(2016) 10 P&H CK 0121

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 593 of 2007

State of Haryana		APPELLANT
	Vs	
Dilbag Singh		RESPONDENT

Date of Decision: Oct. 25, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2016) 4 LawHerald 3493 : (2017) 1 PLJ 37

Hon'ble Judges: Mr. Amol Rattan Singh, J.

Bench: Single Bench

Advocate: Mr. S.K. Hooda, Advocate, for the Respondent; Mr. Rahul Mohan, DAG, Haryana, for the Petitioner

Final Decision: Dismissed

Judgement

Amol Rattan Singh, J. - These are two cross appeals filed by the State of Haryana, i.e. the owner of the bus involved in the accident concerned, and the claimants before the learned Motor Accident Claims Tribunal, Rohtak. Both sets of appellants are challenging the impugned Award, the State mainly on the issue of negligence, though an issue has also been raised with regard to the quantum of the compensation awarded, and the claimants being in appeal seeking enhancement of the compensation of Rs. 10,40,000/- awarded by the Tribunal.

2. The facts, as taken from the impugned Award of the Tribunal, are that the claimants (appellants in FAO No.3035 of 2007), had stated in the claim petition that on 09.11.2005, the first appellant, Dilbag Singh, along with his wife Kamla Devi and one Jaiwanti, were travelling in a Haryana Roadways bus bearing registration no.HR-46B-7246, going from Gohana to Rohtak. Respondent no.1 (in the claimants'' appeal) was driving the bus allegedly at a fast speed in a rash and negligent manner. When the bus reached near the new bus-stand, Rohtak, at about 6:00 pm, the said respondent is stated to have stopped his bus in front of the middle gate of

the bus-stand, upon which the first appellant-claimant, Dilbag Singh, alighted from the bus. However, when his wife, Kamla Devi, was in the process of getting down, respondent no.1 suddenly put the bus in motion again, without any signal in that regard from the Conductor. Kamla Devi is stated to have fallen down and was unfortunately crushed under the rear wheel of the bus, due to which she sustained multiple injuries. She was taken to the PGIMS, Rohtak, where she was declared to have been brought dead.

Hence, it was contended that her death was caused due to the rash and negligent driving of respondent no.1 herein.

An FIR is also stated to have been registered against the said respondent at Police Station Civil Lines, Rohtak.

3. It was further contended that the deceased Kamla Devi was a Government employee and was working as a Store-Keeper in the PGIMS, Rohtak, drawing a monthly salary of Rs. 12,064/-. She was also stated to be an income tax assessee, with her PAN given in the claim petition. She was stated to be 47 years old when she died, and the claimants claimed that they had spent Rs. 15,000/- on her last rites.

Consequently, they sought compensation of Rs. 40,00,000/- on account of her death.

4. Upon notice being issued to the respondents, respondent no.1 filed his written statement admitting the accident but stating that it was not caused because of his negligence but that of the deceased herself, because she had suddenly jumped out from the moving bus, without informing either to the said respondent (driver), or to the Conductor of the bus.

It was further contended that the bus was at a moderate speed and that actually it had not been stopped at the gate of the bus-stand. Yet further, it was contended that a false criminal case was got registered against respondent no.1.

5. Respondents no.2 and 3 before the Tribunal, i.e. the General Manager of the Haryana Roadways Depot, Rohtak (present appellant no.2 in FAO No.593 of 2007) and the State of Haryana, filed a joint written statement, taking a similar plea as was taken by respondent no.1, reiterating that the accident occurred due to the negligence of the deceased herself.

6. Upon the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

"1. Whether the accident in question took place due to the rash and negligent driving of bus bearing No. HR- 46B/7246 by the respondent No.1, on 9.11.2005? OPP

2. Whether Smt. Kamla Devi wife of Dilbagh Singh died due to the injuries suffered by her in the accident, if so, to what amount of compensation and from whom, the applicants are entitled to? OPP

3. Relief."

7. In support of the claim petition, appellant no.1 examined himself as PW1 and reiterated his stand in the claim petition, also tendering the FIR registered against respondent no.1, as Ex.P1.

The first respondent also examined himself as RW1, also reiterating his stand in his written statement and further stating that the Haryana Roadways did not permit any driver to stop the bus outside the gate of the bus-stand and as such, the deceased having fallen down from the "rear window" of the bus, she herself was responsible for the accident.

