IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2977 of 2001 (O&M)
Date of Decision: February 10, 2015

Saudagar Singh ...Appellant(s)

Versus

Rajinder Singh and others ...Respondent(s)

with

FAO No.2985 of 2001 (O&M)

Surjit Kaur ...Appellant(s)

Versus

Rajinder Singh and others ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S. Dhindsa, Advocate for
for the appellant(s).

Mr. Suvir Dewan, Advocate
for respondent no.3-Insurance Company.

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ANITA CHAUDHRY, J.

1. These two appeals have been preferred by the claimant(s) seeking modification of the award dated 04.08.2000, passed by the Motor Accident Claims Tribunal, Ludhiana (here-in-after referred to as the Tribunal).

2. Darshan Singh and Jagdev Singh died in a motor accident on 23.04.1997. The Tribunal on appreciation of evidence held it to be a case of contributory negligence and both the drivers were held to be equally responsible. Both the claim petitions were allowed by a common award.

Dis-satisfied with the meager compensation granted by the Tribunal, both the claimants have preferred the appeals.

3. The brief facts of the case are as follows:-

Jagdev Singh and Darshan Singh being the driver and cleaner on a tanker were returning to Jind. At 8:00 PM when the tanker reached near village Raila in Rajasthan, the offending truck came from the opposite direction. Jagdev slowed down the tanker. The truck driver turned the vehicle to the wrong side. To prevent a collision, Jagdev turned towards the right and in the process ended up colliding with the offending truck. Jagdev and Darshan were thrown out of the tanker and died on the spot. Malkiat Singh who was following the tanker in another vehicle was a witness to the accident. The FIR was lodged the same day at Banera (Rajasthan) by respondent no.1.

4. In the claim petition filed by Saudagar Singh, the claimant was seeking compensation for the deceased Darshan who was 19 years old. The claimant's version was that deceased was drawing a salary of Rs.5,000/- per month and Rs.60/- per day as diet money. However, the Tribunal considered the income to be Rs.2,000/- per month as no documentary proof was produced regarding the same. The yearly income was taken as Rs.24,000/- and the dependency was taken at Rs.16,000/- per annum. Multiplier of 9 was applied and compensation was determined at Rs.1,44,000/-. Further an amount of Rs.10,000/- was added for the other heads thereby raising the total amount to be Rs.1,54,000/-. Half of this amount was ordered to be paid by the respondents.

5. Deceased Jagdev Singh who was employed as a cleaner was drawing a salary of Rs.1,000/- per month, besides Rs.50/- per day as diet money. In the absence of any documentary proof, his income was taken at

Rs.1,500/- per month and the dependency was recorded at Rs.1,000/- per month. Total compensation was calculated at Rs.1,20,000/-. Further, a sum of Rs.10,000/- was added for the miscellaneous heads thereby raising the total to Rs.1,30,000/-. Out of the total amount, a sum of Rs.65,000/- was allowed to the claimants.

6. The record of this case had been burnt in fire incident and only photocopy of the award was available on the case file, the counsel for both the parties had stated that they had no objection if the matter was decided on the basis of record available.

7. The submission on behalf of the appellant(s) was that the finding recorded by the Tribunal regarding contributory negligence was perverse and contrary to the evidence and the finding be reversed as the truck driver was coming from the opposite direction was at fault. He was driving on the wrong side of the road and the tanker driver turned the vehicle towards the right only with the intention of avoiding a head on collision. It was submitted that in this accident both the driver and cleaner had died and even if for the sake of argument, the submissions are not accepted then the negligence ought to be on the part of Jagdev (driver). In the scenario, the claimants seeking compensation for the death of Darshan Singh (cleaner) were entitled to the entire amount as Darshan Singh had by no stretch of imagination contributed in the accident.

8. The submission on the other hand was that the FIR was lodged by the truck driver and no complaint was lodged from the other side (Rajinder Singh, driver of truck bearing registration no.HE-38-A-2032). The Tribunal, after appreciating the evidence held it to be a clear case where the tanker driver turned his vehicle to the right hand thereby resulting in extensive damage to the cabin and death of both of them. It was further

contended that it was merely an error of judgment and had the vehicle turned left, lives could have been saved.

