IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.4832 of 2013 in /and
XOBJ No.193-CII of 2014 (O&M)
Date of Decision: 23.04.2015

Uttrakhand Transport Nigam

......Appellant

Versus

Saroj Bala and others

......Respondents

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. Vikram Bali, Advocate for
Mr. N.S.Chawla, Advocate,
for appellant.

Mr. R.K.Rana, Advocate,
for respondents No.1 to 6.

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SHEKHER DHAWAN, J

Appellant i.e. Uttrakhand Transport Nigam has challenged the award dated 01.06.2013 passed by Motor Accident Claims Tribunal, Ambala (hereinafter referred as 'The Tribunal') whereby claimants were awarded compensation of ₹13,16,000/- on account of death of Shiv Kumar. Cross-objections were filed by claimants and both are being disposed of simultaneously.

2. Relevant facts for the decision of present appeal and cross-objection are that on 28.07.2012, Shiv Kumar was going on motorcycle bearing registration No.HR-01V-0517 at a moderate speed. When he reached in area of Village Chotta Khudda, near Jaspan Rice Factory,

Ambala, respondent No.1 while driving the bus bearing registration No.UK-07-PA-0879 in rash and negligent manner came from opposite side and caused accident with the motorcycle. Shiv Kumar was crushed under the wheel of the bus and died on the spot. Matter was reported to the police. As per claimants, Shiv Kumar was expert electrician and was earning ₹10,000/- per month as he worked with S.S.Electricals during the period from 14.04.2008 to 20.06.2010 and his last earned salary was ₹9,518/-.

3. Respondents contested the claim petition denying the averments of the claim petition apart from taking the plea that deceased was working as electrician and was not earning ₹10,000/- per month and accident had taken place with the vehicle being driven by respondent No.1.

4. Mr. Vikram Bali, Advocate learned counsel for appellant taken the plea that 'The Tribunal' after framing issues and recording evidence returned the finding that the accident had taken place due to rash and negligent driving of bus bearing No.UK-07-PA-0879 and awarded compensation to the tune of ₹13,16,000/- by 'The Tribunal'. Appellant being dis-satisfied preferred the appeal taking plea that the Tribunal has not considered the real income of deceased Shiv Kumar rather reliance has been placed upon certificate showing income of Shiv Kumar as ₹9,600/- per month on the basis of salary certificate Mark A. The said certificate was not duly proved nor the same was exhibited. The accident had taken place on 28.07.2012 whereas certificate is dated 21.09.2010. The said certificate has been manipulated. It has not come on record that deceased was having any diploma/degree in electrical or having any experience certificate from any source. The testimony of RW-1 has not been taken into consideration by 'The Tribunal'. Even the interest granted by 'The Tribunal' @ 7.5% per

annum is also against law. 'The Tribunal has even awarded more compensation than claimed by claimants. So, the award passed by 'The Tribunal' be set aside.

5. Mr. Raj Kumar Rana, Advocate learned counsel for cross-objectors-respondents had taken plea in the cross-objection that deceased was of the age of 39 years at the time of accident. He was drawing a fix salary and as such he was entitled for increase of 50% as future income which has not been added. The deceased was survived by six dependents and as such cut of 1/5th should have been applied on account of self-dependency. A petty sum of ₹20,000/- has been awarded on account of funeral expenses, loss of estate and consortium. The deceased left behind widow aged about 34 years and three minor children and as per latest law the cross-objectors are entitled for ₹1,00,000/- on account of consortium and another ₹1,00,000/- each on account of loss of love and affection and ₹25,000/- towards funeral expenses.

6. Having considered the rival contentions raised by learned counsel for the parties, as most of the facts are not disputed that Shiv Kumar died because of injuries sustained in the motor vehicle accident which had taken place on 28.07.2012. Shiv Kumar was of the age of 39 years at the time of accident. There are six claimants including Saroj Bala widow of the deceased and three minor children apart from parents of the deceased. 'The Tribunal' has taken the income of the deceased to be ₹9,600/- per month on the basis of salary certificate Mark A. The contention raised by learned counsel for appellant is not tenable as salary certificate Mark A was proved as per statement of PW-1 Surjeet Saini who was none else but proprietor of S.S.Electricals. If the said document was not exhibitted despite statement of

PW-1 Surjeet Saini, the same cannot be said to be disproved. More so 'The Tribunal' has to evolve its procedure so as to complete the inquiry and return the findings. 'The Tribunal' has not committed any illegality while placing reliance upon the salary certificate Mark A as proved on the basis of statement of PW-1 Surjeet Saini. More so, the salary certificate is for the period from 14.02.2008 to 20.06.2010 whereas the accident had taken place after two years of the said certificate. In all probabilities, income of the deceased must have gone up during the intervening period but 'The Tribunal' still taken the income of deceased to be ₹9,600/- per month. There is no reason to come to the conclusion that 'The Tribunal/- had taken the income on the higher side or that Mark A cannot be read into evidence so as to determine the monthly salary of the deceased.

7. Accordingly to the present appeal filed by appellant legally is not tenable.

8. Now coming to the cross-objection filed by claimant. 'The Tribunal' has not taken into consideration the enhancement on account of salary in view of future earnings as the deceased was of the age of 39 years. At least 30% income is to be added on account of future earnings. 'The Tribunal' has also not awarded any amount on account of loss of consortium though claimant is widow and a sum of ₹20,000/- only has been awarded on account of funeral expenses. Claimants are certainly entitled for enhancement of compensation. Accordingly the compensation in this case is re-assessed as under:

Monthly income	₹9,600/-
Less 1/4th	₹2400/-
Annual income	₹7200/- x 12 = ₹86,400/-

Add 30% towards future prospects of earning	₹1,12,320/-
Multiplier of 15	₹16,84,800/-
Funeral Expenses	₹25,000/-
Loss of Consortium	₹1,00,000/-
Total	₹18,09,800
Already paid	₹13,16,000/-
Payable enhanced amount	₹4,93,800/-

9. The enhanced amount of compensation shall be payable within a period of 30 days failing which appellant shall be entitled to receive interest @ 7.5% per annum. Remaining conditions regarding payment of interest and disbursal of amount shall remain unaltered.

10. In view of the above, appeal stands dismissed and cross-objections stands partly accepted.

(SHEKHER DHAWAN)
JUDGE

April 23, 2015
msd