

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6972 of 2010

Date of Decision.02.12.2015

Smt. Kela Devi

.....Appellant

Vs.

Hussain Khan and others

.....Respondents

2. FAO No.6974 of 2010

Smt. Kela Devi and others

.....Appellants

Vs.

Hussain Khan and others

.....Respondents

Present: Mr. Onkar Rai, Advocate
for the appellant.

Mr. Satish Chaudhary, Advocate
for respondent No.1.

Mr. Sanjeev Roy, Advocate
for respondent No.2.

Mr. Vikas Chatrath, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Both the appeals are at the instance of the claimants where the claim petitions arising out of the death of a male aged 35 years and death of a boy aged 7 years were dismissed. The case relating to the death of the adult male is the subject of appeal in FAO No.6974 of 2010 and the FAO No.6972 of 2010 is the appeal against the judgment of dismissal for the death of boy aged 7 years.

2. The respective claim petitions were rested on a pleading that on 29.09.2007, the deceased Bijender Singh and his son were travelling in a motor cycle and were followed by his wife in another vehicle driven by one Raj Kumar. According to them, the respondent's truck dashed against the deceased's motor cycle, ran them over, crushing them on the spot and the driver left the vehicle a little farther away and ran away from the spot. The accident was said to have taken place at 10.30 PM and a FIR had been lodged on 30.09.2007 in the early hours at 12.05 at the instance of the wife herself stating that she was a witness to the accident but on account of the fact that it was dark, she could not notice the registration number. This statement was supported by two other witnesses. One Raj Kumar who was also said to be an eye witness in whose vehicle the wife of the deceased was riding as a pillion rider reiterated the statement made by the wife. He had also stated that the vehicle had not been stopped and it was found later in enquiry that the vehicle was a truck bearing No.HR-38X-8445. PW2 was one Singh Ram who had given evidence to the effect that he was working on a vehicle at Shiv Shakti Motors at that night when he knew that there was a vehicle which had been involved in an accident and he saw the vehicle having been stopped just outside Shiv Shakti Motors where he was standing. He had given evidence to the effect that the truck driver left the truck there and gone away and he noticed the registration number of the vehicle as HR-38x-8445. His evidence was also that on next day on 30.09.2007, a woman and a man had come and taken away the vehicle from that place. With all these evidence given by two persons who were immediate witnesses to the accident and yet another

person who had been in the vicinity and who had known the vehicle as truck as having been parked with the driver running away from the place, it was most essential that the driver took the witness stand and gave his own version about the accident. It was also essential that the owner to come to Court to depose about the implication of her vehicle in the accident. Neither the owner nor the driver examined themselves and the Tribunal was overwhelmed by the fact that the registration number of the vehicle had not been given and the FIR had not given on the same day. It failed to note that the accident had taken place at 10.30 PM and an eye witness had given a complaint to the police within two hours. The next day there was only two hours time and it could hardly be said to be a delay. Further when the FIR itself revealed that due to darkness, the woman could not note the registration number, it was begging the question to reject contention on the ground that the vehicle number had not been given. There ought to have been a good reason to reject the evidence of Singh Ram who had given evidence to the effect that he was at the vicinity of the accident and the vehicle which was involved in the accident had been parked and he saw the driver fleeing away from that place. The Tribunal reasoned that he was not actually a personal witness to the accident and therefore, his evidence could not be believed. It failed to notice an important fact that the Tribunal required to fix the involvement of the vehicle. Even if PW2 was not himself a personal witness to the accident, he was the best eye witness who spoke about the fact that the vehicle had been parked in the vicinity of his own workshop which was near the place of accident and the fact that he saw a person running away from the place soon

after the accident parking the vehicle. The Tribunal must have seen that the version was natural and it could have been displaced only if the driver and owner had given their own versions denying the involvement of the vehicle. There is simply no case of collusion made between the claimants and the owner and the driver. On the other hand, there had been a written statement filed denying the accident but neither of them took the courage to come to the witness stand and support the written statement filed. The insurance company allowed itself the luxury of sailing along with the written statement and did not think that there was a duty cast under the Motor Vehicles Act to secure information of the accident and the driving licence particulars when there was any claim made against it. The insurance company did nothing and was satisfied with making a mere denial of the accident and other particulars set out in the petition. The appreciation of evidence by the Tribunal was utterly perverse and it had failed to note what was essential and it buried fathoms deep any legal approach to the evidence given before it. The ultimate decision taken by the Tribunal that the involvement of the vehicle had not been proved was equally perverse and I set aside the same.

