

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

FAO No.452 of 2011 (O&M)
Date of Decision: February 09, 2015

Jagjit Kaur and another

...Appellants

Versus

Baljinder Singh alias Balwinder Singh
alias Kataria and others

....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sagar Aggarwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellants.

None for the respondents.

FATEH DEEP SINGH, J.

The claimants-appellants through this invocation have challenged award of learned Motor Accident Claims Tribunal, Ambala dated 16.11.2009 challenging *inter alia* quantum of compensation as well as findings that it was a case of contributory negligence.

Heard learned counsel for the appellants. The factum of accident as has been submitted on behalf of the appellants on the basis of conclusions of the learned Tribunal was due to the fault of the deceased, who was on a scooty as well as of the bus driver bearing No.PB-01-6055. There is specific contention that the offending bus hit the scooty from the back side and, thereafter, scooty hit the cycle leading to injuries to Kamaljit Singh

and Anil Anand out of whom Kamaljit Singh died. Kamaljit Singh deceased happens to be the person who was driving the scooty and in respect of whose claim his parents have invoked the jurisdiction of the learned Tribunal. Though, the learned Tribunal while discussing the accident in para No.7 has observed that the eye-witness PW4 Jyoti had stated that Kamaljit had not drunk liquor and the learned Tribunal on the testimony of PW2 Dr. K.S. Rana who had examined injured by virtue of MLRs Ex.1 and Ex.2 of jyoti and Anil Anand respectively had presumed that the deceased was also drunk when there is nothing suggestive in the post mortem report, and, thus, how or by what means the learned Tribunal had drawn this conclusion is anybody's guess. As has been pointed out neither it is the defence of the respondents much less evidence to this effect on the records and being devoid of any such substantive reasoning and evidence needs to be brushed aside. More so, none from the side of the respondents have testified so, nor any evidence has come on the records and the entire evidence of the claimants have remained unrebutted are matters which impinges the judicial conscience and, therefore, these findings on issue No.1 are set aside holding that the accident in the light of the unrebutted eye-witness account was due to the rash and negligent driving of the offending bus by its driver respondent-Baljinder Singh. Thus, findings on issue No.1 stands modified.

It is duly admitted on behalf of the appellants that the deceased was a bachelor aged around 30 years. Though, the claimants claim that he was aged around 25 years but it has been held by the learned Tribunal that the post mortem report states the age to be 30 years and, therefore, in the absence of any

evidence to the contrary needs to be taken. The claimant though as PW1 claims that deceased was a property dealer and used to earn ₹8000-10,000/- per month but in the absence of any documentary evidence, especially, income tax and any proof of these earnings the same needs to be taken with a pinch of salt. Learned Tribunal has rightly concluded that the same cannot be accepted. Keeping in view the lack of evidence, learned Tribunal has taken the earnings of a daily wager and considered it to be ₹4000/- per month which is highly appropriate and the learned counsel for the respondents could not rebut it. Since the deceased was a bachelor and in view of the settled position of law $\frac{1}{2}$ needs to be deducted for his own upkeep and maintenance and, therefore, in all likelihood the deceased must be contributing ₹2000/- per month as dependency and, therefore, the annual dependency comes to ₹24,000/-. The proven age of the deceased being 30 years, multiplier of 15 needs to be applied which has been wrongly applied by the learned Tribunal. Therefore, compensation comes to ₹3,60,000/-. Besides this, the aged parents have lost their young son, a source of love and affection and livelihood and must have spent money on the last rites and ceremonies of the deceased, therefore, a sum of ₹50,000/- needs to be awarded which has escaped notice of the learned Tribunal who has only given a pittance of ₹45,00/- under these heads. Thus, total compensation comes to ₹4,10,000/- (Four lacs and ten thousand only).

Thus, in view of the above discussions, the award is not just and equitable and needs to be modified. The claimants shall be entitled to interest @ 7.5% per annum on the

enhanced amount from the date of filing of the appeal till realisation of the amount. Interim compensation paid, if any, shall be adjusted. Rest of the stipulations as laid in the award need not be disturbed.

Thus, the present appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

February 09, 2015
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