



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-4307-2008 (O&M)
Date of Decision: March 20, 2025**

Smt.Kela and others

...Appellants

VERSUS

Sunil Kumar and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashish Gupta, Advocate
for the appellants.

Mr.Gopal Mittal, Advocate
for respondent No.2.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the finding recorded by learned Tribunal, qua contributory negligence, fastened upon the deceased as well as questioned the adequacy of the compensation awarded by learned Motor Accident Claims Tribunal, on account of death of Chand Kishor, in a motor vehicular accident.

At the very outset, be it noted that none of the respondents, upon whom the liability has been fastened to pay the compensation, have filed any appeal.

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

That, on 01.08.2005, Chand Kishor (since deceased) was going to Shikrawa from village Bhandas, on motorcycle bearing registration No.HR-

**FAO-4307-2008****-2-**

28A-5480, which was driven by him, at a slow speed and on correct left side of the road. Mohar Singh was pillion rider of the said motorcycle. When they reached ahead of village Badarpur, in the area of village Badarpur, a motorcycle bearing registration No.HR-29L-0471, came from the Shikrawa side, which was driven by respondent No.1 (Sunil Kumar), rashly and negligently and he struck the same into the motorcycle of Chand Kishor, after coming on the wrong side of the road, as a result whereof, motorcycle of Chand Kishor fell down and he received serious injuries, which proved fatal.

It is further categorically asserted that accident, solely occurred due to rash and negligent driving of respondent No.1-Sunil Kumar.

Upon notice, respondent No.1-Sunil Kumar made appearance and filed reply, wherein, besides taking preliminary objections, thereby disputing the maintainability of the claim petition, has also challenged the locus standi of the claimants to file the claim petition and also asserted that the claimants have not come to the Court with clean hands. The accident had occurred due to rash and negligent driving of the deceased himself and the police case has been registered against the answering respondent with collusion of the local police.

On merits, all the assertions were denied and it was submitted that accident had taken place, due to rash and negligent driving of the deceased himself.

Respondent No.2-insurance company, in its reply, also raised various preliminary objections, about the claimants to be having no locus standi or cause of action to file the claim petition and alleged that accident

**FAO-4307-2008****-3-**

was not result of rash and negligent driving of motorcycle bearing registration No.HR-29L-0471 by respondent No.1 and the claim petition is bad for non-joinder of necessary parties. It was submitted that the deceased himself was responsible for the accident. Respondent No.1 was not having valid and effective driving licence at the time of accident and the motorcycle bearing registration No.HR-29L-0471 was not insured with the answering respondent, at the time of alleged accident and therefore, the insurance company, as such, could not be made liable.

Issues were framed. To substantiate their claim, claimant No.1-Smt.Kela, had stepped into witness box as PW-4. Further, the claimants also examined PW-1 Sunita, DRK in the Court of SDJM, PW-2 Dr.Krishan Kumar, PW-3 Jamil Ahmad, Field Officer, Gurgaon Gramin Bank, Shikrawa and eye witness to the accident is Mohar Singh, who has stepped into witness box as PW-5. Even, PW-6 Abhey Ram, Record room clerk, Safdarjang Hospital has been examined. Besides the same, various other documents were also brought on record.

On the contrary, no evidence, as such, has been led by respondents.

On appraisal of the evidence, brought on record, more particularly, considering the cross-examination of PW-5 Mohar Singh, learned Tribunal had concluded about the accident to have taken place, on account of contributory negligence of deceased Chand Kishor as well as respondent No.1-Sunil Kumar and accordingly, decided issue No.1. Furthermore, while considering the deceased Chand Kishor to be 40 years and being employed at Gurgaon Gramin Bank, Shikrawa and on the basis of

**FAO-4307-2008****-4-**

the salary certificate Ex.P7, had concluded about the monthly income of the deceased as Rs.5701/-. After making deduction, on the count of 'personal expenses' to the extent of 1/3rd, the loss of dependency was taken as Rs.3800/- per month, annual whereof, comes to be Rs.45,600/-. Multiplier of '14' was applied and the compensation was worked upon as Rs.6,38,400. Besides the same, another amount of Rs.10,000/- was granted towards 'funeral expenses and consortium'. In total, the compensation was worked upon as Rs.6,48,400/-. However, taking into consideration deceased Chand Kishor to have contributed negligence to the extent of 50%, the amount of compensation awarded by learned Tribunal to the claimants was Rs.3,24,200/-.

Being aggrieved, the present appeal has been filed by the appellants-claimants.

As already observed aforesaid, keeping in view the recitals of the reply, it is pertinent to mention that even though, the fact of the accident, as such, has been admitted by respondent No.1-Sunil Kumar, in his reply, but however, he has taken a specific plea that the accident occurred due to rash and negligent driving of the deceased himself. He had not taken a specific plea of contributory negligence, as such. In the light of the same, it is pertinent to mention that Mohar Singh has been examined as PW-5, who is an eye witness to the accident in question, being pillion rider of the ill-fated motorcycle. In his affidavit Ex.PW5/A, it is categorically stated that on 01.08.2005, he was going to Shikrawa on motorcycle bearing registration No.HR-28A-5480, as a pillion rider along with Chand Kishor. He further categorically stated in his affidavit that Chand Kishor was driving the



motorcycle, at a moderate speed and on correct left side of the road. Furthermore, he also stated in the affidavit that at about 9.35 a.m., when they reached ahead of village Badarpur, then a motorcycle bearing registration No.HR-29L-0471, came from Shikrawa side, in a rash and negligent manner, driven by respondent No.1 and struck with their motorcycle, as a result whereof, their motorcycle fell down and they sustained grievous injuries. In the concluding lines of the affidavit, this witness categorically stated that this accident, solely occurred due to rash and negligent driving of respondent No.1. Police recorded his statement and lodged the FIR.

