

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

F.A.O No.1137 of 1995

Date of Decision: 31.8.2007.

Smt. Jamna Devi and others.

....Appellants.

Versus

Suresh Kumar and others.

...Respondents.

Present:- Mr.RK Gautam, Advocate
for the appellants.

Mr.Sidharath Sarup, AAG Haryana.

HEMANT GUPTA, J.(ORAL)

The claimants are in appeal aggrieved against the award of the Motor Accident Claims Tribunal, dated 17.1.1995, whereby a sum of Rs.2,00,000/- was awarded as compensation on account of death of Parmanand Aggarwal in a motor vehicular accident.

It is the case of the claimants that on 3.5.1992, the deceased Parmanand Aggarwal was riding scooter No.HR01B-2464 and was going from Shahbad towards Ambala on G.T.Road, when a Haryana Roadways Bus No.HNE-721, driven by respondent No.1 came from behind i.e. Kurukshetra side at a very high speed without following the traffic rules and struck against the scooter from behind. As a result of the impact, Paramanand Aggarwal as well as Mohit Gupta pillion rider fell down on the road and both sustained serious and multiple injuries. Parmanand Aggarwal died as Mohit Gupta on account of his serious injuries filed a separate

claim petition.

It was the stand of the respondents in the written statement that the scooterist emerged from Shahbad side in a reckless manner without caring other traffic on the road. The driver of the bus applied brakes in a controlled manner so as to avoid a big loss to the passengers traveling in it and took his bus to the left hand side, but the scooterist could not control and had a minor impact with the bus. As a result of the impact, the scooterist as well as the pillion rider fell down on the road and sustained injuries due to their own negligence and fault.

Mr. Mohit Gupta, pillion rider, appeared as PW5 who deposed that when they were on G.T.Road, the bus driver Suresh Kumar came from behind without giving any horn and hit the scooter from behind and caused accident due to rash and negligent driving. He also deposed that the accident had taken place 20 yards ahead of crossing towards Ambala G.T. Road. The driver of the bus Suresh Kumar was examined as RW1, who deposed that on seeing the scooterist he took his bus to left but in spite of the said fact the scooterist could not control the scooter and hit the bus and thus it was the scooterist who was negligent in causing the accident.

The learned Tribunal returned a finding that it was the duty of the scooter driver Parmanand Aggarwal to slow down his scooter, first while coming from the link road to GT road and that driver was not bound to slow down the speed of the bus. In view of the said finding, the learned tribunal held that deceased Parmanand was negligent in causing the accident to the extent of 25%.

While determining the amount of compensation, the learned

Tribunal assessed the income of the deceased as Rs.50,000/- per annum including the interest income about Rs.16,000/- per annum. By deducting 1/3rd as his personal expenses and applying the multiplier of 12 assessed the compensation of Rs. 2,72,000/-. By deducting 25% of the amount on account of contributory negligence, the claimants were awarded Rs.2,00,000/- as compensation on account of death of Parmanand Aggarwal.

Learned counsel for the appellants has vehemently argued that in view of the testimony of PW5 Mohit Gupta, the pillion rider, the deceased was 20 feet ahead of the crossing towards Ambala GT road when the bus struck from behind. The said testimony of the injured cannot be said to be rebutted by the testimony of the driver. The driver (RW1) has deposed that the scooterist suddenly came from the side of Shahbad and struck by the side of the bus. On seeing the scooterist he took his bus on the left, however, the scooterist could not control the scooter. It is apparent that in fact by trying to avoid the accident, he ran into the scooterist. Consequently, it cannot be said that the deceased in any way contributed in the manner of accident. The testimony of Mohit Gupta, is clear and logical that they were on GT road when the bus struck from behind. Thus, the finding recorded by the learned Tribunal that there was 25 % negligence of the deceased cannot be sustained and consequently set aside. The accident has occurred solely due to rash and negligent driving of bus driver.

The learned Tribunal has taken pains to examine the income tax record so as to return a finding that the income of the deceased was

Rs. 50,000/- including interest Rs.16,000/-. The calculations made by the Tribunal are beyond comprehension. In the income tax return for the year 1992-93 Ex.P12, the income of the deceased is Rs.31640/- on which tax of Rs.2812/- has been paid. Such income has been accepted vide assessment order dated 31.3.1993 Ex.P13. However, the return of the assessment year 1993-94 was filed on 7th March 1994 by the wife of the deceased. The income of the deceased was disclosed as Rs.84530/-. In the income and expenditure account for the year ending 31st March 1993, the commission of Rs.87,879/- is purportedly received by the deceased. The learned Tribunal has returned a finding that the said income is an income of HUF of which Parmanand Aggarwal has only 1/5th share. As a matter of fact the acknowledgment of filing of return Ex.P14 is that of an individual. The income and expenditure account is of the firm which has been styled as "Parmanand Aggarwal and Sons". Merely because in some of the bills of the goods purchased by the deceased the word 'HUF' are mentioned will not make the firm of the deceased as an HUF. Even if it is presumed that it was an HUF firm, it is not the case that the other members of the Karta i.e. deceased such as wife and minor children were running the business of the firm. The business was the sole effort of the deceased. May be in the event of partition, the wife and children will get share in the assets of firm but that fact alone will not make the share of the Karta as 1/5th.

Keeping in view some possibility of exaggeration in the income tax return of the deceased Ex.P14, Rs. 31640/- is the income returned for the assessment year 1992-93. As the profit and loss account of the said year is not available on record, it can be easily inferred that the income would be

more than Rs.50,000/- for the relevant year as the income is after the withdrawals during the financial year on account of expenses etc and after allowing admissible deductions. Therefore, I assess the income of the deceased as Rs.50,000/- per annum. Since the deceased has three minor children and a wife to maintain, Rs.10,000/- per annum can reasonably be assessed to be the personal expenses of the deceased. Thus, the dependency would be Rs.40,000/-per annum. The deceased was 42 years of age and therefore 16 would be the suitable multiplier. Thus total amount of compensation payable to the appellants comes to be Rs.6,40,000/-.

In view thereof, the award passed by the learned Tribunal is modified. The appellants are found entitled to the compensation of Rs.6,40,000/-. The appellants shall be also entitled to interest at the rate of 8 % on the enhanced amount of compensation from the date of application till its realisation.

August 31,2007.
Reema

(HEMANT GUPTA)
JUDGE