IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-25-2013 (O&M)

Meenu Jhamb and others

...Appellants

VERSUS

Raj Kumar and others

...Respondents

(ii) FAO-1279-2013 (O&M)

Seema Goyal and others

...Appellants

VERSUS

Raj Kumar and others

...Respondents

Date of Decision: August 06, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sunil Bhardwaj, Advocate
for the appellants.

Mr.Sanjeev Kodan, Advocate
for respondent No.3.

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ARCHANA PURI, J.

These are two appeals filed by the respective appellants-claimants, thereby, assailing the contributory negligence, fastened upon the driver of the car bearing registration No.HR-06S-7998 and also seeking enhancement of the compensation, awarded on account of death of Ajay Goyal and Harish Jhamb, in a motor vehicular accident.

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

That, on 24.11.2009, at about 2.00 p.m., Ajay Goyal along with Harish Jhamb and Narain Dass had left Panipat for Delhi on Swift car bearing registration No.HR-06S-7998, being driven by Ajay Goyal, at a moderate speed. When they reached Ganaur near Shane-Punjab dhaba, on G.T. Road, Sonipat, a truck bearing registration No.HR-55E-0236 was parked on the G.T.Road, without placing any symbol or indication. Unfortunately, the car struck against the truck. Ajay Goyal and Harish Jhamb succumbed to the injuries sustained by them, whereas, Narain Dass had sustained grievous injuries on his person. The said car was followed by car bearing registration No.HR-06-5601, driven by Rohit Mehandiratta and as such, he had witnessed the accident.

The truck in question was bearing registration No.HR-69-1215, which was given in the FIR, but however, later on, it was found during police investigation, that registration number of the truck was HR-55E-0236 and the driver of the truck had affixed the fake number plate, showing the registration number as HR-69-1215.

It was pleaded that the accident occurred due to the sole negligence, on the part of respondent No.1-Raj Kumar, driver of truck bearing registration No.HR-55E-0236, who had parked the truck on the main G.T. Road, without any indication. Besides the aforesaid, in the respective claim petitions, the age, vocation as well as extent of earnings of the deceased and dependency of the claimants was also averred.

Respondents No.1 and 2, in their reply, had asserted about Ajay Goyal himself to be negligent, while driving the car and that a false case has been registered. Also, it was averred that the truck was parked, on the extreme left side of the road on *katcha* portion with proper indication. The car, which was driven at a high speed, dashed against the stationary truck bearing registration No.HR-55E-0236.

The evidence was led in the case. On appraisal of the evidence adduced, having considered the blameworthiness to the ratio of 50:50 of drivers of both the vehicles, involved in the accident in question, learned Tribunal had further undertook the exercise of 'work on' of compensation qua Ajay Goyal and Harish Jhamb.

So far as, Ajay Goyal is concerned, considering him to be a businessman and running firm M/s Ajay Loomtex, took his earnings as Rs.30,000/- per month. Dependency of the claimants was taken as Rs.15,000/- per month. Considering the age of Ajay Goyal to be 42 years, multiplier of '14' was applied and compensation was worked upon as Rs.15,000x12x14=Rs.25,20,000/-. Since, the negligence was also found to be there, on the part of deceased Ajay Goyal, while driving the car, 50% deduction was made and the amount of dependency was taken as Rs.12,60,000/-. Apart from the same, Rs.10,000/- each was granted on the counts of 'loss of love and affection', 'transportation of dead body, funeral and last rites', 'pain and suffering' and 'loss of consortium'. Thus, the claimants were held entitled to Rs.13,00,000/- under the various heads, aforesaid.

Qua deceased Harish Jhamb, his earnings were taken as Rs.9,000/- per month. Considering the number of dependents, 50% was deducted and the dependency was taken as Rs.4500/- per month.

Considering his age to be 39 years, multiplier of '15' was applied and the compensation was worked upon as Rs.4500x12x15=Rs.8,10,000/-. Besides the aforesaid, Rs.10,000/- each was granted on the counts of 'loss of love and affection', 'transportation of dead body, funeral and last rites', 'pain and suffering' and 'loss of consortium'. Thus, the total compensation was worked upon as Rs.8,50,000/-.

Being aggrieved by the blameworthiness having fastened to the extent of 50% upon deceased Ajay Goyal as well as, seeking enhancement of the compensation, the appellants-claimants have filed the respective appeals.

