

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107

FAO-6239-2015 (O&M)

Date of Decision : 20.02.2024

BANASPATI DEVI & ANR.

.... Appellants

VERSUS

SURESH DEVI & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.P. Sharma, Advocate for the appellants.

Mr. Sandeep Kumar Yadav, Advocate
for respondents No.1 and 2.

Mr. Sandeep Suri, Advocate
for respondent No.3-Insurance Company.

ALKA SARIN, J. (ORAL)

1. This is an appeal preferred by the claimant-appellants against the award dated 14.05.2015 passed by the Motor Accident Claims Tribunal, Narnaul.

2. Learned counsel for the appellants would contend that the Tribunal has erred in holding this to be a case of a contributory negligence inasmuch as the eye-witness, namely, Rattan Singh, who was also the rider with the deceased, had categorically stated that it was due to the negligence of the driver, namely, Maan Singh, who was driving the motorcycle bearing No.HR-34D-5996. Learned counsel for the appellants has further contended that the income has rightly been assessed as Rs.6,760/- and 50% deduction was applied correctly. Learned counsel has very fairly conceded that the future prospectus ought to have been 40%, however, 50% has been awarded by the Tribunal. It is further contended that multiplier of '13' has wrongly

been applied by the Tribunal, whereas it ought to have been '18' keeping in view the age of the deceased being 22 years at the time of the accident. Further, learned counsel would contend that the amount awarded under the head love and affection and funeral expenses need to be reworked out in view of the law laid down by the 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. Choramandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

3. *Per contra*, the learned counsel for respondent No.3-Insurance Company has vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement. Learned counsel has further contended that there is no evidence qua the age of the deceased being 22 years. It is further the contention that it is a clear case of contributory negligence and infact an FIR had been registered against the deceased Dharambir.

4. Heard.

5. The case as setup was that on 05.11.2013 Rattan Singh along with Dharambir (since deceased) were going on a motorcycle bearing No.Temp 8843 (registration No.HR-34G-0612) towards the fields. The rider of the motorcycle was Dharambir who was riding the motorcycle at a moderate speed and in a cautious manner on the left side of the road. At about 8/8:30 a.m. a motorcycle bearing registration No.HR-34D-5996, the

rider of which was Maan Singh (since deceased), came at high speed and in a rash and negligent manner and hit the motorcycle of Dharambir and as a result thereof Rattan Singh and Dharambir (since deceased) fell on the road. Dharambir (since deceased) and Rattan Singh both received multiple and grievous injuries. Dharambir succumbed to his injuries on the way to the hospital. Criminal case was registered being FIR No.490 dated 05.11.2013 under Sections 279, 337, 304-A Indian Penal Code, 1860 at Police Station Mohindergarh. The Tribunal held it to be a case of contributory negligence to the extent of 50%. Though Rattan Singh who was the eye-witness of the accident had stepped into the witness box and stated that Maan Singh was at fault and no fault could be attributed to the deceased Dharambir, however, in the claim petition filed by the legal representatives of deceased Maan Singh (being FAO-5353-2013) two witnesses, namely, PW-1 Ramphal and PW-2 Sube Singh, had stepped into the witness box and stated that the deceased Dharambir was at fault. Keeping in view the above, the finding of the Tribunal qua 50% contributory negligence cannot be faulted with.

6. The argument of the learned counsel for respondent No.3- Insurance Company that the age of the deceased has not been assessed by the Tribunal needs to be rejected inasmuch as per the postmortem report (Ex.P-5) the age of the deceased was 19 years at the time of the accident. The income of Rs.6,760/- has rightly been assessed. The deduction of 50% has also rightly been made. However, 40% needs to be added towards future prospectus and the Tribunal has erred in adding 50%. 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

‘18’ would be applicable keeping in view the age of the deceased being 22 years at the time of the accident. The amount under the conventional head and consortium are reworked out 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, being parents of the deceased, would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

7. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.6,760/-
2	Annual income [Rs.6,760/- x 12]	Rs.81,120/-
3	Deduction [Rs.81,120/- - 50%]	Rs.40,560/-
4.	Future prospects @ 40% [Rs.40,560/-+ 40%]	Rs.56,784/-
5	Multiplier 18 (Rs.56,784/- x 18)	Rs.10,22,112/-
6	Loss of estate (Rs.15,000+20% increase)	Rs.18,000/-
7	Funeral expenses (Rs.15,000+20% increase)	Rs.18,000/-
8	Loss of Consortium : (i) Filial (48,000 x 2)	Rs.96,000/-
9	Total Compensation	Rs.11,54,112/-

8. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9 % 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

9. 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.

20.02.2024
Aman Jain

(ALKA SARIN)
JUDGE

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