, 2024

Bangarpet Gundappa and another
...Appellants

VERSUS

Vimlesh Kumar and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Surinder Kumar Daaria, Advocate
for the appellants.

Mr.Rajbir Singh, Advocate
for respondent No.3-insurance company.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 19.12.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the appellants-claimants, on account of death of Rashmi Gundappa, in a motor vehicular accident, which took place on 30.07.2011.

On appraisal of the evidence, adduced on record, learned Tribunal had held there to be contributory negligence, on the part of deceased Rashmi Gundappa, in causing the accident in question and considering the same, had granted compensation to the extent of Rs.54,82,400/- (50% of the total compensation) together with interest component. The liability of the respondents was held to be joint and several.

Feeling aggrieved of the findings recorded by learned Tribunal qua contributory negligence, attributed to the deceased to the extent of 50% and also consequential compensation granted, the appellants-claimants have filed the present appeal.

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

That, on 30.07.2011, Deepak Virmani, came to meet his aunt at Gurgaon. When, he was returning back to his house at Faridabad at about 12.15 a.m., a Hyundai I-10 car, being driven by Rashmi Gundappa (since deceased) was going ahead of his car. When they reached just ahead of Kanhai Red Light, in the meantime, the I-10 car, driven by said Rashmi, collided with a dumper bearing registration No.HR-55E-0614, which was wrongly parked on the road, by its driver, in a negligent and careless manner, without following any traffic rules and without any parking or tail lights. Due to the impact of the collision, the offending vehicle moved back slightly and as a result of the same, the car of deceased was extensively damaged. Deepak Virmani, with the help of some persons, had taken the injured to Paras Hospital, Gurgaon. He had also noted the registration number of the offending vehicle as HR-55E-0614. It is the categorical claim that the accident had taken place, due to the wrong parking of the offending vehicle, on the road by its driver i.e. respondent No.1-Vimlesh Kumar. FIR was got registered qua the accident in question. The claim petition was filed by parents of the deceased.

In reply, respondents No.1 and 2 i.e. driver and owner of the offending vehicle, besides taking preliminary objections with regard to locus standi, cause of action, they also denied the accident having caused, due to

rash and negligent driving of respondent No.1 and they made a prayer for dismissal of the claim petition. Likewise, respondent No.3-insurance company, in the written statement, besides taking preliminary objections, had also denied the factum of accident and also made a prayer for dismissal of the claim petition.

To so substantiate the factum of accident, the claimants examined PW-4 Deepak Virmani, whose affidavit is Ex.PW4/A. He deposed in consonance with the pleaded case of the appellants-claimants and further also deposed about registration of FIR, at his instance. Further, father of the deceased namely Bangarpet Gundappa stepped into witness box as PW-5 and besides the same, various other witnesses have also been examined.

On the contrary, no oral evidence, as such, was led by the respondents. However, the insurance company, after tendering the insurance policy Ex.R2, closed evidence, on behalf of respondent No.3.

Considering the evidence, brought on record, in the backdrop of various rules, with regard to parking of the vehicle and the precautions to be taken, while parking such like vehicle and also taking into consideration, about the reasonable care, having not taken, at the behest of the deceased, learned Tribunal reached the conclusion that the accident had taken place, on account of contributory negligence of the deceased and respondent No.1-Vimlesh Kumar, in the ratio of 50:50.

In view of the documentary evidence, coming on record, with regard to the profession of doctor, followed by the deceased and her being employed in Global Health Private Ltd., learned Tribunal had concluded about salary of the deceased to be Rs.84,950/-, which worked out to be

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Rs.10,19,400/- per annum and considering the same, after taking into consideration, about the deduction of Rs.17,736/-, made towards income tax, as deposed by PW-3 Sunil Kumar Maini, Senior Manager of Global Health Private Limited, in the cross-examination and thereafter, deducting an amount of 20.87% out of the salary of the deceased, the tax was worked upon as Rs.3,19,123/- and after making this deduction, the earnings of the deceased, with addition of 50% of the salary, was worked upon as Rs.12,09,976.93 per annum. After making deduction to the extent of 50%, on account of personal expenses, deceased being unmarried, the annual dependency of the claimants was taken as Rs.6,04,988.4 and while applying the multiplier of '18', the compensation was worked upon as Rs.1,08,89,791.2. Besides the aforesaid amount, a sum of Rs.25,000/- was awarded towards funeral expenses and another sum of Rs.50,000/-, on account of loss of love and affection. In total, the compensation was worked upon as Rs.1,09,64,791.2. From the said amount, while making deduction to the extent of 50%, on account of contributory negligence, on the part of the deceased, the appellants-claimants were held entitled to the amount of Rs.54,82,395.6, which was rounded off to Rs.54,82,400/-.

