

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

**FAO No.1490 of 1994
Date of Decision: 19.08.2015**

Sukhwinder Kaur and Others Appellants

Vs.

Surjit Singh and Others Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

**Present:- Mr.Birdavinder Singh Advocate for
 Mr.K.S.Chahal, Advocate for the appellants.**

**Mr.Lalit Garg, Advocate
for the Insurance Company.**

K.KANNAN, J. (O&M)

The appeal is for enhancement of claim for compensation for death of a male aged 30 years in an accident that took place on 19.05.1991. The deceased was travelling on a scooter and going to hospital where deceased's father had been admitted. While turning towards the hospital from the main turn, yet another vehicle of the respondent was coming from the opposite side dashed against him and on account of collision, the deceased fell on the road and succumbed to the injuries later on.

The Tribunal found that the accident was on account of contributory negligence of the deceased himself in not allowing for the vehicle on the main road to pass the route before taking a turn and attributed 50% of negligence. He was said to be working in Electricity Board and there was proof offered by production of salary statements from the State Electricity Board in the April, 1999. The salary was

Rs.2,350/-. The Tribunal made a deduction of 1/3rd and applied a multiplier of 18 and assessed Rs.3,24,000/- as the amount payable. It made a partial abatement of 50% and granted a compensation of Rs.1,62,000/- with an interest @ 12% per annum.

It is argued that the scale of compensation was not properly applied by wrongly assessing contributory negligence. I will hold that in a situation where a person was going on the main road and he had to take a turn to any cut road where another vehicle came from the opposite direction, he ought to exercise caution before taking a turn. However, it is equally necessary that the vehicle coming from the opposite direction also is at all times to be vigilant to know where there is a cut road from the main road, he has to stop or slow down and allow for any unwary vehicle suddenly turning to the side road. If there was a fatal accident of person on a road that involves two vehicles of equal quality such as scooters in this case and one of them dies, it would be too harsh to make an equal apportionment of liability. The person responsible for inflicting a fatal injury by accident must take a higher percentage of responsibility. I will therefore, modify the contributory negligence as found by the Tribunal at 50:50 to 25:75 keeping the deceased contribution at 25%.

As regards the quantum, the scales of compensation from the period of time have become certain, thanks to the decision of the Supreme Court in **Sarla Verma Vs. Delhi**

Transport Corporation and Another 2009 (6) SCC 121.

The definite scales for assessment are the prospect of increase of salary, deduction to be applied and multiplier to be adopted for a female who had four dependents of the deceased. The deduction shall be ¼th and not 1/3rd for a person who was in settled service. If he was earning Rs.2,350/- and less than 40 years of age, the increase will be 50%. The postmortem certificate showed his age as 32 and since he was in service in State Electricity Board, he ought to have produced the service certificate and birth certificate in proof of age. If it was not done, I have to take the age as given in Postmortem Certificate and take a multiplier of 16 as provided in decision laid down in **Sarla Verma Vs. Delhi Transport Corporation and Another 2009 (6) SCC 121.**

Since the accident relates to prior to 2000, I scale down the loss of love and affection to Rs.1,00,000/- to the two minor children and loss of consortium at Rs.1,00,000/- and Rs.50,000/-towards love and affection to the mother. The various heads of compensation are tabulated as under:-

Fatal Accident			
	Date of accident	19.05.1991	
Age		30	32
Occupatio n	Employee in State Electricity Board	Rs.2350/-	-
Claimants	Widow, two minor children and mother of the deceased		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount(Rs.)	Amount (Rs.)

1.	Income	Rs.2350/-	Rs.2350/-
2.	Add, % of increase-50%		Rs.3525/-
3.	Deduction- (1/4th)	1/3rd	Rs.2647.75
4.	Multiplicand		Rs.31725/-
5	Multiplier	18	16
6.	Loss of dependence		Rs.5,07,600/-
7.	Loss of consortium		Rs.1,00,000/-
8.	Loss of love and affection		Rs.1,50,000/-
9.	Loss of estate		Rs.5,000/-
10.	Funeral Expenses		Rs.10,000/-
12	Total	Rs.3,24,000/	Rs.7,72,600/-

There shall be an award of Rs.7,72,600/- and making for 25% deduction for the contributory negligence, assess the compensation payable to the claimants at Rs. 5,79,450/-. The excess amount of compensation shall bear interest @ 7.5% per annum from the date of petition till the date of payment. The amount shall be shared between the widow and two minor children and mother of the deceased in the ratio of 2:2:2:1. The liability shall be as determined by the Tribunal and Insurance Company will be answerable for the amount claimed.

The award is modified and the appeal is allowed to the above extent.

19.08.2015
anil

(K.KANNAN)
JUDGE