
(2020) 02 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No.1575, 1671 Of 2013 (O&M

Arman And Another

APPELLANT

Vs

Sanjeev Kumar And Others

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 128

Motor Vehicles (Amendment) Act, 2019 — Section 194C

Citation : (2020) 02 P&H CK 0159

Hon'ble Judges : Alka Sarin, J

Bench : Single Bench

Advocate : Arun Sharma, S.S. Dinarpur, Vinod Gupta

Final Decision : Allowed

Judgement

Alka Sarin, J

The present order shall dispose of two appeals bearing FAO No.1575 of 2013 and FAO No.1671 of 2013 challenging a common award passed by the

Motor Accident Claims Tribunal, Ambala, dated 17.08.2012.

The brief facts necessary to be noticed in the present case are that on 05.04.2009, one Vinod Kumar, aged about 27 years was going to Naraingarh

from Village Bhurewala on his motorcycle bearing no registration number. It was stated in the claim petition that Vinod Kumar was driving at a slow

speed and was taking one Mukesh Kumar to a doctor for a check up. One Gurmeet Singh was holding the said Mukesh Kumar and they were both

pillion riders of the said motorcycle. When they crossed the bridge of river Begna in the area of Village Laha on Raipur Rani-Naraingarh Road, a car,

which was being driven by respondent No.1 in a rash and negligent manner , came on the wrong side of the road from Naraingarh side and hit the

motorcycle. As a result, all the occupants of the motorcycle fell on the road and suffered multiple grievous injuries. The motorcycle was also

damaged. After causing the accident, the car struck against a Canter, which was coming from Bhurewala side and the Canter in an effort to save the

car struck against a tree. The said accident is stated to have been witnessed by Nasir Mohamad and Rakesh Kumar, who were coming on another

motorcycle from Naraingarh side. They took the injured persons to General Hospital, Naraingarh, from where they were referred to PGIMER,

Chandigarh in a serious condition. Vinod Kumar is stated to have died on 05.04.2009 while Gurmeet Singh is stated to have died on 06.04.2009.

Mukesh, who had suffered fracture on his leg, was referred to General Hospital, Naraingarh.

The wife, minor child and mother of Vinod Kumar filed a claim petition stating therein that Vinod Kumar, who was aged about 27 years, was working

in Dubai as a bulldozer driver with a construction company and claimed that he was earning an amount of Rs. 50,000/- per month in Indian currency.

FIR No.62 dated 06.04.2009 was registered at Police Station Naraingarh. The Tribunal while returning a finding that this was a case of contributory

negligence on the part of motorcycle, car as well as the Canter awarded a total amount of Rs. 6,90,000/-. However, after deducting 2/3rd of the said

amount on account of contributory negligence on the part of deceased Vinod Kumar, the amount of compensation awarded was Rs. 2,30,000/-

Aggrieved by the amount awarded, as well as the finding returned qua contributory negligence, the minor son and mother of the deceased have

preferred FAO No.1575 of 2013. The wife Halima Begum has been arrayed as proforma respondent, since she had remarried after the death of

Vinod Kumar.

Qua the second deceased, namely, Gurmeet Singh, it was averred in the claim petition that he was aged 26 years and was working as a tailor in his

village and was earning Rs. 7,000/- per month. After deducting the amount on account of contributory negligence, the claimants were awarded an

amount of Rs. 1,13,000/-. Aggrieved by the amount awarded by the Tribunal as well as the finding qua contributory negligence, the claimants, who are

parents of Gurmeet Singh, have filed FAO No.1671 of 2013.

I have heard the learned counsel for the parties in both the cases.

It has been contended by the learned counsel for the appellants that the Tribunal has erred in returning a finding of contributory negligence. The

learned counsel contended that the finding of contributory negligence is totally conjectural in nature, inasmuch as, the same is only based on the

photographs which were on the file of the criminal case and an inquiry report, Mark R-2, and, hence the said finding, which is totally contrary to the

record, deserves to be set aside. It was further argued by learned counsel for the appellants that the amount of compensation awarded by the Tribunal

is on the lower side as the Tribunal had erroneously deducted 2/3rd towards contributory negligence and no compensation was granted towards future

prospects. The amounts awarded under the conventional heads and consortium are also on the lower side. Learned counsel for the appellants relied

upon the judgments of the Honâ??ble Supreme Court passed in the cases of Smt. Sarla Verma and others vs. Delhi Transport Corporation and

another, 2009(6) Supreme Court Cases 121, National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (16) Supreme Court Cases 680 and

Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 Supreme Court Cases 130 to contend that the

amounts awarded in the present appeals are on the lower side and not as per the law laid down by the Honâ??ble Apex Court.

Per contra, learned counsel appearing for the Insurance Company in both the appeals, has contended that there is no scope for enhancement in both

the appeals. He further contended that the finding returned by the Tribunal qua the contributory negligence is based on proper appreciation of

evidence led by the parties. It was also contended by the learned counsel appearing for the Insurance Company that it is an admitted case that this is a

case of triple riding on a motorcycle and that by itself would amount to contributory negligence. In support of his argument he has relied on a decision

of this Court in the case of Zile Singh alias Dile Singh vs. Krishan Lal and others, reported as 2014(39) R.C.R. (Civil) 511 .

