

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

**FAO No.1334 of 1998 (O&M)
Date of decision:28.01.2015**

KAVITA RANI AND OTHERS

..... Appellants

VERSUS

BHAG SINGH AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR SINGH CHAUHAN

Present: Ms. Ekta Thakur, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.3.

MAHAVIR SINGH CHAUHAN J. (ORAL)

Award dated 26.02.1998 passed by learned Motor Accident Claims Tribunal, Patiala ('the Tribunal' for short) is in question in these four appeals of which two appeals, i.e., FAO Nos.1334 of 1998 and 1335 of 1998 have been brought by the claimants for modification of the award by enhancing the compensation appropriately and the other two, i.e., FAO Nos.1691 of 1998 and 1692 of 1998 have been brought by the insurer to seek upsetting of the award. All these appeals are proposed to be disposed of by this common order being passed in FAO No.1334 of 1998. Facts for the sake of convenience have been taken from this appeal.

Claim application No.8T of 1996/1998 was brought by legal representatives of Raghubir Singh aged about 30 years stately working as Car Mechanic. Claim application No.9T of 1996/1998 was brought by legal representatives of Vinod Kumar aged about 28 years and stately working as Mason. As per the case of the applicants, the two deceased were knocked down by the offending vehicle i.e. truck bearing registration No. HR-03-5065 while being driven in a rash and negligent manner by Bagh Singh

(respondent No.1) on 20.10.1995. The claim applications were brought by alleging loss of dependancy.

Claim application were contested by the respondents including the insurer, i.e., United India Insurance Company by filing separate written statements, wherein all the allegations of the applicants were denied and certain preliminary objections were also pleaded. From the pleadings of the parties, learned Tribunal framed following issues:

1. Whether deceased Raghubir Singh son of Munshi Ram died in road accident due to the rash and negligent driving of truck No.HR-03-5065 being driven by Bhag Singh respondent No.1? OPA.
2. If issue No.1 is proved then what amount of compensation the claimants are entitled and from whom? OPA.
3. Whether the driver of the offending vehicle was not having a valid driving licence at the time of alleged accident if so to what effect? OPR.
4. Whether the petition is bad for misjoinder of necessary parties as alleged. OPR
5. Relief.

Both the sides adduced evidence and were heard by the learned Tribunal.

On appraisal of evidence in the light of the submissions made at bar, learned Tribunal returned findings on all the issues favourable to the applicants and accordingly, vide award dated February 26, 1998, awarded compensation amounting to Rs.2,93,000/- in favour of the applicants in each

of the two claim applications. The applicants were also allowed interest at the rate of Rs.12% p.a. from the date of filing of the applications till the date of realization of the awarded amount of compensation.

The insurer, as aforesaid, in its appeals has questioned the correctness of the findings recorded by the learned Tribunal, on the factum and manner of occurrence as also quantum of compensation while the applicants seek enhancement of compensation by modifying the award.

I have heard learned counsel for the parties.

As regards, the factum and manner of occurrence, applicants have examined PW3-Pawan Kumar. He has proved the assertions as contained in the claim applications and has been able to stand the test of cross examination successfully. His evidence is corroborated by contents of First Information Report (Exhibit A3) which was recorded on the statement of Jagbir Singh. When the copy of First Information Report (Exhibit A-3) was placed on record, no objection was put forth on behalf of the respondents including the insurer. Further driver of the offending vehicle by Bhag Singh has shied away from the witness stand. Reluctance of the driver of the offending vehicle to appear as a witness, perforce, leads to an inference that the case pleaded by the respondents in the written statement is false. To put it otherwise, by not examining the driver of the offending vehicle, the respondents have allowed the case of the applicants to go un rebutted and their pleas in the written statements to remain unsubstantiated. In view of these circumstances, findings of the learned Tribunal on factum and manner of occurrence cannot be interfered with.

As regards, each of the deceased, namely Vinod Kumar and Raghubir Singh having been taken to be 28 years and 30 years, respectively,

and their income as Rs.2400/- per month, there is no dispute. However, the learned counsel for the applicants has argued that from the assessed income of the deceased, an amount equivalent to its $\frac{1}{4}$ th was required to be deducted towards expenditure of the deceased upon themselves, after addition of 50% to it on account of future prospects and nothing has been awarded as regards loss of consortium, loss of love and affection and loss of estate. The contention raised on behalf of the applicant is found to carry substance.

To the assessed income of the deceased namely Vinod Kumar and Raghubir Singh, 50% is to be added towards future prospects. This brings income of the deceased to Rs.3600/- p.m. The dependents left behind by the deceased being five in number, $\frac{1}{4}$ th of the assessed income has to be deducted towards expenditure of the deceased on themselves. This would bring the loss of dependency to Rs.2700/- p.m. Ages of the deceased being 28 and 30 years, respectively, multiplier of 17 is to be applied and so, calculated compensation payable on account of loss of dependency comes to Rs.2700X12X15=Rs.5,50,800/-. The applicants are entitled to Rs.1,00,000/- on account of loss of consortium, Rs.1,00,000/- for loss of love and affection, Rs.25,000/- as expenditure on last rites of the deceased and Rs.5000/- on account of loss of estate. Thus calculated compensation payable to applicants in both the appeals comes to Rs.7,80,800/-, in each appeal.

At this stage, it is contended on behalf of the insurer that interest at the rate of 12% p.a. awarded by the learned Tribunal is on the higher side and it is liable to be reduced. Keeping in view, the rates of interest being allowed by the banks, the submission seems to be meritorious because rates

of interest are being lowered by the banks, continuously and these days interest is allowed by the banks below 6% per annum.

In the totality of circumstances, it is deemed appropriate and is hereby ordered that the amount of awarded compensation shall carry interest at the rate of Rs.7.5% p.a. from the date of applications till the date of realization/payment of realization of the awarded amount of compensation, as hereby modified.

The applicants are also entitled to costs of these appeals which are assessed at Rs.2200/- per appeal.

In view of the above, FAO Nos.1334-1998 and 1335-1998 of the claimants are allowed and are disposed of in the aforesaid terms while FAO Nos.1691 of 1998 and 1692 of 1998 brought by insurer are also allowed partly to the extent of reduction in rate of interest from 12% to 7.5 % p.a., only. Other terms of the award shall remain unchanged.

(MAHAVIR SINGH CHAUHAN)
JUDGE

28.01.2015
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