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**(2014) 07 P&H CK 0831**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** FAO No. 151 of 1991 (O&M)

Daljit Kaur

APPELLANT

Vs

Punjab State

RESPONDENT

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**Date of Decision:** July 31, 2014

**Hon'ble Judges:** Lisa Gill, J

**Bench:** Single Bench

**Advocate:** Ankur Gupta, Advocate for Arvind Mittal, Advocate for the Appellant; L.C. Aggarwal, AAG, Advocate for the Respondent

**Final Decision:** Disposed Off

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**Judgement**

Lisa Gill, J.

The present appeal has been filed by the appellant claiming enhancement of the compensation awarded on account of the death of Baldev Singh son of Sh. Harnam Singh by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as, the "Tribunal") vide award dated 03.09.1990.

2. The facts as stated are that, on 20.08.1989 Baldev Singh (deceased) was coming from Nangal to Ludhiana via Garhshankar on scooter No. PIM-2228. As he reached ahead of village Hare Ka Pau, a Punjab Roadways bus bearing registration No. PJC-134 coming from the opposite direction being driven by respondent-Charan Singh in a rash and negligent manner hit the scooter by going on the right side of road. Baldev Singh died at the spot. He was an employee of the Punjab State Electricity Board, Ludhiana and aged about 42 years. The claim petition was filed by the present appellant (his widow) and proforma respondents No. 4 and 5 (i.e., father and mother of the deceased). The Tribunal while holding it to be a case of contributory negligence awarded a sum of Rs. 2,88,000/-. As the deceased Baldev Singh was held guilty of contributory negligence to the extent of 40%, the amount payable was assessed as Rs. 1,72,800/-. A sum of Rs. 1,00,000/- was directed to be paid to the present appellant and remaining amount was to be paid in equal shares to proforma respondents No. 4 and 5-parents.

3. The present appeal has been filed by the widow-Daljit Kaur @Amarjit Kaur. It is vehemently contended that there is no evidence whatsoever to prove that there was any contributory negligence on the part of deceased-Baldev Singh. The Tribunal has grossly erred on this count. It is also submitted that the compensation awarded is on the lower side and the GPF and loan etc. cannot be deducted from the salary as has been done by the Tribunal and the claimant/appellant is entitled to compensation on account of future income, funeral expenses, loss of consortium and love & affection.

4. I have heard learned counsel for the parties and gone through the available record.

5. The claimants had relied upon the testimony of Darshan Lal, AW 2 to prove the accident in question. Darshan Lal is admittedly an eye-witness to the accident and also the propounder of the FIR, Ex. A1, which was registered against the respondent No. 3-driver. The Tribunal has held the deceased-Baldev Singh to be guilty of contributory negligence by observing that it has come in the evidence of Darshan Lal (AW 2) that there was a head on collision and that the scooterist and the bus driver each could not maneuver their vehicles to steer clear from each other which goes to show that both the drivers had failed to exercise due care and caution and the accident, thus, took place due to their negligent driving. The bus driver had a higher responsibility in exercising due care and caution and to see that his vehicle did not come into contact with lighter vehicles, therefore, he was held guilty to the extent of 60% for causing the accident.

6. There is no statutory definition of the term negligence. In common parlance, it is the omission to do something which a person is obligated to do or the act of doing something which a prudent or reasonable man would not do. Negligence is the failure to observe the degree of care, caution and precaution which the circumstances justly demand. To determine whether an act is or is not negligent, it is necessary to determine if any reasonable man would foresee that the act or its omission would cause damage or not. The crucial question in this case would be whether the deceased by exercise of reasonable care could have avoided the accident. It is worthwhile to note that Darshan Lal (AW 2) is an independent witness. It has come into evidence that he is not related to the deceased-Baldev Singh. In fact, Baldev Singh deceased was not even known to him prior to the accident. Darshan Lal also had no axe to grind against the driver of the bus who was also a stranger to him. Darshan Lal in his testimony has clearly mentioned that Baldev Singh was going on the left side of the road and that the central front-side of the bus had hit the scooter. The part of the evidence of Darshan Lal to the effect that the scooter and bus had collided head on cannot be read in isolation to conclusively hold that Baldev Singh was at fault. It has been admitted by RW 1, Charan Singh, the driver of the offending bus that he had never complained in this regard and neither he protested that the accident had been caused due to the negligence on the part of

the deceased. There were passengers in the bus but none of them had recorded that the deceased was at fault. Furthermore, there is no site-plan or any other evidence brought forth by the respondents to rebut the positive evidence led by the claimants in this regard. In the absence of the same, the Tribunal has wrongly concluded the deceased-Baldev Singh to be the guilty of contributory negligence. The Hon"ble Supreme Court in [Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company](#), has held that in the absence of any evidence on record it would be incorrect to return a finding of contributory negligence. In that case the Tribunal and the High Court had held the claimant to be guilty of contributory negligence only on the ground that the accident had taken place in the middle of the road. This finding of the Tribunal is, thus, set aside and the accident is held to have been caused due to the rash and negligent driving of respondent No. 3.

7. The deceased was a Cashier with the Punjab State Electricity Board at the time of his death and drawing a gross salary of Rs. 2,464/- per month. He was contributing Rs. 200/- per month towards G.P. Fund and a sum of Rs. 464/- per month towards scooter loan. He was carrying home a salary of Rs. 1,800/- per month. The Tribunal has chosen to take his salary Rs. 1,800/- per month and fixed the pecuniary loss to claimants at the rate of Rs. 1,500/- per month and applying a multiplier of 16, awarded a compensation of Rs. 2,88,000/- to the claimants.

8. However, the salary of the deceased is required to be taken as Rs. 2,464/- per month as the occasion for deducting the amounts on account of G.P. Fund and loan installments does not arise. He was aged 42 years at the time of accident, therefore, multiplier of 14 is, in fact, required to be applied in this case. Keeping in view the fact that the deceased was a Government employee, the claimants are entitled to compensation on account of loss of future income which is assessed at 30%, in accordance with the guidelines laid down by Hon"ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#),

9. Thus, taking the income of the deceased at Rs. 2,464/- per month and applying the deduction of 1/5th on account of personal expenses, the amount comes to Rs. 1971/- per month. Applying the multiplier of 14, the total amount of income works out to be Rs. 3,31,128/- (1971 x 12 x 14). An addition of 30% i.e., an amount of Rs. 99,338/- (30% of 3,31,128) is awarded on account of loss of future income/prospects. The appellant is further held entitled to Rs. 20,000/- on account of loss of consortium; Rs. 5,000/- on account of funeral expenses and Rs. 10,000/- for loss of love and affection. Thus, the total amount of compensation, to which the appellant is held entitled, is assessed at Rs. 4,65,466/- (331128 + 99338 + 20000 + 5000 + 10000) alongwith interest at the rate of 7% from the date of filing of the petition till realization.

10. It is made clear that in view of the fact that the deceased-Baldev Singh has not been held guilty of contributory negligence, there shall be no corresponding deduction in the said amount. The appellant in this case shall be entitled to her

share in the same ratio as apportioned by the Tribunal between her and the parents of the deceased.

11. In the abovesaid terms, this appeal stands disposed of.