3. The case would require to be considered only as regards the quantum of compensation. The deceased was 35 years of age and he was said to be a milk vendor supporting a family of widow, three daughters and two sons, one son died in the accident. The Tribunal observed that the status of the deceased as milk vendor had not been proved and took therefore, the income as ₹3200/- per month. A man who had supported a family of his wife and five children and who could

drive on a motor cycle ought to have had sufficient income and not in any way less than ₹3200/- per month in the manner in which it was assessed. I am not prepared to make a variation of the income which the Tribunal has taken but I will provide for an obvious prospect of increase of income over a period of time and will take the average income to ₹4800/- per month. I will apply a deduction of 1/4th and rework the compensation providing for all the heads of claim which are admitted through the decisions starting from Sarla Verma Vs. DTC 2009(6) SCC 121 and Rajesh v. Rajbir Singh, (2013) 9 SCC 54 with reference to manner of assessment of compensation for consortium, loss of love and affection, loss to estate and funeral expenses. The compensation is tabulated as under:-

FATAL ACCIDENT on 29.09.2007			
Age	35 years		
Occupation	Milk Vendor		
Claimants	Widow and 5 children		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income	3200	3200
2	Add, % of increase 50%		4800
3	Less, Deduction 1/4 th	2400	3600
4	Multiplicand (annualized by multiplying 12)	28,800	43,200
5	Multiplier	15	16
6	Loss of dependence	4,32,000	6,91,200
7	Medical Expenses & Transportation		
8	Loss of Consortium	20,000	1,00,000
9	Loss of love and affection		3,00,000
10	Loss to estate		10,000
11	Funeral expenses	20,000	25,000
	Total	4,72,000	11,26,200

4. The overall compensation will be ₹11,26,200/-.

compensation will attract interest @9% from the date of petition till the date of payment and the liability shall be on the insurance company. The amount will be distributed equally amongst the claimants. Having regard to fact that the accident had taken place about 8 years prior to this order, I will provide for 50% of the amount payable to the widow to be permitted to be withdrawn and the rest of 50% will stay in a deposit for a further period of 8 years, splitting the amount in 8 equal parts, the first part for a period of one year, second part for a period of two years and so on upto 8 years. The amount shall be deposited in a nationalized bank which would yield cumulative interest and shall be released to the claimants without having to apply to the Tribunal for withdrawal again. No permission for premature withdrawal shall be given.

5. As regards the respective claims of the minor children, the entire amount shall be in deposit during their respective age of minority and 75% of the amount shall be permitted to be withdrawn at attaining majority and rest 25% shall be deposited in a nationalized bank for a period of three years, splitting the amount into three equal parts, first part for a period of one years, second part for a period of two years and third part for a period of three years. The manner of disbursement to the respective minor children shall follow the same pattern as referred to above.

6. As regards the claim for the death of a minor child aged 7 years in FAO No.6972 of 2010, the claimant is the mother and I am not entering into separate heads of claim which are possible. There have been various judicial approaches relating to assessment of compensation for minor children and at the most minimum, the compensation which is

now awarded for minors is ₹5 lacs in *Kishan Gopal and another Vs. Lala and others (2014) 1 SCC 244.* I will provide for ₹5 lacs with interest @9% from the date of petition till the date of payment. The liability again shall be on the insurance company and 50% of the same will be permitted to be withdrawn by the mother claimant and the remaining 50% will be worked out in the same fashion as it has been provided in the connected case in FAO No.6974 of 2010.

7. Both the appeals are allowed.

(K. KANNAN)
JUDGE

December 02, 2015
Pankaj*