Such being the recitals of the affidavit, it is further pertinent to note that respondent No.1, who in the capacity of being driver of the offending motorcycle, was the best person to depose about the manner of taking place of the accident, has not stepped into witness box. He has not taken the plea of contributory negligence in the written statement, though, he had made specific assertion about the accident to have taken place, due to rash and negligent driving of the deceased himself. Even if, it be so, it was required on his part to come forward and depose about the manner of taking place of the accident and how there was negligence, on the part of the deceased. However, he has not come forth.

Learned Tribunal has relied upon the cross-examination of PW-5 Mohar Singh, wherein, he had stated about the road, at the place of the accident, to be 12 feet wide and that 2-3 vehicles could have passed simultaneously and that no traffic was moving on the road. On the basis of the same, it was concluded that there was contributory negligence. However, though width of the road, as such, may be one aspect, which can



be taken into consideration, but more important was the manner of taking place of the accident. Relating to the same, as observed aforesaid, it was required for respondent No.1, to have taken a specific plea of deceased having contributed in taking place of the accident and also, should have himself stepped into witness box and substantiated the manner of taking place of the accident. He had not stepped into witness box.

In the light of the same, solely on account of width of the road, assumptions and presumptions, cannot be drawn, about the deceased having not taken any caution, more particularly, when PW-5 Mohar Singh, categorically stated in his affidavit that the accident had solely occurred, due to rash and negligent driving of respondent No.1-Sunil Kumar.

To establish the contributory negligence, some act or omission, which materially contributed to the accident or 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 act, 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.

Thus, omission on the part of respondent No.1 to have stepped into witness box, in itself, demolish the plea of contributory negligence, as raised. There ought to be other circumstances, spelt forth, with regard to the manner of taking place of the accident, besides the width of the road and there being no other traffic, at the relevant time. However, the same, as



such, has not been substantiated, at the behest of respondent No.1, who was the best person to explain away the manner of taking place of the accident.

In the given circumstances, deceased Chand Kishor having contributed negligence, in causing the accident, to the extent of 50% is not justified, more particularly, when there was no explanation, on the part of driver of the offending motorcycle bearing registration No.HR-29L-0471, with regard to the manner of taking place of the accident. This is all the more important to note, as from the evidence of PW-1 Sunita, DRK, it is evident that respondent No.1 was also facing trial under Sections 279 and 304-A IPC and produced on record copy of charge-sheet Ex.P1, report under Section 173 Cr.P.C. Ex.P2, recovery memo Ex.P3, inquest proceeding Ex.P4 and supardginama Ex.P5. Thus, the said finding of the contributory negligence to the extent of 50%, on the part of Chand Kishor, hereby stands reversed.

From the evidence on record, more particularly, considering the record produced by PW-3 Jamil Ahmad, Field Officer, Gurgaon Gramin Bank, Shikrawa, it stands established that Chand Kishor was employed in Gurgaon Gramin Bank, Shikrawa, at the relevant time. Salary certificate coming on record is Ex.P7. On the basis of the service record, PW-3 has also deposed that date of birth of Chand Kishor is 20.03.1968. Even though, learned Tribunal had taken the age of the Chand Kishor as 40 years, but however, taking into consideration the aforesaid date of birth, so coming forth, the age of the deceased comes to be 37½ years, at the time of accident. Considering this age, the compensation as worked upon aforesaid, apart from the deduction, on the basis of the contributory negligence, do call for



re-computation.

From the salary certificate Ex.P7, it stands established that monthly earnings of the deceased was Rs.5701/-, which is now rounded off as Rs.5700/-. Considering age of deceased to be 37½ years, addition of 40%, ought to be made, on the count of 'future prospects', which comes to be Rs.2280/-. After making such addition, the earnings of the deceased, comes to be Rs.7980/- per month.

Considering the number of dependents to be six, the deduction on the count of 'personal expenses' ought to be made to the extent of 1/4th instead of 1/3rd as done by learned Tribunal, which comes to be Rs.1995/- and the residue earnings comes to be Rs.5985/-, annual whereof is **Rs.71,820/-**. Considering the age of the deceased as observed aforesaid, the appropriate multiplier to be applied is '15' instead of '14', as applied by learned Tribunal. Thus, by applying the same, the loss of dependency comes to be **Rs.71,820x15=Rs.10,77,300/-**.

Besides the aforesaid, on the count of '**loss of consortium**', all the appellants-claimants, are entitled to prevalent amount of Rs.48,400/- each i.e. $Rs.48400 \times 6 = Rs.2,90,400/-$ and they are also entitled to compensation, on the counts of '**loss of estate**' as well as '**funeral expenses**', which is **Rs.18,150/-**, on each count.

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

Loss of dependency	:	Rs.10,77,300/-
Loss of consortium	:	Rs.2,90,400/-
Loss of estate	:	Rs.18,150/-



Funeral expenses	:	Rs.18,150/-
Total	:	Rs.14,04,000/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.14,04,000-3,24,200=Rs.10,79,800/-**. On the enhanced amount of the compensation i.e. **Rs.10,79,800/-**, 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 total compensation, as now worked upon, i.e. **Rs.14,04,000/-**, appellant-claimant No.1 is held entitled to **Rs.4,04,000/-**, whereas, appellants-claimants No.2 to 6 are held entitled to **Rs.2,00,000/-** each. However, the compensation, if any, disbursed to the appellants-claimants, at any earlier stage, shall be adjusted accordingly.

Accordingly, the impugned Award dated 15.12.2007 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the above observations, the present appeal stands allowed.

March 20, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No