9. Admittedly the FIR had been lodged by Rajinder Singh, driver of truck bearing registration no.HE-38-A-2032. It is a case of allegations and counter allegations. The issue that was examined by the Tribunal was as to which of the drivers was at fault. The Tribunal had noted that the truck had gone to the wrong side of the road but it had also come in evidence that the tanker driver turned the vehicle to the right. The contention on behalf of the truck driver was that since the tanker driver had gone to the right, therefore, the truck driver was prompted to take his vehicle to the right side. The Tribunal had noted the evidence and had given detailed reasons in para 16 of the award. There is no reason to take a different view and the findings of the Tribunal are affirmed. For brevity, even if there is an error of judgment as observed by the Tribunal, the fault is on the part of both the drivers

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10. The submission on behalf of the appellant was that Jagdev was a driver who was drawing a salary Rs.6,800/- per month and was getting Rs.60/- per day in lieu of diet. Tribunal had taken the income at Rs.2,000/- per month which was admittedly on the lower side. It was urged that a higher income be taken and 50% increase should be made towards future prospects. As far as the question of multiplier is concerned, it was urged that the same should be according to the age of deceased.

11. The submission on behalf of the insurance company was that the minimum wages in 1997 were much lower and income of the cleaner as assessed by the Tribunal at Rs.1,500/- per month is appropriate according to the prevailing wage rate in 1997 in Punjab.

12. The Tribunal recorded that the claimants failed to place documentary evidence regarding income and the evidence consisted only of oral testimony. They could have examined the employer but the same was not done. The Tribunal had taken the income of the driver at Rs.2,000/- per month and had assessed the annual income at Rs.24,000/-. After deducting 1/3rd amount towards dependency, it calculated the compensation at Rs.16,000/- per annum. Since, the deceased was unmarried, the multiplier of 9 was applied and the loss was calculated to be Rs.1,44,000/-.

13. In the case of un-married person, the deduction has to be 50% and the multiplier has to be keeping the age of parents into consideration. Though the age of the claimant is not available but since the deceased was 21 years old, the parents would have been approximately in the age group of 40 to 45 and the multiplier applicable should have been 13. I would make no change, so far as the income is concerned. Taking the income to be Rs.2,000/- per month and giving an increase of 50% on account of future prospects, the amount would come to Rs.3,000/- per month. A deduction of 50% again has to be made since the deceased was a bachelor and the contribution to the family would come to Rs.1,500/- per month and the annual contribution would be Rs.1500/- X 12 = Rs.18,000/-. Taking the multiplier to be 13, the compensation would come to Rs.2,34,000/-. To this a sum of Rs.5,000/- is added for loss of estate, Rs.10,000/- is added for loss of love and affection; raising the total to Rs.2,49,000/-. An award of Rs.1,54,000/- allowed by the Tribunal would be deducted and the balance amount payable would be Rs.95,000/-. The appellant would be entitled to Rs.47,500/- which would be paid within two months, failing which he would be entitled to interest @ 6 % from the date of filing the appeal till realization.

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14. The submission on behalf of the appellant was that the income of the deceased has been taken on the lower side and no amount towards future prospects had been added. It was urged that the amount awarded on miscellaneous heads should also be increased.

15. The submission on the other hand was that the amount awarded was adequate and the claimants themselves had pleaded that deceased was earning Rs.1,000/- per month and was getting some additional amount as diet money. The Tribunal had determined the income at Rs.1,500/- per month and no change regarding the same should be made.

16. The claimants themselves had pleaded that Darshan Singh was a cleaner and was earning Rs.1,000/- per month as salary, besides Rs.50/- per day as diet money and his contribution towards family was Rs.2000/- per month. The Tribunal had taken the income at Rs.1,500/- per month and Rs.1,000/- as contribution to the family. Considering the pleadings and the evidence, no change should be made. Taking the income of the cleaner to be Rs.1,500/- per month and making an addition of 50% towards future prospects, the income available for the family would be Rs.2,250/- per month. After making a deduction of 50% on account of the deceased being a bachelor, the compensation would be Rs.1,125/- X 12 = Rs.13,500/- per annum. The Tribunal had applied the multiplier of 10 but the mother was 42 years old. The multiplier applicable would be 14 and the compensation would come to Rs.1,89,000/-. To this, a sum of Rs.5,000/- should be added as loss of estate and Rs.10,000/- is added for loss of love and affection; raising the total to Rs.2,04,000/-. The Tribunal had awarded Rs.1,30,000/- which would be deducted and after deducting 50% since it

was held to be a case of contributory negligence, the amount payable is Rs.37,000/-. The enhanced amount shall be paid to appellant Surjit Kaur, within two months by the insurance company, failing which she would be entitled to interest @ 6% from the date of filing of appeal till realization.

With the aforesaid modification in the impugned award, both the appeals are partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 10, 2015
sunil