Dealing with the first argument qua contributory negligence, the Tribunal while returning the finding of contributory negligence has primarily relied on

the photographs which were available on the file of the criminal case as well as the enquiry report, Mark R2. The finding of the Tribunal is purely

conjectural in nature, inasmuch as, merely by relying upon the photographs, a conclusion cannot be drawn as to who was driving rashly and negligently

and was responsible for the accident. As far as the report, Mark-R2, being relied upon by the Tribunal is concerned, the said report was an enquiry report which was got conducted by the DSP, Naraingarh, on a complaint filed by respondent No.1. It was noticed by the Tribunal that the said report, which was not proved on the record and was only marked as Mark-R2, was not prepared after associating all the parties in the investigation. In fact, it has come in the statement of PW3 ASI-Chander Bhan, who was the Investigating Officer of the case, that he was not associated with the investigation conducted by the DSP and the said investigation was done at the asking of respondent No.1-Sanjeev Kumar. That being so, no reliance can be placed on the said document.

Now reverting to the evidence on the record, a conjoint reading of the statements of Nisar Mohammad, PW4, ASI-Chander Bhan, PW3, who was the Investigating Officer of the case, leaves no manner of doubt that the accident had occurred due to the rash and negligent driving of the car. Nisar Mohammad, PW4, the eye-witness of the accident, was subjected to a lengthy cross-examination, however, nothing beneficial could be elicited by the respondents from the cross-examination. In fact, the testimony of PW4 remained unshaken. There was no witness produced by the respondents apart from respondent No.1 who deposed regarding the manner in which the accident took place. It has come in the statement of Sanjeev Kumar, RW1, that there were five occupants in the car including him. It fails to reason why the other occupants of the car were not produced by Sanjeev Kumar in support of his stand. That being so, I am of the considered view that there is no evidence pointing towards the contributory negligence on the part of the motorcyclist.

The argument raised by the learned counsel for the Insurance Company that since there were two pillion riders on the motorcycle that would also be a ground to uphold the finding qua contributory negligence, deserves to be rejected. The Honâ??ble Supreme Court in the case of Mohammed Siddique and Another vs. National Insurance Company Limited and others, Civil Appeal No.79 of 2020 dated 08.01.2020, while dealing with a matter where the victim was one of the two pillion riders on a motorcycle, has held as under: -

â??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 194A 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 PW-3 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.â??

In this view of the matter, I set aside the finding of contributory negligence which has been recorded by the Tribunal.

Qua the quantum of compensation awarded by the Tribunal, as per the dictum laid down in Smt. Sarla Verma (supra), Pranay Sethi (supra) and

Magma General Insurance Company Limited (supra), I find that future prospects have not been granted to the claimants of deceased Vinod Kumar. I

also find that no consortium had been granted as per the dictum laid down in Magma General Insurance Company Limited (supra). Even the amounts

awarded under the conventional heads are on the lower side. No spousal consortium is being granted to the wife, inasmuch as, admittedly, she has

remarried after the death of Vinod Kumar. I, therefore, deem it just and proper to award the following compensation to the claimants in FAO No.1575

of 2013:-

Sr. No. Head Compensation Awarded

1. Monthly income â?" 5,000/-
2. Annual income â?" 60,000/-
3. Annual dependency of claimantâ?" 40,000/-
after deduction of 1/3 towards
personal expenses
4. Annual dependency after addingâ?" 56,000/-
future prospects @ 40% (age 28
years)
5. Multiplier of 17 â?" 9,52,000/- (56000x17)
6. Loss of estate â?" 15,000/-
7. Funeral expenses â?" 15,000/-
8. Filial consortium â?" 40,000/-
9. Parental consortium â?" 40,000/-
- Total compensation â?" 10,62,000/-

Qua the compensation, to be awarded to the claimants in FAO No.1671 of 2013, I once again find that no future prospects have been given and

further the amounts awarded under the conventional heads and consortium are also on the lower side. Even the multiplier has wrongly been applied by

the Tribunal. Keeping in mind the dictum laid down by the Honâ??ble Supreme Court in the cases of Smt. Sarla Verma (supra), Pranay Sethi

(supra) and Magma General Insurance Company Limited (supra), I deem it just and proper to award the following compensation: -

Sr. No. Head Compensation Awarded

1. Monthly income â?" 4,200/-
2. Annual income â?" 50,400/-
3. Annual dependency of claimant afterâ?" 25,200/-
deduction of 50% towards personal
expenses
4. Annual dependency after adding futureâ?" 35,280/-
prospects @ 40% (age 26 years)
(25200+10080)
5. Multiplier of 17 â?" 5,99,760/-
(35280x17)
6. Loss of estate â?" 15,000/-
7. Funeral expenses â?" 15,000/-
8. Filial consortium @ (Rs. 40,000/- eachâ?" 80,000/-
to mother & father)
9. Medical expenses â?" 4,040/-
- Total compensation â?" 7,13,800/-

The amount already awarded to the claimants of both the deceased under the impugned award shall be deducted from the total compensation

determined in this order. The enhanced amount in both the cases shall carry an interest at the rate of 7.5% per annum from the date of filing of

the claim petition till date of realisation. In the case of claimants of Vinod Kumar i.e. in FAO No.1575 of 2013, 75% of the enhanced amount

awarded shall be invested in a fixed deposit in the name of the minor child and

the remaining 25% of the enhanced amount shall be paid to appellant

No.2, who is the mother of deceased Vinod Kumar. The amount qua appellant No.1 in FAO No.1575 of 2013 shall be kept in fixed deposit till such

time as appellant No.1 attains majority.

With the above observations, the present appeals are allowed and the award passed by the Tribunal is accordingly modified.