

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 4675 of 2007
Date of Decision:- 21.04.2015

Harinder Singh and others

.....Appellants

Versus

Kartar Bus Service and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Sanjay Tangri, Advocate
for the appellants.

None for respondent No.1.

Mr. Vijay Rana, Advocate
for respondent No.2.

Mr. Pardeep Goyal, Advocate
for respondent No.3.

SHEKHER DHAWAN, J.

Claimants-appellants challenged the award dated 22.05.2007, passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' awarded the compensation to the tune of ₹1,42,257.50/- along with

interest @ 7.5% per annum on account of death of Surinder Singh.

2. Taking the case from undisputed facts that appellants-claimants Harinder Singh (son) and Ravinder Kaur (daughter), had filed the claim petition on account of death of their father Surinder Singh. On 07.09.2003, Surinder Singh was going from Jalandhar to Hoshiarpur in a Maruti car bearing registration No.PIL-806. At about 3.15 PM, he reached near the bridge of canal in the area of Adampur. Sukdev Singh (respondent No.2) came from the opposite side while driving the bus bearing registration No.PB-08-Z-8651 and struck against his car. Thereafter, Surinder Singh was taken to hospital for treatment and later on he died in DMC Hospital, Ludhiana. The matter was reported to the police. As per the claimants the deceased was the only bread earner of the family. The claim petition was contested by the respondents.

3. Respondent No.2 taking the plea that no accident had ever taken place with the bus and he has been falsely implicated. Respondent No.3 taking the plea that accident was result of head on collusion between the two vehicles, coming from the opposite directions and as such, it was a case of contributory negligence of drivers of both the vehicles. 'The Tribunal' accepted the plea of contributory negligence and awarded compensation of ₹2,84,550/- on the basis of contributory negligence to the extent of 50%, awarded amount of compensation was ₹1,42,257.50/-. The appellants-claimants are in appeal challenging the said finding of 'The Tribunal'.

4. At the time of arguments, Mr. Sanjay Tangri, learned counsel for the appellants, took the plea that 'The Tribunal' fell in error while

recording the finding that it was a case of contributory negligence. There was no evidence that the car was overtaking other vehicle. Learned counsel for the appellants also took the plea that 'The Tribunal' has not awarded just compensation because multiplier of 8 was applied, whereas as per judgment of Hon'ble Supreme Court in case *Sarla Verma and others Vs. Delhi Transport Corporation and another*, 2009(3) RCR (Civil) 77, the multiplier of 11 was to be applied. 'The Tribunal' has not awarded any amount on account of loss of Estate and loss of love and affection, loss of consortium and funeral expenses. So, the amount of compensation be enhanced suitably.

5. Mr. Vijay Rana, learned counsel for respondent No.2 took the plea that accident had taken place because of rash and negligent driving by Surinder Singh himself, as the car was not road worthy. Only witness examined from 'The Tribunal' had come with the plea that there was a distance of 15/20 yards from the place of accident. Meaning thereby, there was no one present at the spot who had seen the accident. There are findings of 'The Tribunal' that accident was because of contributory negligence. 'The Tribunal' has otherwise awarded just compensation.

6. Mr. Pardeep Goyal, Advocate, learned counsel for respondent No.3 i.e. Oriental Insurance Company took the plea that the Tribunal has rightly decided the claim petition that it was a contributory negligence on account of both the drivers and there are no grounds for further enhancement of amount of compensation.

7. Having considered the rival contentions raised by learned

counsel for both the parties, this Court is of the considered view that there is no dispute on the facts that it was a case of head on collusion. 'The Tribunal' has rightly placed reliance upon testimony of PW2 Rajinder Singh. 'The Tribunal' has also rightly placed reliance upon judgment in case State of Haryana Vs. Aman Deep Singh, 2001 (2) PLR 363. The Tribunal has also rightly recorded the finding that in such like cases of head on collusion it is very difficult to draw a clear line of distinction, to fix responsibility on either of them. As per the findings of 'The Tribunal' it was a case of contributory negligence only and the said findings and liability of both was fixed for causing accident on 50:50 basis.

8. However, 'The Tribunal' has not awarded just compensation. The amount of annual income has been rightly taken by 'The Tribunal' to be ₹60,000/- per month and 1/3rd has been rightly deducted on account of self dependency. As per post mortem report, the age of deceased was 52 years. 'The Tribunal' applied multiplier of 8, whereas Hon'ble Supreme Court observe in **Sarla Verma's case (supra)** held that multiplier 11 is to be applied at the age of 52 years and applied the same multiplier. Thus, compensation comes to ₹4,40,000/- (₹40,000 x 11). Apart from that, the claimants are entitled to a sum of ₹25,000/- on account of funeral expenses and a total sum of ₹50,000/- on account of loss of love and affection, as claimants are son and daughter of the deceased. The total amount of compensation comes to ₹5,15,000/- (₹4,40,000/- + ₹50,000/- + ₹25,000/-). However, the appellants shall be entitled to ₹2,57,500/- as

compensation on 50:50 basis against sum of ₹1,42,257.50/- already awarded. The enhanced amount of compensation i.e. ₹1,15,242.50 (₹2,57,500 – 1,42,257.50), shall be payable within a period of one month from today, failing which, the appellants shall be entitled to recover the said amount along interest @ 7.5 % per annum. However, the remaining conditions regarding rate of interest and disbursal of amount shall remain unaltered.

9. Appeal partly accepted.

April 21, 2015
naresh.k

(SHEKHER DHAWAN)
JUDGE