

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

FAO No.2923 of 2003 (O&M)

Date of Decision: 25.05.2015

Ram Rati Devi and others

.....Appellants

Versus

Noor Mohamad and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Sudhir Aggarwal, Advocate,
for appellants.

Mr. Suman Jain, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J

Appellant has filed the present appeal seeking enhancement of compensation against award dated 12.05.2003 by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of ₹3,04,244/-.

2. Facts relevant for the purpose of decision of present appeal are that on 12.11.2000 Raj Kumar (since deceased) was travelling in bus bearing registration No.HR-29-PA-0119 of Haryana Roadways from Palwal, District Faridabad to Gurgaon. The said bus met with an accident with trailer bearing registration No.UP-78T-4211. The driver of the bus took the bus towards the extreme left side of the road. Raj Kumar took out his face and hand from the window of the bus and gave signal to driver of

trailer to slow down the trailer but the driver of trailer struck the front side of the bus at the place where deceased Raj Kumar was sitting. Resultantly Raj Kumar suffered greivous injuries on various parts of the body and died on the spot. As per appellant, accident had taken place because of rash and negligent driving of respondent No.1 who was driving the trailer bearing registration No.UP-78-T-4211. Matter was reported to the police.

4. Respondents contested the claim petition. 'The Tribunal' awarded the compensation of ₹3,04,244/- holding that it was a case of contributory negligence on the part of appellant as well as respondent No.1 i.s. Drivier of trailer.

5. At the time of arguments Mr. Sudhir Aggarwal, learned counsel for appellants took the plea that 'The Tribunal' has fell in error while returning the findings that the accident was because of contributory negligence on the part of deceased himself. As per learned counsel for appellant, the bus was not in motion rather the same was parked. There was no bar for any passenger not to take his arm outside in a parked bus so it is not a case of contributory negligence. In fact the trailer had hit the bus and there was no negligence on the part of the deceased. While arguing on the point of compensation, learned counsel for the appellant took the plea that 'The Tribunal' has not awarded 'Just Compensation' because Raj Kumar was of the age of 48 years and multiplier of 13 was to be applied as per law laid down **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77** but the 'The Tribunal' applied multiplier of 11 only and adequate amount has not been awarded on account of love and affection for the family members on account of consortium, funeral expenses, future prospects of earning were to be added @ 30% at the age of

appellant Raj Kumar. Appellant Raj Kumar was also getting pension @ ₹1900/- but that was stopped. So the compensation amount be enhanced suitably.

6. While arguing on this point Ms. Suman Jain, learned counsel for respondent-Insurance Company took the plea that it had come in the statement of witnesses before 'The Tribunal' that half of the body was out of bus and pulled out the deceased from the bus and thereafter death of Raj Kumar had taken place. So it was a case of contributory negligence only. Bus was not parked but the same was in motion condition. 1/3rd amount has been correctly deducted on account of self-dependency. 'The Tribunal' has awarded 'Just Compensation'. More so consortium, funeral expenses are to be ordered as per price index on the date of accident only. So the appeal is without any merit and same be dismissed.

7. Having considered the rival contentions raised by learned counsel for both the parties this Court is of the considered view that 'The Tribunal' had rightly come to the conclusion that it was a case of contributory negligence. The said findings were returned on the basis of oral evidence available on the file. It has come in the statement of PW-6 Kuldeep Singh that Raj Kumar had taken his hand and shoulders out of the bus. As Raj Kumar was travelling in a bus, on a busy road and he was observing that trailer was coming from other side, there was no reason for Raj Kumar to pull his body out of the bus. So 'The Tribunal' has rightly returned the findings that the accident was caused because of rash and negligent act of claimant and Raj Kumar also and the said findings do not call for any interference.

8. As regards to the quantum of compensation 'The Tribunal' has not

taken into consideration the correct multiplier at the age of 48 years and it should have been 13 instead of 11 as per law laid down by Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra). 30% was to be increased on account of enhanced future earning as deceased was 48 years of age. The minimum amount on account of consortium and funeral expenses has also not been awarded. So, the amount of compensation is hereby reassessed as under:

Monthly salary	₹6,800/-
30% deducted on account of self-dependency	₹2,266/-
Annual income	₹54,408/-
Multiplier of 13	₹7,07,304/-
Add 30% on account of future enhanced earning	₹2,12,191/-
Total	₹9,19,495/-
Loss of consortium as one of the claimant is widow	₹1,00,000/-
Funeral expenses	₹25,000/-
Loss of love and affection for sons of deceased	₹2,00,000/-
Grand Total	₹12,44,495/-
Compensation already awarded	₹3,04,244/-
Enhanced compensation	₹9,40,251/-

9. The total enhanced amount comes to ₹9,40,251/- out of this claimant shall be entitled to 50% of the amount as Raj Kumar himself was liable for causing the accident and it was a case of contributory negligence to the accident of 50%. So, the amount of enhanced compensation in this

case shall be ₹4,70,126/-.

10. The enhanced amount of compensation shall liable be payable from the date of claim petition along with alongwith interest @ 7.5% per annum. Remaining conditions regarding disbursal of amount shall remain unaltered.

11. Appeal partly accepted.

(SHEKHER DHAWAN)
JUDGE

May 25, 2015
msd