

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

1. FAO No.2801 of 1996

Swinder Kaur and others

... Appellants

Versus

Gursewak Singh and others

... Respondents

2. FAO No.2802 of 1996

Charan Kaur and others

... Appellants

Versus

Gursewak Singh and others

... Respondents

Date of decision: 11th February, 2015

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Manpreet Singh, Advocate
 for the appellants.

None for respondent No.1 to 3.

Mr. Ravinder Arora, Advocate – Standing Counsel
for respondent No.4.

FATEH DEEP SINGH, J.

On 16.07.1990 around 4.30 p.m. in the area of village
Gaggu Bua, Police Station Jhabal, Bikramjit Singh and Jagir Singh
both deceased were going on same scooter bearing registration

No.PB-10A-3236 when they were hit by a mini bus bearing No.PAB-1370. The parents of Bikramjit Singh namely Swinder Kaur mother and Virsa Singh father filed claim for compensation vide MACT Case No.35 of 1995 while heirs comprising of widow, minor son and daughter of Jagir Singh filed compensation case bearing MACT No.34 of 1995 and it is through different impugned Awards both of even date 17.07.1996 whereby both claim petitions stood dismissed by learned Motor Accident Claims Tribunal, Amritsar. It is out of these Awards, the present two appeals detailed above have arisen by different sets of claimant/appellants and thus, there being common questions of facts and law involved, are being disposed off together.

Heard Mr. Manpreet Singh, Advocate for the claimant/appellants and Mr. Ravinder Arora, Advocate – Standing Counsel for the insurer/respondent No.4.

Though it is stressed on behalf of the respondent insurer that no such accident ever took place however, the claimants have examined an eye-witness Mewa Singh as AW5, who has testified that the driver of the offending vehicle namely Gursewak Singh was driving the vehicle in a rash and negligent manner and had hit the scooter which was going on the correct side of the road leading to the death of both the scooterists. Stand of the driver Gursewak Singh as RW1 depicts that he accepts that he was employed as a driver on the bus in question and in his cross-examination as has been highlighted in the impugned Award he has admitted that a criminal case against him was registered qua this accident. On the premise as has been submitted

learned Tribunal by this acquittal in the criminal case has exonerated the respondents of their liability to pay compensation. The learned Tribunal as is reflected has critically evaluated the evidence and has accepted that this eye-witness Mewa Singh who was one of the passengers of the bus could not produce the ticket nor names of the other co-passengers, are matters which are certainly too preposterous. The learned Tribunal has lost sight of the fact that the Act is a welfare Statute for betterment of the claimants and merely on the basis of acquittal judgment Ex.R1 has sought to brush aside the eye-witness account. It is not expected of a witness after such a belated time to remember peculiar niceties pertaining to the accident. The findings of the learned Tribunal qua issue No.1 are inherently wrong appreciation of the evidence and the fact that it is own admission of the driver that he was facing trial in a criminal case pertaining to this accident, are matters which certainly goes against the respondents in view of the law laid down in '**Keshub Mahindra v. State of Madhya Pradesh**' II (1996) ACC 292 (SC) and therefore, findings on issue No.1 needs to be set aside holding that the accident certainly is an outcome of rash and negligent driving of the offending bus by its driver.

Since the learned Tribunal has not evaluated the evidence qua the quantum of compensation and the fact that the record of the case stands destroyed in fire not much can be appreciated by way of evidence together with the fact that the accident has taken place 25 years ago and it would be highly inappropriate to remand back the

case for adjudication on this aspect and thus, considering whatever is available before this Court, this adjudication needs to be made for the sake of dispensation of justice.

It is not disputed that deceased Jagir Singh was aged around 40 years and was an agriculturist with three minor children and young widow whereas deceased Bikramjit Singh was a young unmarried boy aged around 19 years also carrying on agricultural pursuits and in view of the relative avocations of both the deceased with some amount of guesswork in view of the socio economic status of the deceaseds' families it would be appropriate to hold that deceased Jagir Singh must be earning ₹3,000 per month whereas deceased Bikramjit Singh must be earning ₹2,500 per month, which is even otherwise the then wages of a daily wage labourer.

Assuming that the deceased Jagir Singh out of these earnings must be spending 1/4 on his own upkeep and maintenance in view of the ratio laid down in '**New India Assurance Company Ltd. v. Gopali and others**' reported in **2012 (3) RCR (Civil) 818** and therefore, must be contributing ₹2,250 per month to the running of the household and therefore, annual dependency comes to ₹27,000 and in view of the age of the deceased in the light of '**Sarla Verma & others v. Delhi Transport Corporation & another**' reported in **2009(6) SCC 121** multiplier of 15 needs to be applied and therefore, compensation comes to ₹4,05,000. Besides this, the family must have spent money on the last rites and ceremonies of the deceased, widow has lost her husband a life companion, children their father a source of

love and affection and under all these conventional heads ₹2.00 lacs needs to be awarded and therefore, total compensation on account of the death of Jagir Singh comes to ₹6,05,000 (rupees six lacs five thousand only).

In the case of deceased Bikramjit Singh, being a bachelor in view of '**New India Assurance Company Ltd. v. Gopali and others**' 2012 (3) RCR (Civil) 818, 1/2 needs to be deducted out of his total earnings and thus he must be contributing ₹1,250 per month towards the family and which dependency comes to ₹15,000 per annum. In view of the age of the deceased multiplier of 18 needs to be applied and therefore, compensation comes to ₹2,70,000. Besides this, the family must have spent money on the last rites and ceremonies of the deceased, aged parents have lost their son and thus, ought to be compensated for the loss of love and affection as well as protection and under all these conventional heads an amount of ₹1.50 lacs is awarded and therefore, total compensation on account of the death of Bikramjit Singh comes to ₹4,20,000 (rupees four lacs twenty thousand only).

Since it is admitted stand of the respondents in the light of the arguments of the two sides, Gursewak Singh respondent being driver and respondent Manjit Singh being owner of the offending vehicle which was insured with respondent Oriental Insurance Company Ltd., all the three shall be jointly and severally liable to pay the amount of compensation which each of the claimants in both appeals shall be entitled in equal shares.

Since question of driving license is not there, the same shall have no bearing on these findings.

Besides this, the claimants in both the appeals shall also be entitled to interest @7.5% p.a. on the amount of compensation from the date of filing of the claim petition till realization. Interim compensation paid, if any, shall be adjusted. If any of the claimants is still minor, his/her share shall be resorted to by way of FDR till he/she attains the age of majority.

No other argument has been raised.

With these discussions, the impugned Awards are modified accordingly by way of acceptance of both the instant appeals in those terms.

(FATEH DEEP SINGH)
JUDGE

February 11, 2015
rps