8. Having appraised the aforesaid evidence and the pleadings, the learned Tribunal placed heavy reliance on the testimony of the first appellant, further stating that since he (Dilbag Singh) himself had also alighted from the bus, it was obvious that the bus had stopped (at the gate) as otherwise he would have also sustained injuries, getting down from a running bus. Further holding that since respondent no.1 was also facing a criminal trial, with no animus of the police against him, it was obvious that the accident was caused due to his negligence.

9. On the issue of quantum of compensation, it was found to be proved by the post mortem report, Ex.P3, as also the PAN card of the deceased, that she was 47 years old, having been born on 15.09.1958. She had three children, one of whom was a minor going to school, whereas the other two had attained majority, with the daughter (present appellant no.4) being married about one year after the accident. Her elder son, appellant no.2 (in FAO No.3035 of 2007), was stated to be 26 years old and a student of an Engineering College and a bachelor.

10. As regards the salary of the deceased, it was found that out of the gross salary of Rs. 12,064/-, the deceased was making a contribution of Rs. 1101/- towards her GPF account and Rs. 30/- to the Group Insurance Scheme. She was also drawing a house rent allowance of Rs. 570/- and medical allowance of Rs. 250/-. Holding that the aforesaid two deductions and two allowances were to be deducted from her gross salary, her net income was assessed at Rs. 10,113/- per month, which was rounded off to Rs. 10,000/-, thereby bringing her annual net income to be Rs. 1,20,000/-.

Deducting ⅓rd of that amount towards the personal expenses of the deceased, the dependency of the claimants was held to be Rs. 80,000/- per annum.

On that sum, applying a multiplier of 13, the total loss of income was worked out to Rs. 10,40,000/- (Rs.80,000/- x 13), which was accordingly the total compensation awarded to the claimants, who were also held entitled to interest @ 7.5% per annum, running from the date of the filing of the claim petition till realisation of the amount.

11. Before this Court, Mr. Rahul Mohan, learned Deputy Advocate General, submitted that the Tribunal had wholly erred in attributing negligence to the driver

of the bus, inasmuch as, it was very obvious that even as per the stand taken by the State and the General Manager, no bus was allowed to stand at the gate of the bus-stand and therefore, if the first appellant and his wife alighted from the bus at the time when it was entering the bus-stand, at its gate, the negligence was entirely theirs and not of the driver.

He further submitted that no income tax having been deducted from the salary of the deceased, even the quantum of compensation was excessive, though of course, as per learned counsel, with the negligence being that of the deceased herself, no compensation at all is payable to the claimants.

12. Mr. S.K. Hooda, learned counsel for the appellants (in FAO No.3035 of 2007) and for respondents (in FAO No.593 of 2007), on the other hand submitted that the Tribunal had fully appraised the evidence, including the fact that respondent no.1 was facing a criminal trial on account of the accident caused due to his negligence, and further, the very fact that the first appellant had already alighted from the bus, showed that it had actually stopped at the gate but was put into motion by respondent no.1 at the time when the deceased was still in the process of getting down.

Mr. Hooda further submitted that as regards the quantum of compensation, the Tribunal erred in deducting the contribution made by the deceased towards her provident fund and general insurance, and in disallowing the medical allowance and house rent allowance being received by her per month. He submitted that the GPF being a contribution to the deceaseds'' own account, which would have been drawn by her at the time of her retirement, the contribution was not deductible as it was admittedly to subsequently come back to her.

As regards the house rent allowance, he further submitted that too was part of the financial benefits being given to the deceased as a part of her service conditions and as such, it cannot be said that the said amount was not coming as a financial benefit, which was lost to the family of the deceased.

He yet further submitted that the Tribunal had neither granted any compensation for loss of consortium to appellant no.1, nor for loss of love and affection to other claimants, i.e. the children of the deceased.

Still further, learned counsel submitted that in terms of settled law, Rs. 25,000/- should have been granted by way of expenses towards the last rites of the deceased.

Lastly, he submitted that the deceased admittedly being in permanent Government employment, she would have continued to be in service till the age of 58 years if not 60 years and therefore, the appellants-claimants are also entitled to the loss of future prospects of an increased income, the salary of the deceased obviously being ''increasable'' yearly, by way of annual increments other than by way of revision of

pay scales and promotions etc.

