

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

FAO No.3007 of 2011 (O&M)

Date of Decision: 19.08.2015

Joginder Kaur

....Appellant

Versus

Amerjeet Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI

Present: Mr. Sanjeev Patiyal, Advocate
for the appellant.

Ms. Anamika Mehra, Advocate
for respondent No.3.

Mr. V. Ramswaroop, Advocate
for respondent No.5.

K.C. PURI J. (Oral)

Briefly stated, Kapoor Singh and Joginder Kaur, unfortunate parents of deceased Bhola @ Jaswant Singh, filed claim petition No.128 of 2001, claiming compensation on account of death of Bhola @ Jaswant Singh. The said claim petition was consolidated with other claim petitions bearing Nos. 127 of 2001 titled as Kamlesh Kaur Vs. Amarjit Singh and claim petition No.129 of 2001 titled as Bachan Singh Vs. Amarjit Singh.

The facts pleaded in the claim petition are that on 15.02.1999, Jaspal Singh son of Rulda Singh, Janta Singh and Bhola Singh were going from village Tasholi to Delhi while

driving the truck bearing registration No.HR-37-5682. The truck was being driven by Jaspal Singh. Janta Singh was the cleaner with the same and Bhola Singh was the owner of the potatoes which were loaded in the said truck. At about 03:30 a.m. when the truck reached near National Engineering Works situated on G.T. Road, Panipat, the truck dashed against the tanker which was parked in the middle of the G.T. Road in front of National Engineering Works without any red light on the back portion of the tanker bearing registration No.PBW-7939. The driver of the tanker parked the tanker without any sign and without any light. He did not observe the traffic rules and as such, the driver of the tanker was negligent. The owner of truck bearing No.HR-37-5682 and Finance Company were arrayed as a party along with insurance company of the truck i.e. National Insurance Company Limited. Balvinder Singh owner of the tanker, Kashmir Singh-driver of the tanker and United India Insurance Company Limited were arrayed as respondents. The claim petition was resisted by them.

The learned Tribunal vide award dated 04.04.2002 dismissed the claim petition preferred by the present appellant for want of any evidence. However, the other claim petitions i.e. Kamlesh Kaur Vs. Amarjit Singh and Bachan Singh Vs. Amarjit Singh, were partly accepted. Thereafter, claim petition No.188 of 1999, was preferred by the present claimants before Motor Accident Claims Tribunal, Chandigarh, along with other claim

petitions. The said claim petition was dismissed vide award dated 25.11.2005 on the ground that the present appellants have filed earlier claim petition before the Motor Accident Claims Tribunal, Panipat bearing No.128 of 2001/1999.

The present appellants preferred appeal bearing FAO No.3298 of 2006 before this Court and this Court vide judgment dated 22.07.2010, dismissed the appeal with liberty to the claimants to prefer appeal against the decision of Motor Accident Claims Tribunal, Panipat i.e. MACT No.128 of 2001 and thereafter, the present appeal has been filed. Along with appeal an application for condoning the delay of 3169 days was filed. Reply to that application has also been filed by respondent No.3.

So, in view of the above long drawn history of this case, it is a fit case to condone the delay in filing the appeal. So, the delay of 3169 days in filing the appeal stands condoned.

The case of the claimants is that they have not filed any claim petition before the Motor Accident Claims Tribunal, Panipat and on that account, they could not lead any evidence there. Reference has also been made to complaint against some Advocate representing at Panipat. Without going into the facts of the complaint, since, the case of the claimants has been dismissed on the ground that they have not led any evidence. The order of this Court fortified by the fact that other claim petition has been accepted and even enhancement has been ordered by this Court.

The owner, driver and Insurance company i.e. New India Insurance Company Limited, of the tanker has been held liable to pay the amount of compensation.

The evidence led by the claimants is already on record and from the perusal of the same, it is revealed that respondents were given opportunity to cross-examine the claimant-Joginder Kaur.

The dispute in the present case is regarding quantum only as the negligence part has been upheld by this Court in the appeal preferred by other claimants at Panipat.

Joginder Kaur has stated that deceased was 23 years of age and was earning the income of Rs.5,000/- to Rs.10,000/- per month, but her bald statement cannot be taken as a gospel truth. So, the income of the deceased in the year 1999 has to be taken by keeping in view the minimum wages. So, the income of the deceased is taken as Rs.3,000/- per month and by adding 50% amount in respect of future prospects, the income of the deceased is taken as Rs.4,500/- per month. The dependency has to be calculated by deducting $\frac{1}{2}$ in respect of personal expenses as the deceased was a bachelor. So, the dependency of the claimants is taken as Rs.2,250/- per month and the yearly dependency comes to Rs.27,000/- as per ***“Smt. Sarla Verma and others vs. Delhi Transport Corporation and another”*** reported in 2009(3) R.C.R. (Civil) 77. The multiplier applicable at the age of deceased is 18,

so by applying that multiplier the amount of compensation comes to Rs.4,86,000/-. Another sum of Rs.15,000/- stands allowed on account of expenses on last rites and transportation of dead body. The claimant-Joginder Kaur is also held entitled to claim Rs.30,000/- in respect of loss of love and affection. These amounts have been granted by keeping in view the price index for the year 1999. So, in this manner, the claimants are held entitled to claim Rs.5,31,000/- in all along with interest @ 7.5% per annum from the date of application till payment. However, the interest on the delay part of 3169 days shall not be granted.

Appeal stands disposed of, accordingly.

A copy of this order be sent to the Tribunal for compliance.

19.08.2015

yakub

(K.C. PURI)
JUDGE