2025:PHHC:110775

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1421-2010 (O&M)
Date of Decision: August 21, 2025

Sheela Devi and others

...Appellants

VERSUS

Rachpal Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora, Advocate
for the appellants.

Mr.Neeraj Khanna, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants to assail the Award dated 18.11.2009 passed by learned Motor Accident Claims Tribunal, whereby, compensation was awarded to the appellants-claimants, on account of death of Mani Ram, while apportioning blameworthiness to the extent of 50% upon deceased Mani Ram.

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

That, on 05.11.2008, Mani Ram along with his brother-in-law Ram Murti was going from their house at Power Colony Ropar to meet their friend at Nangal. Mani Ram was ahead of Ram Murti. When they crossed Agampur chowk, at about 9.00 p.m., then truck was seen coming from the

opposite direction with high beam lights. Mani Ram could not notice the parked truck bearing registration No.PB-07K-9393, in the middle of the road, as the same was parked without indicator or lights switched 'on'. Mani Ram struck against the backside of the truck in the rear iron angle and died instantaneously. FIR was got registered.

It is pertinent to mention that respondent No.1, who was driver of the truck in question was proceeded against ex-parte and respondent No.2, owner had died. However, respondent No.3-insurance company had contested the claim petition, in the reply filed. It disputed about the involvement of the truck bearing registration No.PB-07K-9393. Also, it was averred that the driver of the truck was not having a valid and effective driving licence. Even, the numbered truck was not having valid and effective route permit.

On appraisal of the evidence, brought on record, it was held by learned Tribunal that accident had taken place on 05.11.2008, while truck bearing registration No.PB-07K-9393 was parked by respondent No.1, in the middle of the road, without flash of indicator and it had taken place at 9.00 p.m. Mani Ram, who was on motorcycle had struck the parked truck from the rear side. On this account, rashness and negligence was also imputed upon deceased Mani Ram to the extent of 50% and thus, it was held to be a case of contributory negligence, in the ratio of 50:50.

That being so, while considering deceased Mani Ram to be in age group of 41-45 years and also about him to be working in Guru Gobind Singh Super Thermal Plant, Ropar, considered his carry home salary to the extent of Rs.5332/- per month. Since, he was permanent employee, 30%

addition, on the count of ‘future prospects’ was made and the total earnings were taken as Rs.6932/- per month. Considering the number of dependents, 1/4th was deducted, on account of ‘personal expenses’ and the balance came to be Rs.5200/- per month, annual whereof is Rs.62,400/-.

Considering the contributory negligence to the extent of 50%, on the part of deceased, the compensation was worked upon, while applying the multiplier of ‘14’ i.e. Rs.62,400x14-50%=Rs.4,36,800/- and this amount of compensation was paid.

However, the finding of contributory negligence, is palpably wrong. Even, the ‘work on’ of the compensation, do call for re-determination, as per settled prevalent law.

No doubt, it stands established that the motorcycle of the deceased had struck backside of the offending truck, but suffice to consider the testimony of eye witness PW-1 Hindu, who was accompanying Ram Murti as pillion rider, on a separate motorcycle, which was following the motorcycle of Mani Ram, who has categorically deposed, in consonance with the pleaded case of the claimants, about the accident to have taken place at 9.00 p.m.. Also further, he had stated about vehicles coming from the opposite side, having lights, which gave glare to the eye, as a result whereof, Mani Ram, who was going in front of their motorcycle, had struck against the truck. The said witness also categorically deposed as per pleaded case about the truck having been parked, in the middle of the road, without taking any precautions. There was no indicator on the truck as well as it was parked on the wrong side of the road.

Considering this testimony, it is also pertinent to note that respondent

No.1, who was the best person to counter the claim of the appellants-claimants, has not pursued the claim petition.

During the course of arguments, much emphasis has been laid upon the fact of motorcycle having struck the truck from the backside. May it be so, but simultaneously, it is essential to take note of the fact that it is a specific case of the appellants-claimants, about the truck to be stationed in the middle of the road and that too, without any sign board or indicators of the vehicle to be 'on', while parking the truck, on the road.

It is also pertinent to mention that as per Rule 15 of the Road Regulations, 1989, every driver of a motor vehicle, parking on any road, is required to park the vehicle, in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to the other road users and if the manner of parking is indicated by any sign board or making marking on the road side, he shall park his vehicle in such manner.

