

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

**FAO No.1418 of 2006 (O&M)
Date of Decision: February 09, 2015**

Kanta Devi and others ...Appellants

Versus

Sawran and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kulvir Narwal, Advocate
 for the appellants.

 Mr. R.N. Singal, Advocate
 for respondent No.3.

FATEH DEEP SINGH, J.

The claimants aggrieved over the denial of compensation to them through impugned award dated 21.9.2005 by the learned Motor Accident Claims Tribunal, Jhajjar have preferred the instant appeal.

Heard learned counsel for the parties. The fact that on 26.7.1997 deceased Jai Bhagwan while going on his scooter No.HR-13/7509 was hit by offending truck No.PMB-4465 driven by its driver in a rash and negligent manner and, thus, question of death of the deceased Jai Bhagwan due to the rash and negligent driving of the offending vehicle returned by way of findings on issue No.1 has been put to question.

The *inter se* relationship of the deceased with Kanta Devi, who happens to be the widow, Robin and Tapan being

minor sons has not been challenged. Though, it has been brought about by PW3 Satbir who is an eye-witness and was driving ill-fated scooter on which the deceased was a pillion and has categorically stated that while going from Bahadurgarh to Tikri Border the offending truck bearing No.PBM-4465 came without lights from the opposite side and hit their scooter and has given the registration number of the vehicle as PBM-2465. The learned Tribunal merely on the premise that though this witness claims that deceased remained admitted for 7-8 days in the hospital but has failed to prove the factum of hospitalisation. Even the deposition of another eye-witness PW4 Shri Bhagwan was rejected as he never put in appearance to face the cross-examination and merely on the fact that this witness states that he arrived on the spot after 2-3 minutes of the accident the learned Tribunal has outrightly rejected presence of this witness. As has been argued on behalf of the claimants the Act is a welfare Statute for the betterment of the claimants and, thus, needs to be liberally construed and loosely interpreted. Since stricter principles of law and Evidence Act are not to be applied. What is sought to be reflected from the impugned award the learned Tribunal has critically evaluated the evidence as if it was deciding a criminal case and merely on the fact that one of the witness states that scooter number is HR-13/2509 whereas, other states HR-13/3209 does not cuts much ice and it has been rightly argued that FIR Ex.P1 and the documents Ex.P2 to Ex.P17 along with eye-witness account have remained totally unrebutted could not be controverted on behalf of the respondents, who have not led any evidence in their support and, therefore, entire evidence of the

claimants remained unchallenged. The death and the accident is well established through the oral and documentary means. Neither the driver nor the owner has stepped into the witness-box and, therefore, adverse presumption needs to be drawn against them in terms of Section 114 of Evidence Act. Moreover, it is purely on the conclusions of the Tribunal that it was not possible to see the truck during dark time has led to this finding which is highly lackadaisical and needs to be struck down in view of the eye-witness account and the documentary evidence. It is well established from the records that deceased Jai Bhagwan died on account of rash and negligent driving of offending vehicle by its driver Sawran and, therefore, finding on issue No.1 as arrived by the learned Tribunal needs to be set aside by deciding the same in favour of the claimants.

It is the claim of the claimants that the deceased was aged around 37 years and working as a Welder and to the very query how they have proved the earnings of the deceased to be ₹15,000/- per month learned counsel for the appellants was clearly at loss of words. No doubt, the Act is a welfare Statute and keeping in view the absence of any documentary evidence it can be safely assumed that the deceased was working as a labourer and keeping in view the then prevalent daily wages it would be safe to hold that the deceased in all likelihood must be earning ₹1800/- per month. Having regard to the fact that claimants are the widow and two minor sons whereas, respondent No.4 Phool Kaur is mother of the deceased and in view of the law laid down in **New India Assurance Company Limited vs. Gopali and others 2012 Vol III RCR (Civil) 818** the deceased in all eventuality must be

spending 1/4th on his own upkeep and maintenance and in all likelihood must be contributing ₹1350/- per month for the running of the household which is a reasonable amount and, therefore, the annual dependency comes to ₹16,200/-. Keeping in view the age of the deceased multiplier of 15 needs to be applied, therefore, compensation comes to ₹2,43,000/-. Besides this, the family must have spent money on the last rites and ceremonies of the deceased, the widow has lost her life companion and the entire family has lost not only their bread earner but source of love and affection, and thus, under all these conventional heads a sum of ₹2,00,000/- needs to be given. Thus, the total compensation comes to ₹4,43,000/- (Four lacs and forty three thousand only).

It is not disputed that respondent No.1 Sawran is driver, respondent No.2 Jaswant Kaur is owner and respondent No.3 M/s National Insurance Company Ltd is Insurer of the offending vehicle and, therefore, in view of the settled law the driver, owner and the Insurer are jointly and severally liable to pay the compensation amount. The claimants shall be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till the realisation of the amount. Interim compensation paid, if any, shall be adjusted. Keeping in view the requirements of the claimants, who are young and have a long life to go and that the mother-respondent Phool Kaur is on the advanced age, thus it would subserve the ends of justice if claimants Kanta-widow, Tapan and Robin minor sons are awarded 30% each of the compensation amount and widowed mother Phool Kaur is awarded 10% of the awarded amount.

In view of the foregoing discussions, the learned

Tribunal has erred in denying the compensation to the claimants and, thus, the impugned award needs to be set aside by way of acceptance of the present appeal.

(FATEH DEEP SINGH)
JUDGE

February 09, 2015
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