IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) **FAO No.5680 of 2012 (O&M)**

Murti Devi and another

......Appellants

Versus

Sonu and others

......Respondents

2) **FAO No.3403 of 2012 (O&M)**

Krishan Kumar

......Appellant

Versus

Sonu and others

......Respondents

Date of Decision: 21.05.2015

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. Dheeraj Narula, Advocate,
for appellant (s).

Mr. Rohit Goswami, Advocate for
Mr. Vinod Chaudhary, Advocate,
for the respondent No.3.

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SHEKHER DHAWAN, J

Present appeal has been filed by appellant-claimant against award dated 30.03.2012 by Motor Accident Claims Tribunal, Sirsa (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation of ₹2,00,000/- in favour of Kirshan Kumar and ₹25,000/- in favour of Murti Devi.

2. Relevant facts for the purpose of decision of both the appeals that on 30.06.2010 appellant Krishan Kumar, Jai Kishan (since deceased) and Murti Devi were going in a Maruti Car bearing registration No.HR-18-1145 from Agra. The said car was being driven by Jai Kishan (deceased) at a moderate speed and right on his left side and at Jodhkan turn a tractor bearing registration No.HR-24-F-2581 which was being driven by respondent No.1 came from opposite side and all of a sudden respondent No.1 turned the tractor and collided with car bearing No.HR-18-1145 and as a result of which they all sustained injuries. Respondent No.1 fled away from the spot after causing the accident. Matter was reported to the police.

3-A Injuries caused to Krishan Kumar and awarded a sum of ₹25,000/- only on account of death of Jai Kishan mainly on the ground that Murti Devi and her son had not suffered any substantial loss on account of death of Jai Kishan as she was getting same pension.

3. Both the appellants sought compensation for the injuries having been sustained in the accident.

4. Respondents contested the claim petition on all accounts. 'The Tribunal' awarded compensation of ₹2,00,000/- to Krishan Kumar and ₹25,000/- to Murti Devi. Being dis-satisfied with the compensation awarded appellants are before this Court.

5. At the time of arguments Mr. Dheeraj Narula, Advocate for appellant took plea that 'The Tribunal' has completely ignored the fact that age of Jai Kishan was 54 years and was getting salary of ₹21,300/- per month and he was not duly compensated on account of loss of income.

6. 'The Tribunal' has also not awarded minimum amount of

compensation under the head loss of consortium (though widow being one of the claimant), funeral expenses, loss of love and affection.

7. While arguing this point Mr. Rohit Goswami, learned counsel for respondent took the plea that 'The Tribunal' has rightly taken the view that retirement age of deceased was 58 years as he was working as a Government Teacher. There is no financial loss to Murti Devi and family members of Murti Devi as Murti Devi is getting same amount of pension as per scheme of the Government so the appeal is without any merit and same be dismissed.

8. Similar matter was before Hon'ble Division Bench of this Court in case titled as **Oriental Insurance Company Vs. Saroj Devi 165 PLR 761** and following principles of law were laid down:

> "19. In the line of reasoning adopted by the Hon'ble Supreme Court, this Court declares that the Insurance Companies cannot get their liability excused or reduced because the deceased's family is also entitled to financial assistance from an alternative source which is accruing only by reason of the death of the deceased and not because he died in a motor vehicle accident. Drawing an analogy from the aforesaid observation of the Hon'ble Apex Court, when liability of the Insurance Company arises from a specific type of contract i.e. contract of indemnity, how can they be permitted to take benefit of compassionate assistance which results from employer-employee relationship and which is a right accruing by virtue of a welfare legislation (subordinate legislation).
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> 20. In Perry V. Cleaver, (1970) A.C.I, it was observed that "it would be revolting to the ordinary man's sense of justice, and therefore contrary to public policy, that the sufferer should have his damages reduced so that he would gain nothing from the benevolence of his friends or relations or of the public at large." Having regard to this observation of the House of Lords, I find it strange to conclude that a gratuitous payment coming from a private source should have no bearing on the assessment of compensation but if the same

> comes FAO No.374 of 2012 (O&M) 4 though State, it should be taken into consideration?
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> Still further, in any State, whether a welfare state or not, it is the primary responsibility of the Government to look after its citizens. Then whey, if the Government steps in to provide a benefit to the dependents of the deceased who was employed in the conduct its affairs and who had a role to play in the working of the entire official machinery, should such a benefit be taken into consideration at all for reduction of damages suffered by the claimants of the deceased or the injured, for that matter? In my understanding, even the aforementioned observation of House of Lords includes the possibility of State assistance when it uses the term "public at large".

9. More so the loss of earning member of the family is always a financial loss. The family would be deprived of earnings of such a member apart from loss of love and affection which cannot be quantify by way of compensation.

10. Now the next question comes how much compensation is to be awarded in this case.

11. As in this case Jai Kishan was getting a salary of ₹21,370/- per month as proved on the basis of statement of PW-6. Out of that 1/3rd is to be deducted on account of self-dependency and the remaining loss of income comes to ₹14,247/- per month.

Annual loss of income	₹14,247 x 12 = ₹1,70,964/-
Multiplier of 9	₹15,38,676/-

Apart for that claimants are entitled to receive following amount:

Loss of consortium as one of the claimant is widow	₹1,00,000/-
Loss of love and affection	₹50,000/-

Funeral expenses	₹25,000/-
Total	₹17,13,676/-
Compensation already awarded	₹ 25,000/-
Enhanced compensation	₹16,88,676/-

13. The enhanced amount of compensation of ₹16,88,676/- shall be payable from the date of claim petition. However, the enhanced amount of compensation be paid within 45 days from today failing which claimant shall be entitled to receive interest @ 7.5% per annum from today.

IN FAO No.3403 of 2012

14. At the time of arguments Mr. Dheeraj Narula, Advocate for appellant took plea that 'The Tribunal' has not awarded 'Just Compensation' though claimant remained as indoor patient for 23 days so the amount of compensation be enhanced suitably.

15. While arguing this point Mr. Rohit Goswami, learned counsel for respondent No.3 took the plea that 'The Tribunal' has already awarded compensation and there is no ground for enhancement of any amount of compensation.

16. Having considered the submissions made by learned counsel for both the parties this Court is of the considered view that 'The Tribunal' has already awarded the amount of compensation on account of actual amount spent by claimant Krishan Kumar. Petitioner has not been able to prove any permanent disability however as petitioner remained 23 days as indoor patient, he has not been duly compensated on account of pain and suffering, loss of income.

17. The amount of compensation is enhanced by ₹25,000/- on account of loss of income and pain and suffering which shall be payable

from the date of claim petition. However, the enhanced amount of compensation be paid within 45 days from today failing which claimant shall be entitled to receive interest @ 7.5% per annum from today.

18. Resultantly both the appeals partly accepted.

(SHEKHER DHAWAN)
JUDGE

May 21, 2015
msd