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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.

FAO-8385-2017 (O&M)
Date of Decision : 14.10.2024
- Urmila Devi (deceased) through LRs & Anr.

... Appellant(s)
- Versus
- Prem & Anr.

... Respondent(s)
2.

FAO-3469-2018 (O&M)
- Jag Mohan Garg & Anr

... Appellant(s)
- Versus
- Prem & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Kumar Arya, Advocate for
Mr. Anshul Mangla, Advocate
for the appellants (in FAO-8385-2017).

Mr. Udit Garg, Advocate
for the appellants (in FAO-3469-2018).

Mr. D.R. Bansal, Advocate
for respondent No.2-Insurance Company (in both the appeals).

ALKA SARIN, J. (Oral)

1. This order shall dispose off the aforesaid two appeals. The present appeals have been preferred by the claimant-appellants aggrieved by the award dated 05.05.2017 passed by the Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as ‘Tribunal’) though the claim petitions filed by the claimant-appellants were allowed.

2. The brief facts relevant to the present *lis* are that on 03.08.2013 two boys, namely, Manu and Rinku were riding on a motorcycle bearing Registration No.HR-41-G-8810 (Temporary No.HR-99-U-Temp-3185) and were on their way from Pehowa to Haridwar. The rider of the motorcycle was Rinku while Manu was a pillion rider. At about 12:15 am, when they reached near the gate of Grain Market, Radaur (Yamuna Nagar), suddenly a motorcycle bearing Registration No.HR-07-S-6769, which was being driven by a rider in a rash and negligent manner, came from the front side and dashed into the motorcycle on which Manu and Rinku were riding. Due to the impact the riders of both the motorcycles as well as the pillion rider died. FIR No.139 dated 03.08.2013 was registered under Sections 279, 336, 337, 427, 304-A of the Indian Penal Code, 1860 (IPC) at Police Station Raduar (Yamuna Nagar).

3. The claim petition i.e. MACT No.163-A of 2013 was filed by Jag Mohan Garg and Renu Bala (appellants in FAO-3469-2018), parents of the deceased - Manu - who was the pillion rider on the motorcycle bearing Registration No.HR-41-G-8810. It was claimed that the deceased was 19 years of age at the time of the accident and was earning Rs.20,000/- per month while working with Guru Digital Photo Studio and also doing the work of Panditai.

4. The claim petition i.e. MACT No.50-A of 2013 was filed by Satish Kumar and Urmila Devi (appellants in FAO-8385-2017) on account of death of their son - Rinku - who was also stated to be 19 years of age at the time of the accident and was earning Rs.20,000/- per month by doing the work of Panditai.

5. On notice, respondent No.1 i.e. owner of the offending motorcycle bearing Registration No.HR-07-S-6769 filed his written statement raising various preliminary objections. On merits the factum of the accident having taken place due to the rash and negligent driving of the rider of the motorcycle bearing Registration No.HR-07-S-6769 was denied and it was stated that the accident was the outcome of rash and negligent driving of Rinku - rider of the motorcycle bearing Registration No.HR-41-G-8810. Respondent No.2-Insurance Company also filed its written statement raising various preliminary objections. On merits it was stated that the motorcycle was insured, however, it was not the same offending vehicle. The accident was not admitted nor was the fact that the accident was caused due to the rash and negligent driving of the rider of the offending vehicle. Replication was filed. On the basis of the pleadings, the following issues were framed :

1. Whether the accident in question resulting into death of Manu son of petitioners Jagmohan Garg etc. and Rinku son of petitioners Satish Kumar etc. and damage to motor cycle no.HR-41-G-8810 (Temporary no.HR-99-U-Temp-3185) took place due to rash and negligent driving of motor cycle No.HR-07-S-6769 by its driver ? OPP
2. If issue no.1 is proved in affirmative, what amount of compensation petitioners Jagmohan Garg etc. are entitled to for the death of deceased Manu and from whom ? OPP
3. If issue no.1 is proved in affirmative, what amount of compensation petitioners Satish Kumar etc. are entitled to for the death of deceased Rinku and from

whom ? OPP

4. If issue no.1 is proved in affirmative, what amount of compensation petitioners Satish Kumar is entitled to for the damage caused to motor cycle no. HR-41-G-8810 (Temporary no.HR-99-U-Temp-3185) and from whom ? OPP

5. Whether motor cycle no. HR-07-S-6769 was being driven in violation of terms and conditions of insurance policy. If so, to what effect ? OPR-3

6. Relief.

6. The Tribunal though noticed that no plea of contributory negligence was raised, however, held it to be a case of contributory negligence holding the rider of motorcycle bearing Registration No.HR-07-S-6769 liable for contributory negligence to the extent of 60% and the rider of the motorcycle bearing Registration No.HR-41-G-8810 i.e. the deceased - Rinku - as having contributed to the extent of 40%. The Tribunal awarded the following compensation :