Such being the appraisal of evidence, brought on record, at the very outset, learned counsel for the appellants has assiduously resisted the finding of contributory negligence, on the part of the deceased. It is submitted that the accident had taken place, at midnight, at 12.15 a.m. The dumper was parked in the middle of the road on a highway and without taking any precautions, with regard to parking of the vehicle and therefore, considering the same, it is submitted that in any case, the accident

cannot be concluded to be a case of contributory negligence, on the part of the deceased also. Thus, it is submitted that blameworthiness has been erroneously fastened upon the deceased to the ratio of 50:50.

Undoubtedly, from the material evidence, coming forth, it stands established that deceased Rashmi was driving the I-10 car, at the relevant time of accident. Also, it stands established that the said car struck against the stationery dumper from the backside. Suffice to consider the testimony of Deepak Virmani, an eye witness to the accident, who had got recorded the FIR and had also taken the injured, soon after the accident, to the hospital. During the course of arguments, much emphasis has been laid upon the fact of I-10 having struck the dumper from the backside. May it be so, but simultaneously, it is essential to take note of the fact that it is a specific case of the appellants-claimants, about the dumper to be stationed in the middle of the road and that too, without any sign board or indicators of the vehicle to be 'on', while parking the dumper, on the road.

In this regard, it is important to make reference to the reply filed to the claim petition, at the instance of respondents No.1 and 2. Therein, nothing as such, is coming on record, about any precautions, as per rules, having taken by respondent No.1, while parking the vehicle on the road. This was clearly in contravention of the Rule 109 and 138 of the Central Motor Vehicle Rules, which has been reproduced by learned Tribunal, in the impugned Award.

It is also pertinent to mention that as per Rule 15 of the Road Regulations, 1989, every driver of a motor vehicle, parking on any road, is required to park the vehicle, in such a way that it does not cause or is not

likely to cause danger, obstruction or undue inconvenience to the other road users and if the manner of parking is indicated by any sign board or making marking on the road side, he shall park his vehicle in such manner.

Besides these precautions having not been so taken, as required by the ibid rules, it is also pertinent to mention that accident had taken place on highway, when proceeding from Gurgaon to Faridabad and that too, at midnight. There is no such evidence, coming forth, about due precautions having been taken by respondent No.1, while parking the dumper and putting all the safety measures, at the time of parking of the vehicle and having put 'on' the parking lights. In the given circumstances, there is definitely, contravention of the Central Motor Vehicle Rules.

To counter this plea of negligence, on the part of respondent No.1, while parking the dumper, respondent No.1 was the best person, who could have explained, as to whether, any such steps had been taken, but however, he had chosen to remain away from the witness box. Not even such plea of precautions having taken, was raised, in the reply.

To establish the contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person, against whom, it is alleged. Where, by his negligence, one party placed another in a situation of danger, which compels the other to act quickly, in order to extricate himself, it does not amount to contributory negligence, if that other acts, in a way, with which the benefit of hindsight is shown not to have been the best way out of the difficulty. In fact, the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute negligence.

In the case in hand, it is pertinent to mention that accident had taken place in the midnight. There is not an iota of evidence, coming on record, to establish about that area, where the accident had taken place, to be well lit. The accident had taken place on a highway. The speed of the ill-fated car, is also bound to be more, comparatively, being a vehicle driven on highway. Even, highway is not a place for a dumper to be parked and that too, without parking lights etc. In the given circumstances, one cannot decipher that the deceased, being occupant, while driving the car, could eventuate the situation, to come across the vehicle(dumper), which was stationary. Such being the situation, obviously, she could have, at the maximum, noticed the vehicle, only having come very near to it. Within a fraction of few seconds, she may not have been able to quickly respond to the fact of dumper, being parked there. This error to respond spontaneously, in any manner, cannot amount to contributory negligence, more particularly, when there was failure on the part of driver of the dumper, who had parked the vehicle, in such a manner, without taking precautions and thus, putting the deceased, in situation of danger. Considering all the aforesaid factors, in any manner, it cannot be concluded that there was contributory negligence, on the part of the deceased, while driving the ill-fated car.

In the given circumstances, the findings recorded by learned Tribunal, with regard to there being contributory negligence, on the part of the deceased, to the ratio of 50%, is hereby set aside.

In this backdrop, let us consider the compensation, to be granted to the appellants-claimants. As already reproduced in the earlier portion of the judgment, the compensation, so worked upon by learned Tribunal, do

call for re-determination.

Apart from father of the deceased, deposing about the profession followed by his daughter, Sunil Kumar Maini, Senior Manager of Global Health Private Limited, has been examined as PW-3, who, on the basis of the record, has deposed about Dr.Rashmi Gundappa to be working in their hospital. He proved the appointment letter Ex.P5 and also proved the last drawn salary certificate, which is Ex.P3. As per the same, the salary of the deceased as Rs.84,950/- per month, the break-up whereof, has been reproduced by the Tribunal, in paragraph No.15 of the impugned Award. Considering it to be so, the annual income worked out to be Rs.10,19,400/-.

