

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO No.3313 of 2005

Date of decision: February 27, 2015

Sunita and others

... Appellants

versus

Vinod Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN 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. R.A. Sheoran, Advocate
for the appellants.

Mr. N.R. Dahia, Advocate
for respondent No.1.

Mr. R.K. Bashamboo, Advocate
for respondent No.3.

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AMOL RATTAN SINGH, J.

This appeal seeks enhancement of compensation to the appellants who were the claimants before the learned Motor Accident Claims Tribunal, Bhiwani (in short “the Tribunal”).

The facts of the case are that one Smt. Tarawati, mother-in-law of appellant No.1, grand-mother of appellants No.2 to 4 and mother of appellant No.5, was coming on foot to the bus stand of Village Sanjarwas Phogat on 07.02.2003 at about 7.00 a.m., when truck bearing Registration No.HR46-A-1118, owned by respondent No.2, driven by respondent No.1 and insured by respondent No.3, ran her over, resulting in her death. Respondent No.1 is stated to have stopped the vehicle for a short-while and then sped away.

Upon the claim petition having been filed by the present appellants, as per the award of the learned Tribunal, dated 07.04.20005, respondents No.1 and 2 did not stand in the witness-box, though the respondent-Insurance Company contested the claim.

The issue of negligence having been decided in favour of the claimants, and there being no appeal against the same, the present appeal is only for enhancement of compensation to the claimants-appellants.

Mr. Sheoran, learned counsel for the appellants submits that the learned Tribunal simply awarded a lump sum of Rs.50,000/- to all the appellants, awarding Rs.5,000/- thereof to appellant No.5, i.e. son of the deceased, and the remaining Rs.45,000/- to be shared equally between the first 4 appellants. The Tribunal, in its wisdom, did not take into account the family pension which was being drawn by the deceased Smt. Tarawati after the death of her husband.

Learned counsel for the appellants submitted that the Tribunal did not even refer to the family pension received by the deceased and simply stated as follows:-

“14. As regards the compensation to be awarded to the petitioners, the petitioner Mrs. Sunita has brazenly admitted in cross-examination that having lost her husband in accident, she had received compensation to the tune of Rs.2,21,000/- along with her three children (petitioner No.2 to 4). It lends credence to this glaring fact that the petitioners No.1 to 4 were not dependent upon the deceased. However, keeping in view the peculiar circumstances of the present case, the petitioners are entitled to Rs.50,000/- in lump-sum as compensation due to loss of live and affection and companionship of deceased Mrs. Tarawati.”

As to why, just because appellants No.2 to 4 had received compensation on account of death of the husband of appellant No.1 (father

of appellants No.2 to 4) in similar proceedings, the present appellants should not receive compensation on account of the death of the mother-in-law of appellant No.1, grand-mother of appellants No.2 to 4 and mother of appellant No.5, in a wholly different road accident, to the one in which the husband of appellant No.1 (son of deceased Tarawati) died, is something which is wholly and completely not understood.

Though learned counsel appearing for the respondents have tried to justify the finding arrived at by the Tribunal, they have not been able to explain the reasoning behind the conclusion drawn by the Tribunal.

The deceased Tarawati is stated to have been receiving Rs.3319/- per month as family pension after the death of her husband. It is not the case of the respondents, at least in these proceedings, that the deceased Tarawati was not living with the present appellants. However, presently at least, there is nothing on record to prove that such family pension was actually being received or not by the deceased or whether she had any other income also, which would cease to be available to the family on account of her death.

As per the award, Rs.10,000/- was claimed to be the monthly income of the deceased, allegedly earned from agriculture and the said family pension of Rs.3319/-.

However, whether such income was actually being received by her or not would have been a matter to be proved before the learned Tribunal by leading evidence on the issue.

Further, though a consolidated sum of Rs.50,000/- was awarded by the learned Tribunal to all 5 claimants, the heads of compensation were not given.

The deceased is stated to have been only 45 years old, though that would also be a matter to be proved before the Tribunal, keeping in view the fact that her daughter-in-law, i.e. appellant No.1, was 31 years old and the age of appellant No.5 (son of deceased Tarawati) has not been shown in the memo of parties before the Tribunal or before this Court.

Therefore, keeping in view the above, the impugned award of the Motor Accident Claims Tribunal is set aside on the issue of compensation awarded to the appellants-claimants, upholding the finding of negligence, which in any case is not under challenge.

The parties would lead evidence before the learned MACT on issues No.2 and 4, i.e. with regard to the amount of compensation that the claimants before the Tribunal (appellants before this Court), are entitled to and the consequent relief that is awardable to them.

The Tribunal would, obviously after appreciating the evidence led before it, decide the matter keeping in view the judgments on the subject, with regard to payment of funeral expenses, loss of love and affection, application of multiplier etc., as settled by the Hon'ble Apex Court and this Court, in various judgments.

The appeal is accordingly disposed of and remitted to the Motor Accident Claims Tribunal, Bhiwani, in view of the directions given herein above.

February 27, 2015
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(AMOL RATTAN SINGH)
JUDGE