13. Having heard learned counsel for the parties and having considered the impugned Award of the Tribunal, it must be first stated that the evidence led before the Tribunal is not available, it having been destroyed in the fire incident that took place in the record room of this Court in January 2011.

However, be that as it may, the first issue be looked at even in the light of the discussion on the issue by the Tribunal, is that of the alleged negligence of respondent no.1.

14. I am inclined to agree, at least partly, with the arguments raised by the learned Deputy Advocate General, inasmuch as, when the bus driver was not authorised to stop the bus at the gate of the bus-stand, there actually would be no reason for him to do so. Had he done so, to allow the first appellant and his wife to alight from it then there would have been no reason for him to move the bus even before she got off. It seems obvious that the first appellant herein, and his wife, got off either when the bus was in slow motion upon entering the gate of the bus stand, or when it had come to a temporary halt at the gate. Either way, it was not the authorised alighting point for passengers.

If the matter is viewed entirely from that stand point, no negligence would be attributable to respondent no.1 at all.

15. However, it also cannot lost sight of that once the first appellant would have got off when the bus was in slow motion at the entry point of the gate of bus-stand, even on the above reasoning of this Court, thereafter to suddenly speed up the bus, knowing fully well in Indian conditions, that people unfortunately tend to alight as early as possible, from slow moving vehicles, it cannot be said that the 1st respondent is not at fault at all, it being part of his duty as a driver to be alert to such a situation.

If, on the other hand, the reasoning of the Tribunal is accepted, to the effect that the bus was at a completely halt when the first appellant got off and thereafter was put in motion by respondent no.1, then the fault would be more with the said respondent-driver, but still would not absolve the first appellant and his wife of the responsibility of not getting off at the designated spot for the passengers to alight from the bus.

16. Consequently, keeping in view the entire circumstances, it is held that the deceased and the first respondent herein were equally negligent, leading to the deceased falling down from the bus, in the process of getting off therefrom, and receiving injuries under the tyre of the bus.

Hence, the finding of the Tribunal on the issue of negligence is partly reversed and the deceased and respondent no.1 are held equally negligent in causing the accident leading to the death of the deceased. Thus there is found to be

contributory negligence of the deceased and respondent no.1, equally.

17. Coming to the issue of quantum of compensation, I agree with the learned counsel for the appellant, that firstly, neither the contribution made by the deceased to her general provident fund was deductible from her income, nor was the house rent allowance received by her so deductible. The contribution made by her, of Rs. 30/- per month to the General Insurance Scheme of all employees may, however, be considered deductible. In the opinion of this Court, even the medical allowance of Rs. 250/- per month was not deductible because the said allowance is in lieu of reimbursement of medical expenses, which otherwise even the dependents of a Government employee are entitled to.

However, what was needed to be deducted was any income tax payable by her. In the case of the deceased, income upto Rs. 1,35,000/- per annum was exempt from any income tax, in the assessment year 2006-07 (corresponding to the financial year 2005-06), she being a resident woman citizen, having died on 09.11.2005. Hence, obviously, no income tax was deductible in that year.

Consequently, the only deductible component would be the Rs. 30/- that she contributed towards the General Insurance Scheme, thereby bringing her net monthly salary, for the purpose of calculation of compensation, to be Rs. 12,034/- or Rs. 1,44,408/- per annum.

(It needs to be noticed here that though this Court has held herein above that her income being below Rs. 1,35,000/- per annum, no income tax was deductible, that is only with regard to the taxable income after her contribution to the General Provident Fund, which would be deductible for the purpose of income tax. Thus, upon deducting of Rs. 1101/- per month towards her GPF, from her gross monthly salary of Rs. 12,064/-, the taxable monthly salary would come to Rs. 10,963/- minus Rs. 30/- that was contributed by her towards the Group Insurance Scheme. Thus, for income tax purposes, her monthly salary was Rs. 10,933/-, which amounts to an annual taxable salary of Rs. 1,31,196/-, which is obviously below the threshold of Rs. 1,35,000/- applicable to women in the assessment year 2006-07).

18. Hence, the annual salary of the deceased being Rs. 1,44,408/-, it is now to be seen which of the appellants can be considered to be dependent upon her. At the time of her death, her daughter was stated to be unmarried as were her major son and her minor son. However, her husband cannot be accepted to be dependent upon her, unless proved to the contrary and as such, she had three dependents upon her at the time of her death. Thus, as regards the deduction towards her personal expenses, in terms of the ratio of the judgment in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121** , a ⅓rd deduction is to be applied to calculate the loss of dependent income to the claimants, as was correctly done by the Tribunal.

