2025 INSC 741

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2025
(@ Special Leave Petition (Civil) Nos. 993-994 of 2024)

RAJO DEVI & ANR. ETC. **Appellant(s).....**

VERSUS

MANJEET KAUR & ORS. **Respondent(s).....**

J U D G M E N T

PRASANNA B. VARALE, J:-

1. Leave granted.

2. The challenge in the present appeals is to the common order dated 27.02.2020 in FAO No. 1905 of 2014 (O&M) and 8197 of 2014 (O&M) whereby the High Court of Punjab and Haryana had partially upheld the order dated 03.06.2011 passed by Motor Accident Claim Tribunal, Kaithal, ('MACT' for short) to the extent of application of principle of contributory negligence.

3. The factual matrix of the case is that on 26.07.2009, a newly purchased motorcycle bearing chassis No. S107RP602050 (insured with M/s Bajaj Allianz General Insurance Company Limited (Respondent no. 5 herein) was being driven by the deceased Gautam who happened to be a bachelor aged around 22 years (son of claimants, namely Rajo Devi (appellant no. 1 herein) and Prem Chand (appellant no. 2 herein) and on which his brother-in-law, deceased Harpal Singh (his dependants are Harjinder Kaur, Babu Singh and Noordeep (appellant nos. 3, 4 & 5 herein respectively) aged about 30 years, was riding pillion. While they were going on the main road in the area of Police Station Kaithal, an Alto car bearing registration No. HR08-J-3157 (insured with M/s New India Assurance Company Limited (Respondent no. 6 herein)) being driven by Gulzar Singh and in which one Kulwinder Singh (since injured) was sitting next to the car driver, came from the opposite side and a head-on collision took place between the two vehicles, leading to death of both the motorcyclists and injuries to Kulwinder Singh. The owner and driver of alto car, namely, Gulzar Singh, died after sometime due to some other reason and was represented by his LRs, namely

Manjeet Kaur, Virender Singh and Sarabjeet Singh (Respondents no. 1, 2 & 3 herein respectively) before the Trial Court.

4. Accordingly, amongst other petitions, two petitions were filed by the petitioners herein before the MACT, Kaithal. The Ld. Tribunal vide its order dated 03.06.2011 opined that the accident in question was a clear-cut case of contributory negligence and accordingly, the dependants of deceased Gautam were held entitled to Rs. 86,000/- which was 50% of total compensation of Rs. 1,72,000/- which was assessed by taking the income of deceased Gautam as Rs. 3,000/- per month after considering him as a casual labourer and applying the multiplier of 9. Similarly, the dependants of deceased Harpal Singh were held entitled to Rs. 2,23,000/- which was 50% of total compensation of Rs. 4,23,000/- which was assessed by taking the income of deceased Harpal as Rs. 3,000/- per month after considering the minimum wages and applying the multiplier of 17.

5. Feeling aggrieved by the judgment and award of MACT an appeal was preferred by the appellants herein claiming enhancement of compensation amount and the issue of contributory negligence be decided in favour of the appellants herein. The High Court vide the impugned common order has

partly allowed the appeal by enhancing the amount of compensation payable to the dependants of deceased Gautam and Harpal Singh by assessing their monthly income as Rs. 4,000/- and Rs. 5,000/- per month and applying the multiplier of 18 and 17 respectively, thereby arriving at total compensation of Rs. 5,52,000/- in case of deceased Gautam and Rs. 6,91,200/- in case of deceased Harpal Singh. The High Court has also enhanced the interest from 7% p.a to 9% p.a. However, the High Court has upheld the applicability of the principle of contributory negligence.

6. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court the appellants herein have preferred the present appeals.

7. The learned counsel for the appellants submitted that the impugned order is erroneous in not considering the testimony of other eyewitness namely, Suresh Kumar (PW4) and relying upon the testimony of Kulwinder Singh (PW 5) only. It was further submitted that the principle of contributory negligence has been wrongly applied by the High Court in ignorance of the testimony of PW4 who had deposed that deceased Gautam was riding his motorcycle at a normal speed on his left side when the Alto car

came from opposite side in a high speed and was very rashly and negligently driven.

8. It was next submitted that the High Court erred in law by differentiating in the income of deceased Gautam and pillion rider Harpal. The income of the deceased Gautam has been assessed at Rs. 4,000/- per month whereas that of deceased Harpal has been assessed at Rs. 5,000/- per month despite the fact that they both were in the same profession i.e. running a hair cutting salon and were hair dressers. The differentiation in assessment of income of both the deceased is irrational and without any basis.

