IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4769 of 2011 (O&M)
Date of decision: November 27, 2015

Smt. Nanu Maya Thapa and others

...Appellants

Versus

Billu and another

...Respondents

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?**

Present: Mr. Jatinder Kumar Verma, Advocate, for the appellants.

Mr. Pardeep Kumar, Advocate, for the respondents.

K. KANNAN, J. (Oral)

1. The appeal is for enhancement of compensation for the death caused to a male aged 36 years, who was run over at the middle of the road in an accident that took place on 14.11.2009, who was a pillion rider of a motor cycle which was reported to have been parked by its driver on the left side of the road and the deceased walked to the middle of the road to pick a bag that has fallen from his shoulder from the middle of the road. At that time, a three wheeler that had been bringing passengers with persons spilling out, numbering about 9 persons, in a three wheeler dashed against the deceased resulting in the fatal injuries. The claimants were widow, three minor children and the father. The deceased was said to be a worker in a

farm house and the Tribunal assessed his income as ₹2,400/- and after making an assessment of ₹3,80,212/- made a partial abatement of the claim of 50% by attributing contributory negligence by virtue of the fact that the deceased was at the middle of the road and the accident could not have occurred if he had been careful.

2. I find the manner of assessment of contributory negligence to be wholly faulty. It was not as if the deceased had fallen out of the vehicle on the middle of the road and he was run over immediately by a vehicle coming behind. The statement in FIR was that the motor cycle in which the deceased was pillion rider had been parked on the left side and the deceased took up his bag and was walking back towards the vehicle when he was run over. The accident had taken place at 4 pm in broad day light and any vehicle coming behind could not have been in such a close tow, if there was time for a motor cyclist to park the vehicle and the pillion rider to walk to the road to take up his bag. Any responsible driver following from behind could have very easily averted the accident, for, there ought to have been time lag between a pillion rider getting down from the vehicle and when the motorcyclist parked it on the left side of the road and when a person walking towards a dropped bag and returning with it. There was an evidence that the three wheeler was in excessive capacity with the passengers falling out the vehicle. The Tribunal ought to have seen that the negligence on the part of the three wheeler was writ large and ought not have cast any contributory negligence as arising in such a situation. I, therefore, set aside the finding of the Tribunal and will proceed to assess the compensation on the same basis it was done by the Tribunal with reference

to deceased income status. The Tribunal was indeed modest in taking income to be ₹2,400/- who was supporting a family of wife, three minor children and the father. If there is a means of increasing it, I still make it within the confines of what is now judicial approach providing for a normal prospects of increase over a period of time and in this case factoring the age of the deceased at 36, I will provide for 30% increase and take average income ₹3,600/-, scaling down by 1/4th for the expenses for the personal consumption and provide for loss of consortium to the wife at ₹1 lakh and for the minor children and the father ₹3 lakhs and tabulates various heads as under:-

Fatal Accident		***Date of accident***	
Age	36	14.11.2009	
Occupation	Worker in a farm	2400	
Claimants:	Widow, three children and father		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1	Income	2400	2400
2	Add 30% of increase		3600
3	Deduction		2700
4	Multiplicand		32400
5	Multiplier	16	15
6	Loss of dependence	3,45,600	4,86,000
7	Medical expenses	14,612	14,612
8	Loss of Consortium	10,000	1,00,000
9.	Loss of love and affection for children and father		3,00,000
10	Loss to estate		5000
11	Funeral Expenses	10,000	25000
	Total	3,80,212	9,30,612

3. There shall be total compensation of ₹9,30,612/- and the amount in excess over what was awarded will also attract interest @9%

from the date of the petition till the date of payment. The amount will be distributed in the ratio of 2:2:2:2:1. The father will be entitled to withdraw whole of the sum, while the widow shall be permitted to withdraw 50% of the amount and the balance shall remain in a bank deposit for a further period of nine years by splitting the sum into nine equal portions, the 1st portion for one year, the 2nd portion for the two years and so on upto the 9th years in a nationalized bank. The amounts shall be periodically paid to the widow on the maturity of the respective sums with specific direction to the bank to release it to the claimants without allowing for any loan or premature closure. As regards, the share of the minor children they shall be held in a bank deposits for rest of the age of upto majority and 75% of the principal will be issued to the respective claimants on attaining the age of majority. The remaining 25% shall be each split up for the three children into three portions to survive for a further period of three years, the 1st portion for one years, the 2nd portion for the two years and the 3rd portion for the three years with similar direction for disbursement in the manner provided for the widow.

4. The liability shall be on the insurance company as already determined by the Tribunal. The award stands modified and the appeal is allowed on the above terms.

November 27, 2015 **(K.KANNAN)**
prem **JUDGE**