On the above net annual income of Rs. 1,44,408/-, if the aforesaid deduction is applied, the annual loss of dependent income to the claimants comes to Rs. 96,272/-.

The deceased having been proved to be 47 years of age, the Tribunal correctly applied the multiplier of 13, again in terms of the ratio of Sarla Vermas'' case (supra). Hence, applying that multiplier, the total loss of income to the claimants comes to Rs. 12,51,536/-.

19. I further agree with learned counsel for the appellant, that again in terms of the ratio of aforesaid judgment, read with subsequent judgments also, the deceased being in permanent Government employment, 47 years of age at the time of her death, a 30% increase is to be applied to the aforesaid sum towards the loss of future prospects of an increased income to the deceased and the claimants. Adding the aforesaid sum, the figure arrived at is Rs. 16,26,997/-, rounded off to Rs. 16,27,000/-.

Again, as per settled law, Rs. 25,000/- is to be paid as compensation to the claimants, towards the funeral expenses and last rites of the deceased. In this regard, the judgment in **Rajesh and others v. Rajbir Singh and others (2013)(9) SCC 54** can be cited, which has been constantly followed thereafter, as regards this aspect of the compensation.

The first appellant, i.e. the husband of the deceased would also be entitled to Rs. 1,00,000/- towards the loss of consortium and the major children of the deceased, she being only 47 years of age, would also be entitled to Rs. 50,000/- each, in the opinion of this Court, towards the loss of love and affection of their mother.

As regads her minor child, i.e. appellant no.3 in FAO No.3035 of 2007, he is held entitled to a compensation of Rs. 1,00,000/- for the death of his mother.

20. Consequently, as per what has been held herein above, the claimants (appellants in FAO No.3035 of 2007) would otherwise be held entitled to compensation as follows:-

i)	Loss of income	:	Rs. 16,27,000/-
ii)	Towards loss of consortium (to appellant no.1)	:	Rs. 1,00,000/-
iii)	Towards loss of love and affection (appellants no.2 & 3) @ Rs. 50,000/- each	:	Rs. 1,00,000/-
iv)	Towards loss of love & (appellant no.3)	:	Rs. 1,00,000/-

v)	Towards funeral expenses	:	Rs. 25,000/-
	Total	:	Rs. 19,52,000/-

However, since this Court has held that negligence to the extent of 50% was that of the deceased herself, in view of the discussion held on that issue herein above, the appellant-claimants are held entitled to actual compensation of Rs. 9,76,000/-.

Thus, with the Tribunal having awarded a compensation of Rs. 10,40,000/- to the claimants, obviously this Court even while agreeing with learned counsel for the appellants-claimants that adequate compensation under different heads was not awarded, eventually has reduced the total compensation payable, on account of the issue of negligence having been held partly in favour of the appellants (in FAO no. 593 of 2007).

Of the aforesaid sum, appellant no.1 would be entitled to Rs. 2,65,875/- appellants no.2 & 4 would be entitled to Rs. 2,28,375/- each and appellant no.3 to Rs. 2,53,375/-.

On the aforesaid sum, the appellants would be entitled to interest @ 7.5% per annum, as awarded by the Tribunal, running from the date of the filing of the claim petition, till the date of realisation thereof.

It may be mentioned here that normally this Court awards only interest @ 6% per annum on any compensation enhanced by this court, on the ground that the pendency of the appeal otherwise becomes an albatross around the neck of the owner or the insurer of the vehicle concerned; but since in this case, eventually the compensation payable has actually been reduced due to the finding on 50% negligence of the deceased herself, the rate of interest awarded by the learned Tribunal is being maintained.

21. In view of the above, the appeal filed by the State, i.e. FAO No.593 of 2007, is allowed to the above extent, and whereas, though ''technically'' the contentions of learned counsel for the appellant, as regards the quantum of compensation, have been accepted, but on account of the finding on negligence against the deceased/claimants, it amounts to a reduction in compensation to the extent of Rs. 64,000/-, the appeal filed by the claimants, i.e. FAO No.3035 of 2007 is dismissed.

The parties are left to bear their own costs.