

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.442 of 1991
Date of Decision: 27.04.2015

Nirmala Devi and others

..... APPELLANTS

VERSUS

Naranjan Dass and others

..... RESPONDENTS

PRESENT: - Mr. V.K. Kataria, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the local papers may
be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in
the Digest?

SHEKHER DHAWAN, J.

The claimants have filed the present appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Faridkot (for short 'The Tribunal').

Taking the case from undisputed facts that the

motor vehicle accident had taken place on 02.09.1988. Jatinder Kumar while working as Foreman Boiler had gone to Ludhiana on truck No.PAT-3436 so as to bring equipment for Rice Sheller. The said truck was being driven by respondent No.1 and Jatinder Kumar, Gopi Ram and Balbir Singh were sitting on the rear seat. Because of rash and negligent driving on the part of driver of the truck, the said truck over turned. Balbir Singh and Jatinder Kumar sustained injuries. Both the legs of Jatinder Kumar @ Kala were crushed in the window of the truck. He was taken to C.M.C., Ludhiana where he died. The claimants filed the claim petition.

The respondents contested the claim petition on all accounts.

The Tribunal after appreciating the evidence available on file decided the claim petition and awarded compensation of ₹1,92,000/-.

Being dis-satisfied with the awarded amount of compensation, the claimants are in appeal before this Court.

Mr.V.K. Kataria, learned counsel for the appellants took the plea that the Tribunal not awarded 'just compensation'. Nothing has been awarded on account of future prospects of earnings. No amount has been awarded on account of loss of consortium. So, the amount of

compensation be enhanced suitably.

Mr. Vinod Gupta, learned counsel for respondent No.3-Insurance Company took the plea that Jatinder Kumar was not travelling in the truck as owner nor he was travelling in the truck for loading and unloading purpose so the Insurance Company is not liable for compensation on account of death of Jatinder Kumar. More so, the contractual liability of Insurance Company was restricted to ₹1.5 lacs.

Learned counsel for the respondent also took the plea that if at all the Insurance Company is made liable to make any payment on account of compensation, recovery rights be given to the Insurance Company.

Having considered the rival contentions, this Court is of the considered view that Jatinder Kaur was travelling in the truck in his capacity as Foreman Boiler and had gone to Ludhiana to bring equipment for Rice Sheller. Identical matter had gone before Hon'ble Three Judges Bench of Hon'ble Supreme Court in case **Hanumanagouda Vs. United India Insurance Co. Ltd. and others** 2014 ACJ 681. The liability to pay the amount of compensation was held to be of the Insurance Company. Same law was laid down by Hon'ble Supreme Court in case of **Manager, National Insurance Company Limited Vs. Saju P. Paul**

and another 2013(2) SCC 41.

As regard to amount of compensation, the income of the deceased has been correctly taken to be ₹1600/- per month and 1/3rd amount has been rightly deducted on account of self dependency. The age of the deceased was 30 years on the date of death. The multiplier of 16 has also been correctly applied. However, the Tribunal has not considered the increase in future earnings though age of the deceased was 30 years. As per law laid down by Hon'ble Supreme Court in case of **Rajesh and others Vs. Rajbir and others**, 2013(9) SCC 54, 50% of earnings are to be added on account of future earnings and applying the same ratio of law to the present set of facts. The only loss of income to the claimants comes to ₹12,000/- (₹1,000/-x12). Applying 50% of the increase, annual loss of income comes to ₹18,000/- and by applying multiplier of 16, it comes to ₹2,88,000/-. Apart from that, the claimants are entitled to receive a sum of ₹1 lacs on account of consortium as one of the claimants is widow and another sum of ₹25,000/- on account of funeral expenses and the total amount of compensation comes to ₹4,13,000/-.

The enhanced compensation shall be payable within one month from today failing which the claimants shall be entitled to receive interest @ 7.5% per annum.

However, the remaining conditions regarding payment and disbursal of amount shall remain unaltered.

The appeal is accordingly partly allowed.

(SHEKHER DHAWAN)
JUDGE

April 27, 2015
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