In FAO-8385-2017 (MACT No.50-A of 2013)		
Sr. No.	Heads	Calculation (In Rs.)
(i)	Income	6,000/- per month
(ii)	½ of the (i) deducted as personal expenses of the deceased	6,000-3,000 = Rs.3,000/-
(iii)	Compensation after multiplier of 18 is applied	Rs.3,000 x 12 x 18 = Rs.6,48,000/-
(iv)	Loss of love and affection	Rs.25,000/-
(v)	Funeral expenses/Last rites/Transport	Rs.25,000/-
	Total Compensation awarded	Rs.6,98,000/-
	Interest	8% per annum

In FAO-3469-2018 (MACT No.163-A of 2013)		
Sr. No.	Heads	Calculation (In Rs.)
(i)	Income	6,000/- per month
(ii)	½ of the (i) deducted as personal expenses of the deceased	6,000-3,000 = Rs.3,000/-
(iii)	Compensation after multiplier of 18 is applied	Rs.3,000 x 12 x 18 = Rs.6,48,000/-
(iv)	Loss of love and affection	Rs.25,000/-
(v)	Funeral expenses/Last rites/Transport	Rs.25,000/-
	Total Compensation awarded	Rs.6,98,000/-
	Interest	8% per annum

7. Learned counsel for the claimant-appellants would contend that in the absence of any plea having been raised qua contributory negligence, the finding qua contributory negligence is wholly unsustainable in law. It is further the contention of the learned counsel that the age of the deceased in FAO-8385-2017 was 22 years and that he was a bachelor and that the age of the deceased in FAO-3469-2018 was 20 years and he too was a bachelor. It is further the contention of the learned counsel that though the income has rightly been assessed and so has the deduction and the multiplier, however, no amount has been awarded towards future prospects and that the amounts awarded under the conventional heads and the head ‘loss of consortium’ are not in accordance with the law laid down by the Supreme Court. It is further the contention of the learned counsel that no amount has been awarded towards loss of consortium to the fathers of the deceased in both the cases. In support of their contentions, the learned counsel have 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].

8. Learned counsel for the claimant-appellants in FAO-8385-2017 has pointed out that the mother of the deceased - Rinku - is stated to have since expired and her legal representatives have already been brought on record.

9. Learned counsel for the respondent insurance company would content that the finding on the point of contributory negligence is based on the evidence adduced. It is further contented that sufficient amount has already been awarded and there is no scope for enhancement.

10. I have heard the learned counsel for the parties.

11. In the present case, admittedly, there was no plea of contributory negligence having been raised by any of the parties. In the absence of any plea having been raised, the Tribunal erred in holding that it was a case of contributory negligence. The Tribunal on its own cannot introduce any such plea on the basis of the evidence. Support qua the same can be drawn from the judgment of this Court in the case of **Ajmer Singh Vs. Nafe Singh & Ors. [FAO No.6558 of 2016 decided on 14.02.2018]** wherein it has been held as under:-

“7. The appellant has raised a plea that the present is a case of contributory negligence, therefore, claimants are not entitled to get compensation to the extent of negligence attributable to the deceased, driver of motor cycle No.HR-06Q-4628 driven by its driver, Krishan on which Pardeep was a pillion rider. Firstly, no such plea

of contributory negligence was raised by the driver or registered owner of the vehicle in their reply to the petition. As the appellant and driver of the vehicle denied accident having taken place with the alleged offending vehicle, it is not open for them to raise a plea of contributory negligence nor the Court can introduce any such plea on the basis of evidence.”

12. In view of the fact that no plea of contributory negligence was raised, the finding by the Tribunal cannot be sustained and the same is accordingly set aside.
13. In the present case the Tribunal has not awarded any amount towards future prospects. In both the cases the claimant-appellants would be entitled to 40% addition towards future prospects also. The amounts awarded under the conventional heads and the head ‘loss of consortium’ need to be reworked out in view of the law laid down by the Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra). The same is reworked out as under :

In FAO-8385-2017		
Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.6,000/-
2	Annual Income	[Rs.6,000x12]=Rs.72,000/-
3	Deduction 50%	[Rs.72,000-36,000]=Rs.36,000/-
4	Future Prospects - 40%	[Rs.36,000+14,400]=Rs.50,400/-
5	Multiplier - 18	[Rs.50,400x18]=Rs.9,07,200/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	[Rs.48,000x2] =Rs.96,000/-
	Total Compensation	Rs.10,39,200/-

In FAO-3469-2018		
Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.6,000/-
2	Annual Income	[Rs.6,000x12]=Rs.72,000/-
3	Deduction 50%	[Rs.72,000-36,000]=Rs.36,000/-
4	Future Prospects - 40%	[Rs.36,000+14,400]=Rs.50,400/-
5	Multiplier - 18	[Rs.50,400x18]=Rs.9,07,200/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	[Rs.48,000x2] =Rs.96,000/-
	Total Compensation	Rs.10,39,200/-

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 8% 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. The fathers in both the cases would also be entitled to the amount awarded under the head loss of consortium.

15. In view of the above discussion, the present appeals are allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

14.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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