

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

FAO No. 2671 of 2002 (O&M)

Decided on: 7.5.2015.

Smt. Bawita and others

... Appellants

Versus

Gurdial Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Nitish Goyal, Advocate for
Mr. Sanjeev Gupta, Advocate,
for the appellants.

Mr. Vinod Gupta, Advocate,
for respondent No.3.

K.C.PURI.J.

This is an appeal directed by claimants widow, two minor sons Deepak and Rahul and Shanti Devi widow of Sube Singh claiming compensation on account of death of Sube Singh in a motor vehicular accident.

The case of the claimants is that on 6.6.1996 Raj Kumar was going on his scooter to village Bhodwal Majri. Madan Lal was the pillion rider on the scooter. When Raj Kumar reached near Chaudhary Rice Mill, G.T. Road, Patti Kalyana, a bus came from behind and struck on one side of the scooter. Raj Kumar lost balance of the scooter and the scooter struck with traula (truck) No. PB-08G-3832

which was standing on the metalled G.T. Road. It is pleaded that

accident has taken place due to parking of traula in the middle of pacca G.T. Road. The claim petition has been filed against the driver, owner and insurance company of traula No. PB-08G-3832.

The respondents No.1 and 2 did not turn up inspite of service. So, they were proceeded exparte.

The respondent No.3 insurance company resisted the claim petition and, inter-alia, pleaded that claim petition was bad for non-joinder of necessary parties. The claim petition has not been filed against the driver, owner and insurance company of the bus which was involved in the accident. The petitioners have no locus-standi to file the present claim petition. The present claim petition is false, bogus and does not disclose any cause of action. The respondent No.3 has not received any intimation regarding the accident and as such the factum of accident was denied.

The respondent No.4 filed written statement taking preliminary objections of locus-standi. It was pleaded that respondent No.4 was not liable to pay any compensation and no accident has taken place with the vehicle of respondent No.4. A false criminal case has been registered against respondent No.4. The traula was duly insured with insurance company so the insurance company was liable to pay the compensation.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident in question took place due to

rash and negligent driving of truck-traula No. PB-08G-3832 by respondent No.1 ? OPP

2. Whether the petitioners are entitled to compensation, if so to what amount and from whom ?
OPP

3. Whether the vehicle in question was being driven against the terms and conditions of the insurance policy ?OPR

4. Whether the petitioners are entitled to interest, if so, since when ?OPR

5. Relief.

On issue No.1 learned Tribunal reached to the conclusion that the accident has taken place due to contributory negligence of bus more than respondent No.1 i.e. the driver of traula. The respondent No.1 was held negligent to the extent of 50%. The amount of compensation was calculated as Rs.2,73,800/- by taking the income of the deceased as Rs.1800/-per month. The Tribunal deducted Rs.400/- as personal expenses and the dependency was taken as Rs.1400/- per month. The yearly dependency was taken as Rs.16,800/- (1400x12). The age of the deceased was taken as 30 years. So, multiplier of 16 was applied and the amount of compensation was calculated as Rs.2,68,800/-. A sum of Rs.5000/- was allowed for loss of consortium. In this manner, the claimants were held entitled to claim

Rs.2,73,800/- as compensation. However, deduction of 50% was made

on account of the fact that the bus driver was equally liable. So, a sum of Rs.1,36,900/- was allowed.

Learned counsel for the appellants has challenged the Award on two grounds (i) that the contributory negligence has been wrongly held by the Tribunal; (ii) that the fault lies with the driver of bus and driver of traula in question. So, it is submitted that it is a case of composite negligence which is between the traula and bus and as such, the deduction cannot be made. It is submitted that the respondents can recover the amount from the owner and driver of bus.

On the other hand, learned counsel for the insurance company has submitted that no number of the bus and no detail of the driver has been given by the claimants and as such it cannot be said to be a case of composite negligence. The said story propounded by the claimants is imaginary. In the case of composite negligence, the details of driver, owner and number of the vehicle are required to be given as according to composite negligence, one of the wrong doers can recover from the owner and driver and insurance company of the other wrong doer. However, in the absence of any detail of such owner of bus in question, it cannot be said to be a case of composite negligence.

I have considered the submissions made by learned counsel for the parties.

The argument advanced by learned counsel for the respondent No.3 carries weight and has to be accepted. No particular of driver, owner, registration number and detail of insurance in respect of

bus in question has been given by the claimants. Even during the course of arguments, no such detail has been mentioned by counsel for the appellants. So, in these circumstances, it cannot be said to be a case of composite negligence as argued by counsel for the claimants-appellants. So, the above said contention stands rejected.

The second contention raised by learned counsel for the appellants is in respect of quantum of compensation. It is submitted that income of the deceased has been taken on lower side. The deceased was earning Rs.4000-5000 per month.

I have considered the said submission but do not find any force in that submission. In the absence of any cogent evidence, the income of the deceased as Rs.1800/- per month in the year 1996 cannot be said to be on lower side.

The next contention raised by learned counsel for the appellants regarding quantum is that future prospects has not been taken into account. The deceased was 30 years old and as per Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(6) SCC 121, the multiplier applicable was 17. The claimants are four in number. So, the dependency is to be taken by deducting 1/4th in respect of personal expenses. No amount in respect of expenses for last rites, transportation of dead body has been awarded. No amount in respect of loss of consortium and loss of love and affection has been given. The interest @ 6% per annum awarded by the Tribunal is on lower side.

On the other hand, learned counsel for the insurance company has supported the Award of the Tribunal.

I have carefully considered the submissions made by learned counsel for the parties and have gone through the record.

The income of the deceased has been taken as Rs.1800/- per month which has been affirmed by this Court as discussed above. The deceased was 30 years and as such future prospects to the extent of 50% should have been taken into account by the Tribunal in view of the authority **Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403**. So, by adding that amount, the income has to be taken as Rs.2700/- (1800+900). The dependency has been calculated by deducting 1/4th in respect of personal expenses. So, the monthly dependency comes to Rs.2025/-. The yearly dependency comes to Rs.24,300/-. The multiplier applicable at the age of 30 years as per **Sarla Verma's case (supra)** is 17. So, by applying the said multiplier, the amount of compensation comes to Rs.4,13,100/-. Another sum of Rs.10,000/- stands allowed in respect of last rites and transportation etc. keeping in view the price index prevailing in the year 1996. A sum of Rs.25,000/- stands allowed in respect of loss of consortium to widow Bawita. Another sum of Rs.25,000/- stands allowed in respect of loss of love and affection to the claimants. The claimants are held entitled to claim Rs.4,73,100/-. The contributory negligence of the bus is to the extent of 50%. So, the amount of compensation payable to the claimants comes to Rs.2,36,550/- i.e. 1/2th

of the said amount. The claimants shall be entitled to interest @ 7.5% per annum from the date of application till payment. The amount already paid shall be adjusted against the payment of the said amount. The liability to pay the amount is the same as ordered by the Tribunal.

The appeal stands partly accepted to the extent mentioned above.

7.5.2015.
SN

(K.C.PURI)
JUDGE