

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1383 of 2013(O&M)
Date of decision :30.09.2015

Parkasho Devi and another

.....Appellants

Vs.

Vinod Kumar and Others

.....Respondent

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Mr.Kanwar Bhan Sidhu, Advocate for the appellants.

**Ms.Vandana Malhotra, Advocate for
respondent No.3/Insurance Company.**

K.KANNAN, J.

CM No.7991-CII of 2013

For the reasons mentioned in the application, delay of 352 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The appeal is for enhancement of compensation for death of a male aged 19 years. He was a student studying in 12th standard and was said to be also doing agricultural work. He was earning about Rs.6,000/- per month. The Tribunal took his income at Rs.3,000/- per month and applied 1/3rd deduction and assessed the compensation of Rs.3,46,000/- after adding the conventional heads.

The Tribunal also made a partial abatement of 25% holding that there was a contributory negligence on the part of the driver of the motorcycle and assessed at Rs.2,59,500/- as the amount payable.

The deceased was himself not the driver of the motorcycle. Insofar as the pillion riders are concerned, there could be no case of contributory negligence. It was merely a case of composite negligence of two vehicles, namely, insured tractor trolley and driver of the motorcycle. I will allow for no abatement as possible in the claim and an abatement to the

extent of 25% is not justified. This is case for enhancement of compensation and I will increase on the basis of recent decisions in similar cases i.e. Rs.1 Lac for love and affection and Rs.25,000/- towards funeral expenses. The Court had deducted 1/3rd deduction which is wrong considering with the fact that the deceased was bachelor and I apply a deduction of ½ in the manner suggested by the decision of Supreme Court in Sarla Verma Vs. Delhi Transport Corporation 2009(6) SCC 121. The father of the deceased had already died and it was only quite possible that the deceased had taken care of his mother and sister as dependents. The Tribunal has taken the income at Rs.3,000/-. I have to take that to be a projection of what could have been earned by him and I will assess the compensation as under:-

	Date of accident	04/11/10	
Age	19		
Occupation	student		
Claimants			
	Heads of claim	Tribunal	High Court
Sr. No.		Amount(Rs.)	Amount (Rs.)
1	Income		Rs.3000/-
2	Add, % of increase 30% 50%		
3	Deduction 1/2, 1/3, 1/4, 1/5		Rs.1500/-
4	Multiplicand		Rs.18,000/-
5	Multiplier		18
6	Loss of dependence		Rs.3,25,000/-
7	Medical expenses		
8	Loss of consortium		
9	Love and affection		Rs.1,00,000/-
10	Loss to estate		Rs.10,000/-
11	Funeral Expenses		Rs.25,000/-
	Total	Rs.3,46,000/-	4,59,000/-

The total compensation of Rs.4,59,000/- and the additional compensation shall also attract interest from the date of petition till the date of payment. The additional amount of compensation shall be distributed in the ratio of 2:1 between mother and sister of the deceased.

The Insurance Company would be at liberty to file an independent

suit against the owner and driver of the motorcycle which was involved in the accident as there was negligence on the part of the driver of the motorcycle. The decree of culpability of the driver of motorcycle in the absence of driver or the owner and even the assessment made by the Tribunal cannot bind the owner or rider of the motorcycle. Since the owner was not made a party, the liability incurred by the Insurance Company will constitute the starting point of cause of action or any such action is possible by the Insurance company. The claimant shall have the benefit of interest from the date of petition till date of payment at @ 7.5% per annum.

The award stands modified and the appeal is allowed to the above extent.

30.09.2015
anil

(K.KANNAN)
JUDGE