9. It was further submitted that the site plan of the accident prepared by the investigating agency, which was not in the knowledge of the petitioners herein was never brought on record and that the same would show that the accident took place because of the negligence of the driver of Alto car only.

10. *Per contra,* learned counsel appearing for the respondent no. 5 submitted that deceased Gautam, who was the driver of the motorcycle in question, was not holding a valid and effective driving licence. It was submitted that the accident in question had taken place due to the sole negligence and rashness of

Gulzar Singh, who was the driver of Alto car. It was further submitted that as the motorcycle in question was not the offending vehicle, respondent no. 5 is not liable to pay any compensation.

11. Learned counsel appearing for respondent no. 6 submitted that the accident in question was a head-on collision and accordingly, the driver of both the vehicles need to be held responsible as they had contributed equally to the accident. With regard to the quantum of compensation, it was submitted that the same has been awarded at higher side by the High Court in the impugned order. It was further submitted that the site plan cannot be allowed to be produced at this stage before this court.

12. No counter affidavit has been filed on behalf of a respondent nos. 1 to 3 herein who are the legal heirs of deceased Gulzar Singh (driver of Alto car) and respondent no. 4 herein (owner of the accidental motorcycle).

13. Heard learned counsel appearing on both sides at length and perused the relevant documents placed on record.

14. The High Court while upholding the application of principle of contributory negligence and assessing the income of the deceased persons has observed as under:

"*The testimony of Kulwinder Singh is the most important one as no other eye-witness to this incident has been examined by any of the sides. Being an injured eye-witness, is certainly a stamp witness in the realm of evidence. In his cross-examination Kulwinder Singh as PWS has admitted the fact that the Alto car was being driven at a speed of 60 kilometres per hour and the accident has occurred in middle of the road and it was a head on collision. The contentions of the counsel representing the insurance company that it is a clear-cut case of contributory negligence could not be displaced by any of the counsel representing the other side. Learned counsel for the insurance company has placed on record* ***'Bijoy Kumar Dugar vs. Bidyadhar Dutta & others' 2006(2) RCR (Civil) 590****, where in a similar proposition, the Supreme Court has held that where the vehicles had a head-on collision the drivers of both vehicles need to be responsible to have contributed equally to the accident. In the present case, in the light of the fact that there is no evidence to the contrary, this Court needs to hold it so and the findings drawn by the impugned award to that effect need to be upheld.*

In case of claim by the parents of deceased Gautam, it is admitted that the deceased was a bachelor aged around 22 years. Though much fanfare has been sought to be raised over the factum that he was not holding a valid driving license, but the same has not been proved by the insurance company on whom the onus lay, and rather the driving license of driver of the Alto car Guljar Singh has been brought on record as Ex.Rl, registration certificate of the Alto car as Ex.R2 and the insurance police as Ex.R3. Learned counsel for the insurer of the Alto car fairly concedes that at the time of accident the car was under insurance cover. No avocation of deceased Gautam and Harpal Singh has been proved. It is also not in any manner displaced that they were running hair-cutting saloon and were hair-dressers. The Tribunal has wrongly assessed the earnings of Gautam and Harpal to be of casual labourers. Keeping in view the age of Gautam and the fact that he happens to be young unmarried grown up son of aged parents, who were totally dependent and that Harpal Singh too was young aged around 30 years with a widow and two minor children as dependents and keeping in view that the factum of their avocation is not denied though there is no proof of their earnings, this Court taking into consideration the objective of the Act being of welfare nature, feels it expedient to hold that

by all likelihood Gautam must be earning~ 4,000/- per month and Harpal Singh ~ 5,000/- per month. The same is also commensurate with the family strength they were looking after in such days of escalating prices of essential commodities and cost of living. Accordingly, the annual income of deceased Gautam comes to ~48,000/- and that of deceased Harpal Singh~ 60,000/-.

