IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4209 OF 2002 (O&M)
DATE OF DECISION : 1st SEPTEMBER, 2015

Ved Kaur & others

…. Appellants

Versus

Maharashtra State Road Transport Corporation Ltd., Bombay

…. Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. R. S. Mamli, Advocate for the appellant.

Mr. Surinder Gandhi, Advocate for the respondent.

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SURINDER GUPTA, J. (ORAL)

1. This appeal has been filed by Ved Kaur wife and four children of Hem Chander (later referred to as deceased), who died in a motor accident with bus No.MH-20-D-2580 (later referred to as offending vehicle).

2. The case of the claimants in brief is that on 23.02.2000 the deceased was going on his truck No. HYO-4525 and when he reached near Saikrapa Petrol Pump in front of Police Station Aradhpur, District Nanded, Maharashtra, the offending vehicle which was being driven by respondent No.2 Padurang Marouti Rao Kaneke in a rash and negligent manner went out of his control and hit the driver side of the truck by coming on wrong side of the road. Deceased tried to avoid accident but in vain. In the accident deceased received fatal injuries and was taken to hospital where

he died. He was 50 years of age and was owner-cum-driver of his truck No.HYO-4525 and thereby earning ₹15,000/- per month through the business of transport.

3. FIR No.35 of 2000 for offence punishable under Sections 279, 337, 304-A and 427 IPC was registered at Police Station Aradhpur, District Nanded against the driver of the bus. On the treatment and transportation of dead body and funeral of deceased, expenses of ₹40,000/- were incurred.

4. In the written statement respondent admitted the accident but contested and controverted the averments of the claimants inter alia pleading that the accident has taken place due to the rash and negligent driving of the truck by the driver of the truck. All the averments regarding the income of the deceased and expenses of treatment and transportation and funeral of deceased were also denied.

5. The pleadings of parties led to the framing of issues as follows:

i) Whether late Padurang Marouti Rao Kaneke driver of Bus No.MH-20-D-2580 owned by respondent no.1 while in the employment of respondent no.1 has driven the bus rashly and negligently on 25.2.2000 in the area of P.S. Aradhpur, District Nanded Maharashtra and caused the accident with truck No.HYO-4525 driven by deceased Hem Chander as alleged, if so, to what effect? OPP

ii) Whether the petitioners are the legal heirs of deceased Hem Chander, if so whether they are entitled to any compensation from the respondent if so, from who and how much? OPR.

iii) Whether the petition is bad for want of non joining of necessary parties, as alleged ? OPR.

iv) Relief.

6. The Tribunal while recording the finding on issue No.1 observed that it was a case of contributory negligence resulting in head on collusion between truck and the bus, as a result of which both the drivers died on the same day.

7. The Motor Accident Claims Tribunal Rohtak (later referred to as the Tribunal) allowed the compensation as tabulated below:

Sr. No.	Heads	Amount (₹)
1.	Income of the deceased	3000
2.	Deduction towards personal expenses (1/3rd of the income)	3000X1/3 = 2000
3.	Multiplier applied by assessing the age of deceased as 57 years	2000x12x8= 1,92,000
4.		
5.	Funeral expenses	2000
6.	Loss of consortium for wife of deceased	5000
7.	Contributory negligence (50% of 1,92,000/-)	96000
8.	**Grand Total (96,000+2000+5000)**	1,03,000/-

8. Learned counsel for the appellants has argued that while awarding the compensation the Tribunal has wrongly applied the multiplier of 8 in place of 9 as per the observations in the case of ***Sarla Verma & others vs. Delhi Transport Corporation & another,*** reported as ***2009 ACJ***

1298 (SC), a deduction towards personal expenses was also wrongly made as 1/3 instead of ¼ as the number of dependant family members of the deceased was 5. No compensation was allowed for the love and affection. The compensation allowed towards loss of consortium is on lower side. Claimants are also entitled to compensation keeping in view the future prospect which has not been allowed in this case.

9. In the case of Sarla Verma (supra) it has been observed that for the age group of 56 to 60 years the multiplier to be applied while calculating the compensation is 9. About the deduction for personal and living expenses it was observed in para 30 of the above judgment as follows:

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra,* the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{rd}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{th}$) where the number of dependant family members is 4 to 6, and one-fifth ($1/5^{th}$) where the number of dependant family members exceed six."

10. The deceased aged 57 years has left behind five family members who were dependent on him, as such, the deduction of ¼ of his income was required to be made towards his personal expenses. In the case of ***Rajesh & others versus Rajbir Singh & others,*** reported as ***2013(3) RCR (Civil), 170*** the deceased had left behind 3 minor children and wife. While calculating the compensation, an amount of ₹1,00,000/- was allowed towards loss of care and guidance for the minors, besides the claimant No.1 being wife is also entitled to compensation to ₹1,00,000/- towards loss of consortium. The claimants are resident of Rohtak and the accident and death of deceased had taken place near Nanded in Maharashtra, as such, the claimant must have spent a huge amount on the funeral, transportation etc. They are also entitled to addition of 15% in the income of deceased towards future prospects as per observations in case of Rajesh & others (supra).

11. In view of my above observation claimants are entitled to compensation as tabulated below:

Sr. No.	**Heads**	**Amount (₹)**
1.	Income of the deceased	3000
2.	Added 15% towards future prospectus	3000+450= 3450
3.	Deduction towards personal expenses (1/4th of the income)	3450X1/4 =863 3450-863= 2587
4.	Compensation after applying multiplier as 9	2587x12x9= 2,79,396
5.	Loss of love and affection care and guidance for minor children.	1,00,000
6.	Loss of consortium for wife of deceased	1,00,000
7.	Expenses towards transportation and carriage of the dead body and funeral expenses.	25,000

8.	**Total**	**5,04,396**

12. Total compensation of the claimant works out to be ₹5,04,396/-. As the tribunal has found this case to be of contributory negligence, therefore, the Tribunal held the responsibility of respondent as 50% of the total amount of compensation. The claimants shall be entitled to compensation of ₹2,52,198/- . The claimant No.1-Ved Kaur being wife of deceased will get 40% of the enhanced amount of compensation while the remaining amount will be shared equally by the remaining claimants.

In view of above modification in the compensation amount the appeal is accordingly, allowed.

1st September, 2015 (SURINDER GUPTA)
'raj' JUDGE