

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.1749 of 2000 and
XOBJC No.166-CII of 2014 (O&M)
Date of Decision: 14.05.2015

Paramjit Kaur and others

..... APPELLANTS

VERSUS

Resham Singh and others

..... RESPONDENTS

PRESENT: - Mr. Rajinder Sharma, Advocate
for the appellants.

Mr. Suresh Kumar Arya, Advocate
for respondent No.1/cross-objector.

None for respondent No.2.

Mr. Rajbir Wasu, 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.

present appeal against award dated 11.11.1999 passed by the Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of ₹2,75,000/-. Cross-objections have also been filed.

Respondent No.1 challenged the award vide which the Insurance Company was exonerated from the liability of the award.

The relevant facts for the purpose of decision of the present appeal and cross objections that the motor vehicle accident took place on 01.09.1995 at about 5.30 A.M. Satwant Singh was driving the Matador bearing No.PIA-9136 along with vegetables for sale in the market of Amritsar. A few other persons also boarded the Matador. Nahar Singh was following the Matador on his Scooter No.PCM-3342. Resham Singh driver of said Matador took the Matador on wrong side and hit against truck bearing No.PEN-7391. Resultantly, Satwant Singh and other persons travelling in the Matador sustained injuries and Satwant Singh succumbed to the injuries. He was of the age of 29 years and self employed person and agriculturist by profession and owning a dairy farm also. His total income was ₹7,000/- per month.

The respondents contested the claim petition and prayed that the claim petition be dismissed.

'The Tribunal' after appreciating the evidence awarded compensation of ₹2,75,000/- and liability to pay the amount of compensation was fastened upon respondents No.1 and 2 as driver and owner of the Matador.

Being aggrieved of passing the said award, the present appeal and cross-objections.

Mr. Rajinder Sharma, learned counsel for the appellants-claimants took the plea that 'The Tribunal' has not awarded 'just compensation' because the claim petition was filed by Smt. Paramjit Kaur widow of the deceased and two minor children of Satwant Singh and mother of Satwant Singh. In all, there are four claimants. 1/4th amount was to be deducted on account of self dependency as per law laid down by Hon'ble Suprme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009(3) RCR 77 whereas 'The Tribunal' deducted 1/3rd on account of self dependency. More so, 'The Tribunal' has not awarded any amount on account of enhanced future earnings. He was of the age of 29 years and with the passage of time his income was to grow. 30% was to be added on account of future prospects of enhanced earnings.

The plea has also been taken that 'The Tribunal' has not applied correct multiplier of 17 and in fact applied multiplier of 16 only. The minimum amount on account of consortium, funeral expenses, love and affection has also not been paid.

Mr. Rajbir Wasu, learned counsel for respondent No.3 has also took the plea that the Insurance Company was not liable to pay any amount of compensation as Satwant Singh was not travelling along with vegetables for loading or unloading purposes but was carrying passengers. So, the appeal is without any merit and the same be dismissed.

Having considered the rival contentions, this Court is of the considered view that 'The Tribunal' has certainly fell in error while calculating the amount of compensation because Satwant Singh was of the age of 29 years. Nothing has been added on account of enhanced future earnings. Multiplier has also not been applied correctly as per law laid down by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (supra)**. Minimum amount has not been awarded on account of loss of consortium, loss of love and affection for the family members and funeral expenses as laid down by

Hon'ble Supreme Court in case of **Rajesh and others Vs. Rajbir and others**, 2013(9) SCC 54. As they were four claimants, 1/4th was to be deducted on account of self dependency. Taking the case from income as assessed by 'The Tribunal' to be ₹2100/- per month, the amount of compensation reassessed as under:

1	Annual income of the deceased	₹25,200/-
2	Less ¼ on account of self dependency as claimants are five in number (₹25,200/---₹6,300/-)	₹18,900/-
3	Multiplier 17 (₹18,900/-x17)	₹3,21,300/-
4	Loss of consortium	₹1,00,000/-
5	Funeral Expenses	₹25,000/-
6	Love and affection	₹2,00,000/-
7	Total Less already awarded	₹6,46,300/- ₹2,75,000/-
8	Enhanced compensation	₹3,71,300/-

The enhanced compensation shall be payable from the date of claim petition. The enhanced amount shall be payable within 45 days from today failing which the appellants shall also be entitled to receive interest @ 7.5% per annum from the date of claim petition till actual payment.

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

The appeal is accordingly partly allowed.

Cross-objections

Cross-objections have been filed by respondent No.1, driver of the offending vehicle taking the plea that 'The Tribunal' has wrongly exonerated the liability of the insurance Company and burdened the entire liability on the cross-objector i.e. driver and owner. Satwant Singh was travelling in the Matador for the purpose of sale of vegetables in the market and, as such, the Insurance Company was liable to make the payment of compensation.

Mr. Rajbir Wasu, learned counsel for respondent No.3-Insurance Company took the plea that as per provisions of Section 147 of the Motor Vehicle Act, in case of death of a person travelling in goods vehicle on account of accident, the Insurance Company cannot be held liable for the death or bodily injuries suffered by any person found travelling in the goods vehicle arising from any accident. On this point, reliance was placed upon judgment of Hon'ble Supreme Court in case of **New India Assurance Co. Ltd. Vs. Asha Rani**, 2003(1) RCR (Civil)671 wherein such a law was laid down.

Having considered the rival contentions, this Court is of the considered view that 'The Tribunal' has rightly fastened the liability to pay the amount of compensation

upon the cross-objector Resham Singh and owner of the vehicle thereby exonerating the Insurance Company as Satwant Singh was not travelling in the Matador as owner. As per provisions of Section 147 of the Act, the goods carrying vehicle cannot be used for carrying passengers and if there is any such violation, Insurance Company is not liable to pay the amount of compensation. 'The Tribunal' has rightly observed that Satwant Singh along with 10-12 other persons were travelling in the said Matador and they are not covered under Section 147 of the Act at all. As per law laid down by Hon'ble Supreme Court in **New India Assurance Co. Ltd. Vs. Asha Rani (supra)**, the Insurance Company is not liable to pay the amount of compensation in such like cases.

In view of the above, the Cross objections are without any merit and the same stand dismissed.

Accordingly, the appeal is partly accepted and the cross-objections are dismissed.

(SHEKHER DHAWAN)
JUDGE

May 14, 2015
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