

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

FAO No.1137 of 1999 (O&M)

Date of decision: **28**.09.2015

Janki Devi and others

... Appellants

versus

Amarjit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Siao, Advocate,
for Mr. A.K. Kalsy, Advocate,
for the appellants.

Ms. Monika Thakur, Advocate,
for respondent No.1.

Mr. Vinod Choudhari, Advocate,
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The appeal is at the instance of the claimants who had filed a petition for compensation as damages for death in a motor accident that was alleged to have taken place on 26.11.1997. The claim was presented on an averment that the 1st claimant's husband was going on his bicycle to his own shop and at that time, the 1st respondent, who was the driver of the 2nd respondent, drove the vehicle in a rash and negligent manner, ran over the deceased at

Rajeev Gandhi Colony, Focal Point, Ludhiana and crushed him under the wheels. A case had been registered against the driver of the vehicle immediately by the police and at the trial before the Tribunal, an eyewitness, who had given the complaint, was also examined. The respondents' case in defence was that no such accident took place. The driver himself was not examined. The respondents attempted to place reliance on the fact that a criminal case instituted against the driver resulted in acquittal of the 1st respondent giving him the benefit of doubt.

2. The Tribunal upheld the defence and held that PW3, who claimed to be an eyewitness, had not been able to even recall the registration number of the vehicle and his own version that he had seen the accident could not be true. It gathered evidence that the deceased was 35 years of age, running his bicycle repair shop but did not assess any compensation as payable, having found that the claimants had not established accident.

3. Since the 1st respondent-driver was represented through counsel and I had doubts that in spite of a criminal case having been registered soon after the incident, the respondents were perhaps coming with a false story. The accident was said to have taken place in broad daylight at 9 AM in a big town and it was inconceivable that the vehicle could not have been immediately seized or the complaint that was given soon thereafter could have been fabricated.

I had, therefore, summoned the driver to be produced in court as a court witness. He was present on 09.09.2015 and I had examined him myself. He admitted on searching questions put to him that he was actually at the wheel but he was trying to contend that the cyclist had come behind the rear wheels and he knew that the accident had taken place only when the police stopped him at a little further distance. He would admit that his cleaner got down and actually saw that the deceased had been run over. Having regard to the admission made in the examination in court, the findings recorded by the Tribunal are insupportable. For the deliberate false defence taken in the written statement filed by the defendants 1 and 2, I cannot give even a benefit that there had been any contributory negligence on the part of the deceased. I hold the 1st respondent-the driver was responsible for causing the accident by his rash and negligent driving.

4. The compensation will have to be determined on the basis that the deceased was 35 years of age and considering the fact that the wife had given evidence that the deceased husband was earning about ₹ 5,000/-, I will take his average income, making a provision for even a prospect of increase for a person, who is running a cycle repair shop, could not have been less than ₹ 3,000/-. He had to support the whole family of himself, his wife and 3 children, all of whom were minors at the time when he died. I will

take the contribution to family at 1/4th the amount of ₹3,000/-, apply a multiplier of 16 and also provide for ₹1 lakh as loss of consortium. Considering the fact that the accident had taken place before 2000, I will provide for ₹50,000/- as loss of love and affection for each one of the children. I'll also provide for ₹5,000/- as loss to estate and another ₹ 5,000/- towards funeral expenses. The various heads of claim are tabulated as under:-

Accident	26.11.1997		
Age	35 years		
Occupation	Running cycle repair shop		
Claimants	Wife and 3 children		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1.	Income		3,000
2.	Add, % of increase 30%/50%		
3.	Deduction ½, 1/3, ¼, 1/5		2,250
4.	Multiplicand		27,000
5.	Multiplier		16
6.	Loss of dependence		4,32,000
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		1,50,000
10.	Loss to estate		5,000
11.	Funeral expenses		5,000
	Total	1,92,000	6,92,000

There shall be an award for ₹6,92,000/- and the same shall be payable by the Insurance Company which is the 3rd respondent. The award will also attract interest at 7.5% per annum from the date petition till date of payment. The amount shall be distributed equally amongst all the claimants.

5. The award stands modified and the appeal is allowed on the above terms.

(K.KANNAN)
JUDGE

28.09.2015

sanjeev