

Mosmi and others versus Shamsher Singh and others

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

FAO No. 4378 of 2001 (O&M)

Date of decision: 23.09.2015.

Mosmi and others

..... Appellants.

Versus

Shamsher Singh and others

..... Respondents.

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

1. Whether Reporters of 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?

Present:- Mr. Amit Jain, Advocate, for the appellants.

Mr. Neeraj Khanna, Advocate, for
Mr. Ravinder Arora, Advocate, for respondent No. 5.

NAVITA SINGH, J.

This appeal is directed against the award dated 10.04.2001 passed by the Motor Accident Claims Tribunal, Gurgaon, vide which the appellants were granted compensation to the tune of Rs.2,45,000/-. Being dissatisfied with the amount, the appeal was filed for enhancement.

2. The accident had taken place on 21.03.1996 and Mahesh Kumar, husband of appellant No. 1, father of appellant No. 2 and son of appellants No. 3 and 4, died as a result of the same. He was driving the vehicle, i.e. matador No. DAC-5124, which was being used for the staff of a factory in Sector 18, Maruti Industrial Area, Gurgaon. When the said vehicle reached near electricity office on Sarhaul Road, the offending vehicle, i.e. bus No. DL-IP-0688, came from the opposite side and was being driven by respondent No. 1 in a rash and negligent manner. The bus

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came towards wrong side of the road and despite the deceased having taken the matador towards the kuchha portion of the road, the vehicle was hit by the bus. Mahesh Kumar died at the spot.

3. The Tribunal observed that the widow of the deceased testified that the latter was getting salary of Rs.2,500/- per month out of which he contributed Rs.2,000/- per month towards household expenses. All the same, she stated that he was living in Gurgaon in a rented accommodation for which he paid rent of Rs.1,000/- per month or may be more. However, she then went on to clarify that the deceased used to work overtime and gave Rs.2,000/- per month for household expenses to her.

4. Counsel for the appellants contended that since the statement of the widow was not successfully rebutted, her version should be believed that the deceased was earning from overtime as well. This contention, however, is not acceptable because nothing was given as to what was the deceased earning by working overtime and also in normal circumstances, only the salary which was being officially received by him would be his income. The owner, Shyam Sunder, said that he was paying Rs.2,200/- earlier and then Rs.2,500/- per month to the deceased. The Tribunal, therefore, rightly concluded that Mahesh Kumar was earning Rs.2,500/- per month. The Tribunal then came to the conclusion that since he was living in a rented accommodation in Gurgaon, he must be contributing only Rs.1,200/- to the family. This aspect was rightly challenged by counsel for the appellants because even if an amount of Rs.1,300/- was available to the deceased for his own expenses, he could not have survived after paying the

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rent of more than Rs.1,000/- per month. Deduction has to be made as per Sarla Verma's case and, therefore, it would be taken that $\frac{1}{4}$ th of the total income was spent by the deceased on himself. Amount available to the appellants would, therefore, be Rs.1,875/- per month. Multiplier of sixteen was applied by the Tribunal, whereas it should have been seventeen. The compensation on the basis of income would, therefore, come to Rs.3,82,500/-.

5. Counsel for the appellants then argued that for loss of consortium, a sum of Rs.1,00,000/- should be paid and also the family was liable to be compensated for love and affection. The amount of Rs.15,000/- awarded as lump sum under conventional heads was inadequate.

6. Counsel on the other side, i.e. for the Insurance Company, could not raise any argument to the contrary in view of the settled law regarding grant of compensation for loss of consortium to the widow and for loss of love and affection to the children. Though it was submitted that the income assessed by the Tribunal was correct as according to the widow herself, the deceased was paying rent in Gurgaon, it was not denied that the multiplier was wrongly applied and that Sarla Verma's case would be applicable for making the calculations.

7. Besides the amount granted on account of loss of income, it is directed that respondent No. 5 – Oriental Insurance Company shall indemnify the widow to the tune of Rs.1,00,000/- for loss of consortium and also indemnify the daughter of the deceased to the same tune for loss of love and affection. No other point was urged before me.

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8. The amount, therefore, awarded by the Tribunal on account of the income of the deceased would be enhanced from Rs.2,30,400/- to Rs.3,82,5000/-. The amount for loss of consortium would stand enhanced from Rs.15,000/- to Rs.1,00,000/-. In addition to that, an amount of Rs.1,00,000/- awarded to the child on account of love and affection is to be added. The enhanced amount shall fetch interest @6% per annum.

9. The appeal is disposed of in the above terms.

(NAVITA SINGH)
JUDGE

23.09.2015

Ramesh

Whether to be referred to reporter: Yes