IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

XOBJC No.52-CII of 2010 in / and
FAO No.1478 of 2010 (O&M)

Date of Decision: 15.07.2015

Rajender Kumar and another **......Appellants**

Versus

Kusum @ Kamla and others **......Respondents**

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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. Harish Bhardwaj, Advocate for
Mr. Harkesh Manuja, Advocate,
for appellants.

Mr. S.S.Virk, Advocate,
for respondents No.1 to 5/cross-objector.

Mr. Nitin Mittal, Advocate for
Mr. Subhash Goyal, Advocate,
for respondent No. 6-Insurance Company.

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SHEKHER DHAWAN, J (ORAL)

Present appeal and cross-objection are against award dated 22.01.2010 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of ₹4,49,500/- on account of death of Ram Lakhan who died in motor vehicle accident on 29.05.2008.

2. Cross-objection has been filed by the claimants for enhancement

of awarded compensation whereas FAO has been filed by the driver and owner of vehicle involved in the accident.

3. Relevant facts for the purpose of decision of present FAO and cross-objection that motor vehicle accident took place on 29.05.2008 involving tempo bearing No.DL-IM-0801 and truck bearing No.HR-37-A-9471. The accident resulted into death of Ram Lakhan who was 45 years the age, married and survived by widow and two minor children as well. 'The Tribunal' awarded the compensation on the facts that accident had taken place because of rash and negligent driving of respondent No.1 Rajinder Kumar and liability to pay the amount of compensation was fastened upon driver and owner of the vehicle whereas Bajaj Allianz General Insurance Company Ltd. was absolved of its liability.

4. Learned counsel for appellant mainly took the plea that liability has been fastened upon appellant-driver and owner on the ground that Ram Lakhan was a gratuitous passenger and as such no liability could be fastened upon the Insurance Company. However, in the case in hand Ram Lakhan was travelling along with his goods in the vehicle and he was not gratuitous passenger. Such a law laid down by Hon'ble Supreme Court in case **New India Assurance Co. Ltd. Vs. Asha Rani 2003(1) RCR (Civil) 671**.

5. Mr. S.S.Virk, learned counsel for cross-objector took the plea that 'The Tribunal' has not awarded 'Just Compensation' because income of the deceased has not been taken on the available evidence. The multiplier applied in this case at the age of 45 was 13 whereas it should have been 14 as per law laid down by Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR**

(Civil) 77. More so only meager amount has been awarded on account of loss of consortium and nothing has been awarded on account of loss of love and affection for two minor children.

6. Mr. Nitin Mittal, learned counsel for Insurance company took the plea that there was absolutely no evidence available on file that Ram Lakhan was travelling in the vehicle along with goods at the time of accident and 'The Tribunal' has rightly returned the findings that Ram Lakhan was gratuitous passenger and the appeal is liable to be dismissed. The cross-objection also deserved for dismissal because 'The Tribunal' has already awarded 'Just Compensation' keeping in view the income of the deceased. There is no contrary evidence regarding income of the deceased, so, appeal and cross-objection be dismissed.

7. Having considered the rival submissions made by learned counsel for the parties this Court is of the view that 'The Tribunal' fell in error while returning the finding that Ram Lakhan was gratuitous passenger because it has come on the file by way of statement of PW-1 Smt. Kusum @ Kamla widow of Ram Lakhan that Ram Lakhan was travelling in the vehicle along with goods and he used to work as a *Kabari* at Panipat, Delhi and Narela. Similar evidence had come on the file by way of statement of PW-2 Arun Kumar-eye witness of the case. He has specifically denied the suggestion took to him by Insurance Company that there were no goods in the vehicle at the time of accident. Learned counsel for Insurance Company took the plea that it had come in the report of Investigator that at the time of accident there were no goods in the vehicle but no such evidence is available on the file to return such findings that Ram Lakhan was not travelling with goods rather positive evidence had come on the file that Ram Lakhan was

travelling along with goods in the vehicle at the time of accident and 'The Tribunal' has mis-appreciated the evidence on this point. The liability to pay the amount of compensation in this case shall be of Bajaj Allianz General Insurance Company Ltd.-respondent No.3 in the claim petition and the findings returned by 'The Tribunal' on this point are hereby reversed.

8. Learned counsel for cross-objection also took the plea that 'The Tribunal' has not awarded any amount on account of enhancement for future earnings.

9. The cross-objector-claimant also entitled to seek 30% of the amount of compensation as enhancement for future earnings as well.

10. The facts are not disputed to the extent that Ram Lakhan was of the age of 45 years and as per law laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra)** multiplier of 14 was to be applied and as per law laid down in **Rajesh and others Vs. Rajbir Singh and others 2013(9) SCC** 54 cross-objection in this case are also entitled to seek a sum of ₹1,00,000/- on account of loss of consortium for the widow and a sum of ₹1,00,000/- each for two minor children on account of love and affection with 'The Tribunal' has not awarded. So, the cross-objection are accepted partly and the amount of compensation in this case is re-assessed as under:

Monthly income	₹3,500/-	
Add income for future prospects @ 30% (+)	₹1,050/-	₹3,500/- + ₹1,050/- = ₹4,550/-
Self dependency 1/4th (-)	₹1,138/-	₹4,550/- (-) ₹1,138/- = ₹3,412/-
Annual income	₹3,412/- x 12	₹40,944/-

Multiplier	₹40,944/- x 14	₹5,73,216/-
Loss of consortium		₹1,00,000/-
Loss of love and affection for two minor children	₹1,00,000/- each	₹2,00,000/-
Funeral expenses		₹25,000/-
Total compensation	₹5,73,216 + ₹1,00,000/- + ₹2,00,000/- + ₹25,000/- = ₹8,98,216/-	
Compensation already awarded		₹4,49,500/-
Enhanced Compensation	₹8,98,216/- (-) ₹4,49,500 = ₹4,48,716/-	

11. Appellant shall be entitled to receive the amount which they have already paid to the claimant in this case and the amount payable by Bajaj Allianz General Insurance Company Ltd. along with interest @ 6% from the date of payment till actual payment by the Insurance Company.

12. The enhanced amount of compensation of ₹4,48,716/- shall be payable from the date of claim petition along with interest @ 7.5% per annum. The remaining terms and conditions regarding disbursal of the amount shall remain unaltered.

13. Resultantly the present appeal and cross-objection are accepted partly.

(SHEKHER DHAWAN)
JUDGE

July 15, 2015
msd