Be it noted that the fact and manner of accident as well as the liability fastened upon the respondents were never questioned, as none of the respondents, who were made liable, filed any appeal.

Before coming to the 'work on' of the compensation, it is essential to consider about the contributory negligence, to the ratio of 50:50, fastened upon the drivers of both the vehicles. The factum of accident was never disputed by respondents No.1 and 2, though, they took the plea that the truck was parked on the *katcha* portion. However, it is essential to note that no evidence, qua this manner of parking of the truck, as such, has come on record. In fact, respondent No.1-Raj Kumar, driver of the truck, had never stepped into witness box, to so substantiate this plea.

Considering the aforesaid, it is significant to note that the car bearing registration No.HR-06S-7998, was being driven by Ajay Goyal and Harish Jhamb was co-passenger, besides Narain Dass. They were proceeding from Panipat to Delhi, in broad day light. The accident had taken place at 2.00 p.m. The car dashed against the backside of the truck. Learned Tribunal had meticulously appraised the testimony of PW-3 Rohit Mehandiratta, who is an eye witness to the accident as well as PW-10 ASI Subhash Chander, Investigating Officer, who deposed about the number plate affixed on the truck, to be fake and PW-8 Ram Kiran, DRK, Civil Court, who had proved the record, relating to the criminal trial faced by respondent No.1-Raj Kumar. Considering the testimonies of the aforesaid witnesses, learned Tribunal had concluded about the blameworthiness to the ratio of 50:50.

The law requires that driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance, from the other vehicle to avoid collision, if the vehicle in front should certainly slow down or stop. Similarly, it is required that the vehicle, which has been parked, ought to be parked in such a manner, while taking all due precautions to caution the other vehicles passing by, about it being stationary.

Men may tell lies, but the circumstances do not. It is a cardinal principle for evaluation of the evidence. The manner of taking place of the accident, as deposed by the eye witness, leaves no place for doubt that there was contributory negligence, on the part of the driver of the car also. Considering the same, the culpable conduct of both the drivers has been taken as 50:50. No doubt, the truck was parked, but there is no evidence, coming on record, about the same having parked on the *katcha* portion, as per the plea taken by respondents No.1 and 2 i.e. driver and owner of the truck in question, but however, at the same time, the following vehicle in such a situation, also should take requisite precautions, so as to avoid the accident. Though, it was submitted that the car was driven at a moderate speed, but however, the speed is a relative factor, which has to be appraised, while taking into consideration other circumstances, spelt out at the spot, at the relevant time.

The driver of any vehicle is required to have full control over the vehicle, while driving the same, more particularly, on the G.T. road. Many a times, the speed may be more, but the driver may have full control over the vehicle or it can be other way round i.e. the speed may be slow, but still the driver may not be having full control over the vehicle. However, the control of the vehicle is also to be considered from the impact of the accident.

In the case in hand, two of the occupants of the car bearing registration No.HR-06S-7998, had sustained fatal injuries, after striking with the stationary truck and this in itself, speaks volume about the force, with which the car struck against the vehicle and that reflects the impact of the same, which unerringly, points out the negligence, on the part of driver of the car. That being so, the blameworthiness has been correctly held to be to the ratio of 50:50, which finding, as such, stands affirmed.

Now, coming to the 'work on' of the compensation.

So far as, Ajay Goyal is concerned, considering the evidence, brought on record, more particularly, the income tax return for the year 2009-2010 Ex.P6 and statement of accounts of various banks, learned Tribunal had appropriately considered the deceased to be running firm M/s Ajay Loomtex and considered his earnings as Rs.30,000/- per month, annual whereof, comes to be Rs.3,60,000/-. From the PAN card Ex.P2 as well as

Membership Identity Card Ex.P3, it is evident that the date of birth of Ajay Goyal was 30.05.1967. As such, it stands established that Ajay Goyal was 42 years old, at the time of accident.

As per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, for the purpose of 'work on' of the compensation, actual income ought to be taken minus tax component. As per the tax slab, prevalent in the assessment year 2008-2009, the income upto Rs.1,50,000/- was exempted from tax. However, from the income bracket of Rs.1,50,000-3,00,000/-, income tax payable was 10%, which is to the extent of Rs.15,000/-. Furthermore, for the income bracket of Rs.3,00,000-5,00,000/-, the tax payable was 20%. After deduction of Rs.3,00,000/-, the residue taxable amount works out to be Rs.3,60,000-3,00,000=Rs.60,000/- and therefore, working upon the tax on this amount @ 20%, it comes to be Rs.12,000/-. Thus, the total tax payable is **Rs.27,000/-**. After making deduction of the aforesaid extent of income tax amount, the residue annual income, is Rs.3,60,000-27,000=**Rs.3,33,000/-.**

Learned Tribunal had taken the dependency to the extent of 50%, but however, the number of dependents are five. As per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the deduction, on the count of 'personal expenses' has to be made to the extent of 1/4th, instead of 50%, as done by learned Tribunal. Considering the age of the deceased, as per ***Pranay Sethi's case (supra)***, addition on the count of 'future prospects', has to be made to the extent of 25%.