Besides these precautions having not been so taken, as required by the ibid rules, it is also pertinent to mention that it is coming in the testimony of eye witness that there were other vehicles coming from the other side also, which gave glare to the eyes. Also it be taken note of that respondent No.1 had not come forward to contest the claim petition and there is, as such, nothing on record about the parking of the truck and taking up of safety measures, at the time of parking of the truck and having put 'on' the parking lights. In the given circumstances, there is definitely contravention of the Central Motor Vehicle Rules.

Such being the evidence, coming on record, it is also further significant to note that nothing is coming in evidence that at the spot, where

the accident was very well lit, that the vehicle parked is visible to the person coming from the backside.

To establish the contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person, against whom, it is alleged. Where, by his negligence, one party places 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 acts 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.

Considering the categoric claim that the accident had taken place at 9.00 p.m. and that too, with the truck, which was parked in the middle of the road, without any parking lights or taking any precaution to caution other vehicles coming on road, about parking of the said vehicle, it is difficult to decipher that the deceased, who was coming from the backside of the truck, at the night time, when the road was not well lit, could eventuate the situation to come across the vehicle, which was stationary. Obviously, it was only when, coming very near to the parked vehicle, the deceased would have noticed the vehicle. Within a fraction of few seconds, he may not have been able to quickly respond to the fact of truck, being parked there. This error to respond spontaneously, in any manner, cannot amount to contributory negligence, more particularly, when the truck was parked without taking precautions and thus putting the deceased, in situation of danger. Considering all the aforesaid factors, in any manner, it cannot be

concluded that there was contributory negligence, on the part of the deceased, while driving the ill-fated motorcycle.

In the given circumstances, the finding recorded by learned Tribunal, with regard to there being contributory negligence, on the part of the deceased, to the ratio of 50%, is hereby set aside.

In this backdrop, let us consider the compensation, to be awarded to the appellants-claimants. As already observed aforesaid, the compensation, worked upon by learned Tribunal, do call for re-determination.

Deceased Mani Ram was asserted to be 37 years old, at the time of accident. However, the widow of deceased had stated that deceased was born in the year 1980. Apart from this, there is no other evidence, coming on record to establish about age of the deceased. In the given circumstances, in no manner, it can be taken that deceased was falling in the age group of 41-45 years. Definitely, he has to be considered as below the age of 40 years. Considering it to be so, the multiplier of '14' is not to be applied, whereas, the suitable multiplier is '15'.

Mohinder Lal Kainth, UDC, Account Branch, GGSSTP, Ropar was examined as PW-3. He has deposed Mani Ram deceased was working as skilled worker in their department and he had brought the salary bills from August to December 2008, which are Ex.P4 to Ex.P8. Learned Tribunal had erroneously considered the carry home salary of Rs.5332/- per month and has worked upon the compensation. However, 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 salary certificate Ex.P5, which is for the month of September 2008, the net salary of the deceased was Rs.9732/- per month and this amount has to be taken into consideration, annual whereof is Rs.1,16,784/-. To this amount, on the count of 'future prospects' addition has to be made. Learned Tribunal had erroneously made addition to the extent of '30%', whereas, deceased being permanent employee, it has to be to the extent of '50%', as he was below 40 years of age, at the time of accident. Considering the number of dependents, deduction of 1/4th has been appropriately made by learned Tribunal.

Besides the aforesaid, compensation under the conventional heads, ought to be paid to the appellants-claimants. On the count of 'loss of consortium', each of the appellants-claimants is entitled to Rs.48,400/- and they are also entitled to compensation on the counts of 'loss of estate' and 'funeral expenses' to the extent of Rs.18,150/- on each count.

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

Annual earnings	Rs.1,16,784/-
Addition of 50%	Rs.1,16,784+Rs.58,392=Rs.1,75,176/-
Deduction of 1/4th	Rs.1,75,176-43,794=Rs.1,31,382/-
Multiplier of '15'	Rs.1,31,382x15=**Rs.19,70,730/-**
Loss of consortium	Rs.48,400x4=**Rs.1,93,600/-**
Loss of estate	**Rs.18,150/-**
Funeral expenses	**Rs.18,150/-**
Total	**Rs.22,00,630/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.22,00,630-4,36,800=Rs.17,63,830/-**. On the enhanced amount of the compensation i.e. **Rs.17,63,830/-**, 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.2 to 4 are held entitled to **Rs.4,00,000/-** each, whereas, appellant-claimant No.1, is held entitled to the residue amount of **Rs.5,63,830/-**.

The impugned Award dated 18.11.2009 stands modified, to the extent, as indicated aforesaid. The liability of the respondents to pay the compensation shall be joint and several, as ordered by learned Tribunal.

In view of the aforesaid terms, the present appeal stands allowed.

August 21, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

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