As regards future prospects are concerned, the dependants of deceased Gautam shall be entitled to 50% of his annual earnings i.e. ~24,000/- and thus his total income after addition of future prospects comes to ~ 72,000/-. Keeping in view that Gautam was a bachelor and must be contributing 1/3rd on his own. upkeep and maintenance, and has only two aged parents as dependents therefore, deduction of 1/3rd on his personal expenses and maintenance is appropriate and as such his dependency comes to ~ 48,000/.,. (72000 x 2/3). In the light of age of the deceased and that of his parents, multiplier of 18 is applied whereby the compensation comes to ~ 8,64,000/- (48000 x 18). Since it is a proven case of contributory negligence and Gautam was driving the motorcycle and has equally contributed to this accident, therefore the claimants in his case shall be entitled to 50% of the compensation i.e. ~4,32,000/-. Taking the earnings of deceased Harpal Singh to be ~60,000/- per annum and adding 40% (i.e. ~24,000/-) towards his future prospects, his total earnings would come to ~84,000/-. Keeping in view that he has left behind widow and two minor sons and in view of the dependency he must be contributing 1/5th on his own upkeep and maintenance so his dependency comes to ~67,200 (84000 x 4/5). More so, with the passage of time, children would grow up and their requirements in life on account of education etc. would also increase and keeping in view the age of Harpal Singh deceased multiplier of 17 is appropriate. Therefore, the amount of compensation comes to ~11,42,400/- (67200 x 17). As it was a case of contributory negligence, his dependents shall be entitled to 50% of the compensation i.e. {5,71,200/-.

Besides this, in case of both the deceased an amount of {50,000/- each is awarded on account of loss of consortium, { 20,000/- each for expenses of funeral and last rites and a sum of~ 50,000/- each on account of loss of estate. Resultantly, the total amount of compensation in case of deceased Gautam comes to {5,52,000/- whereas in case of

deceased Harpal Singh the total compensation is { 6,91,200/-."

15. The question posed by the appellants is with respect to the applicability of principle of contributory negligence.

16. The MACT has held that the accident in question was a case of contributory negligence relying solely upon the testimony of Kulwinder Singh (PW5) who deposed that the accident took place in the middle of the road. The said finding has been upheld by the High Court in the impugned order. However, in the considered opinion of this Court, the same deserves to be set aside as the High Court has committed a serious error in not considering the testimony of PW-4 Suresh Kumar who was also one of the eye-witnesses apart from PW-5 Kulwinder Singh.

17. The site plan of the said accident which was prepared by the investigating agency has been brought on record before this court for the first time. It was submitted by the petitioners herein that the same was not placed before the MACT as the charge-sheet was never filed since the accused Gulzar had passed away before the filing of the charge-sheet. The objection raised on behalf of respondent no. 6 to the production of site plan at this stage is in our view without merit. It must be kept in mind that the

provision of providing compensation to the injured/dependants in accident cases under Motor Vehicles Act, 1988 is a beneficial provision to enhance social justice. Accordingly, the rigours of procedure cannot be allowed to defeat its purpose as the trial in such cases is summary in nature. Hence, the site plan is taken on record by allowing the appellant to file additional document.

18. A careful perusal of the site plan shows that point ‘A’ is shown as the place where the accident took place and where the motorcycle was found lying. Point ‘A’ is on the left side of the road going from North to South. Point 'B' in the site plan denotes the place where Alto car was found lying. Point ‘B’ is on the extreme right side of the same road. Point 'C' in the site plan marks the place where dead body of the deceased persons were found lying i.e. in the field of Ramchari S/o Ratiram. Point ‘C’ is on the extreme left side of the same road. The distance of point 'B' from point 'A' is about 62 feet, and of point 'C' about 18 feet.

19. Therefore, as per the site plan, deceased Gautam was riding his motorcycle on his left side of the road when the Alto Car hit him. The site plan also corroborates the testimony of eyewitness PW4, complainant Suresh. Thus, in view of the above discussion, this Court finds that the accident in question took place due to

rash and negligent driving of Gulzar Singh only, driver of Alto car and there was no contributory negligence on the part of deceased Gautam.

20. In view of the above discussion this Court is of the view that the High Court has erred in upholding the application of the principle of contributory negligence and thereby deducting the amount of compensation entitled to the deceased persons by 50%. Therefore, this court is inclined to enhance the amount of compensation by amount which was deducted by the High Court on account of contributory negligence. Thus, the total amount of compensation to which deceased Gautam is entitled to is **Rs. 9,84,000/-** [Rs. 5,52,000 (compensation calculated by the High Court) + Rs. 4,32,000/- (Compensation deducted by High Court on account of contributory negligence)]. Furthermore, the total amount of compensation to which deceased Harpal is entitled to is **Rs. 12,62,400/-** [Rs. 6,91,200/- (compensation calculated by the High Court) + Rs. 5,71,200/- (Compensation deducted by High Court on account of contributory negligence)]. The said compensation shall carry interest at 9% per annum as awarded by the High Court.

21. In view of the above, the present appeals are allowed and disposed of accordingly. The balance amounts to be deposited with the MACT with interest within a period of six weeks from today.

22. No order as to cost.

.....J.
[B.V. NAGARATHNA]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
MAY 19, 2025.