For the purposes of assessment of the compensation, as per ***Pranay Sethi's case***, it is the income minus tax component, which ought to be taken into consideration. Learned Tribunal, in the impugned Award had made an observation, on the basis of cross-examination of PW-3 Sunil Kumar Maini, Senior Manager, wherein, he admitted that deduction of Rs.17,736/- was made towards income tax and on the same basis, the deduction to the extent of 20.87% of the salary of the deceased, was made towards tax and the total tax was Rs.3,19,123/- and after making deduction of the same, the income was worked upon as Rs.12,09,976.83. However, this manner of deduction of the tax, is not appropriate.

Though, PW-3 Sunil Kumar Maini, in the cross-examination had stated that deduction to the extent of Rs.17,736/- was made towards income tax, but there is no material, coming forth, with regard to this extent of deduction made from the earnings of the deceased. In the given

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circumstances, it shall be appropriate to consider the income tax slab, as prevalent, at the relevant time.

As per the tax slab, prevalent at the time of accident, the income upto Rs.1,80,000/- was tax free. From the income bracket of Rs.1,80,000-5,00,000/-, income tax payable was 10%, which is to the extent of Rs.32,000/-. Furthermore, for the income bracket of Rs.5,00,000-8,00,000, the tax payable was 20% i.e. Rs.60,000/-. The income bracket from Rs.8,00,000/- and above, the tax payable was 30%. Since, the total income of the deceased, as worked upon aforesaid, was Rs.10,19,400/-, therefore, the after deduction upto Rs.8,00,000/-, the residue taxable amount works out to be Rs.2,19,400/- and upon the same, tax payable @ 30%, comes to be Rs.65,820/-. Thus, the total tax payable, comes to be **Rs.1,57,820/-**. After making deduction of this tax amount, the residue income, to work upon the dependency, comes out to be $\text{Rs.10,19,400} - \text{Rs.1,57,820} = \text{Rs.8,61,580/-}$.

Even though, learned Tribunal had considered the addition on the count of 'future prospects' to be 50%, but however, as per ***Pranay Sethi's case***, considering the age of the deceased to be 29 years, while taking date of birth of Rashmi Gundappa as 10.12.1981, as evident from various educational certificates, coming forth and considering the employment document of the deceased, the addition, ought to be made, to the extent of 40%, which is to the extent of Rs.3,44,632/-. Thus, the total income of the deceased works out to be $\text{Rs.8,61,580} + \text{Rs.3,44,632} = \text{Rs.12,06,212/-}$ per annum.

Undisputedly, the deceased was unmarried. Considering the same the deduction, as per ***Sarla Verma's case***, the deduction on the count

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of 'personal expenses', ought to be 50%. Thus, making this deduction, the loss of dependency comes to be Rs.12,06,212-603106=Rs.6,03,106/-.

Considering the age of the deceased, as per *Sarla Verma's case*, the appropriate and suitable multiplier, to be applied is '17', and after application of the same, the loss of dependency, works out to be Rs.603106x17=**Rs.1,02,52,802/-**.

Besides the aforesaid, compensation under the conventional heads, ought to be paid to the appellants-claimants. Learned Tribunal, while working upon the compensation had granted Rs.25,000/-, on the count of 'funeral expenses' and Rs.50,000/- was awarded, towards 'loss of love and affection'. However, as per prevalent law, these amounts, call for intervention by this Court. As per *Pranay Sethi's case (supra)*, under the conventional heads, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses', compensation was required to be paid, to the extent of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, so calculating, at present, the compensation, on the aforesaid counts, comes out to be, **Rs.48,400/-, Rs.18,150/- and Rs.18,150/-**, respectively.

However, as per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', now, 'loss of consortium' is not only restricted to the spouse. Rather, it was held that all the dependents/claimants, as the situation may required, are entitled to 'parental', 'spousal' and 'filial consortium. Considering the same

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both the appellants-claimants, who are parents of the deceased, are entitled to an amount of Rs.48,400/- each, for the ‘loss of consortium’.

Considering the same, the compensation payable to appellants-claimants, on account of death of Rashmi Gundappa, is re-computed, as herein given:-

Loss of dependency	:	Rs.1,02,52,802/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.1,03,85,902/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.1,03,85,902-54,82,400=Rs.49,03,502/-**. On the enhanced amount of the compensation i.e. **Rs.49,03,502/-**, 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 liability to pay the compensation shall be joint and several of the respondents.

In view of the aforesaid terms, the present appeal stands allowed.

May 07, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No