No separate amount is required to be given under the head of 'loss of love and affection', as the said amount is comprehended under the head of 'loss of consortium'. However, under the conventional heads as given, the compensation also calls for enhancement. Taking it to be so, now, the compensation to be awarded is re-computed as herein given:-

Annual earnings	Rs.3,33,000/-
Deduction of 1/4th	Rs.3,33,000-83,250=Rs.2,49,750/-
Addition of 25%	Rs.2,49,750+Rs.62,437=Rs.3,12,187/-
Multiplier of '14'	Rs.3,12,187x14=Rs.43,70,618/-
Contributory negligence 50%	Rs.43,70,618-50%=**Rs.21,85,309/-**
Loss of consortium to all dependents	Rs.48,400x5=**Rs.2,42,000/-**
Funeral expenses	**Rs.18,150/-**
Loss of estate	**Rs.18,150/-**
Total	**Rs.24,63,609/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal is **Rs.24,63,609-13,00,000=Rs.11,63,609/-**. The enhanced amount of the compensation i.e. **Rs.11,63,609/-**, be disbursed to the appellants-claimants in equal shares and they shall also 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.

So far as, the 'work on' of the compensation qua death of Harish Jhamb is concerned, qua him, it is a case of composite negligence and no blameworthiness, as such, could be fastened upon the co-passenger of the car in question. The owner and insurer of the car bearing registration No.HR-06S-7998 have not been impleaded as party in the present case. Since, there are two vehicles involved, therefore, it is a case of composite negligence. In such cases, the claimant is entitled to sue, both or any one of the joint tortfeasors and to recover the entire compensation, as liability of joint tortfeasors is joint and several. However, the apportionment of the compensation between tortfeasors, vis-a-vis, the claim is not permissible. The claimant can recover at his option, whole damages from any one of them. Considering the same, the 'work on' of the compensation, qua death of Harish Jhamb is to be made.

So far as, earnings of deceased Harish Jhamb is concerned, learned Tribunal, while considering the income tax return of deceased, coming on record, had appropriately taken his earnings as Rs.9000/- per month, annual whereof, comes out to be Rs.1,08,000/-. As per prevalent income tax slab, at the relevant time, the earnings of deceased Harish Jhamb, do not fall within the income tax bracket. As such, no deduction is to be made, on the count of income tax. However, considering the number of dependents to be five, the deduction has to be extent of 1/4th, instead of 50%, as done by learned Tribunal. Considering the age of the deceased to be 39 years, multiplier of '15' has been suitably applied by learned Tribunal. However, on the count of future prospects, addition has to be made to the extent of 40%. Further, the compensation under the conventional heads, as observed in the case of Ajay Goyal, calls for enhancement.

Thus, considering the aforesaid, the compensation is re-computed as herein given:-

Annual earnings	Rs.1,08,000/-
Deduction of 1/4th	Rs.1,08,000-27,000=Rs.81,000/-
Addition of 40%	Rs.81,000+Rs.32,400=Rs.1,13,400/-
Multiplier of '15'	Rs.1,13,400x15=**Rs.17,01,000/-**
Loss of consortium to all dependents	Rs.48,400x5=**Rs.2,42,000/-**
Funeral expenses	**Rs.18,150/-**
Loss of estate	**Rs.18,150/-**
Total	**Rs.19,79,300/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.19,79,300-8,50,000=Rs.11,29,300/-**. On the enhanced amount of the compensation i.e. **Rs.11,29,300/-**, 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. Out of the enhanced amount of compensation, appellants-claimants No.1 to 3 are held entitled to **Rs.3,00,000/-** each, whereas, appellants-claimants No.4 and 5, are held entitled to the residue amount of **Rs.2,29,300/-**, in equal shares.

The impugned Award dated 08.09.2012 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, both the appeals stand allowed.

August 06, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**