

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

**FAO No.5263 of 2013 (O&M)
Date of Decision: August 27, 2015.**

Pepsu Road Transport Corporation

.....APPELLANT(s).

VERSUS

Nirmal Singh and others

.....RESPONDENT(s).

(2)

FAO No.5860 of 2013 (O&M)

Nirmal Singh and others

.....APPELLANT(s).

VERSUS

Pepsu Road Transport Corporation and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ankit Aggarwal, Advocate for
Mr. Anupam Singla, Advocate
for the appellant in FAO-5263-2013 and
for respondent No.1 in FAO-5860-2013.

Mr. M.S. Longia, Advocate
for respondents No.1 and 2 in FAO-5263-2013 and
for appellants in FAO-5860-2013.

Mr. L.C. Aggarwal, A.A.G. Punjab
for respondent No.3 in FAO-5263-2013 and
for respondent No.2 in FAO-5860-2013.

Mr. Sushil Sharma, Advocate for
Mr. Gurcharan Dass, Advocate
for respondent No. 4 in FAO-5263-2013 and
for respondent No.3 in FAO-5860-2013.

SURINDER GUPTA, J.

This order will dispose of both the aforementioned appeals filed against the award dated 20.07.2013 passed by Motor Accident Claims Tribunal, Rupnagar (later referred to as the Tribunal).

In claim petition filed under Section 166 of Motor Vehicles Act, 1988 by Nirmal Singh, husband and Kuljit Kaur minor daughter of Manjit Kaur (since deceased), the Tribunal passed the award allowing compensation of ₹7,48,000/-.

The case of the claimants, in brief, is that on 30.08.2010 Manjit Kaur along with claimants was coming on motorcycle bearing registration No.PB-16C-7525 from Nangal to village Dasgrain. Manjit Kaur was pillion rider and was carrying claimant No.2 with her while claimant No.1 was driving the motorcycle. At about 1.00 p.m. they reached near the bus stand of village Brahmpur, when a bus bearing registration No.PB-11AK-9905 (offending vehicle) came from Nangal side. It was being driven by respondent No.3 Surjit Singh in a rash and negligent manner. The offending vehicle hit the motorcycle, as a result of which claimant No.1 along with Manjit Kaur and claimant No.2 (who by then was of six months) fell on the road and sustained serious injuries. Manjit Kaur along with claimant No.2 was taken to BBMB Hospital, Nangal where the doctor declared Manjit Kaur 'brought dead'. Claimants were dependent on Manjit Kaur and had suffered mentally, physically and financially due to abrupt termination of her life.

In reply by respondents No.1 to 3, the accident was denied.

The issues were framed by the Tribunal as follows:-

(1) Whether Manjit Kaur died in the motor vehicle accident

caused by respondent no.1 while driving a motorcycle No.PB16C-7525 in a rash and negligent manner?OPP

- (2) Whether the claimants are entitled to be(sic the) compensation as prayed for? If so, to what extent and from whom?OPP
- (3) Whether the respondent no.1 was not having any valid driving licence, valid registration certificate, fitness certificate and route permit of the truck in question at the time of accident?OPR-3
- (4) Whether the claim petition is not maintainable?OPR-3
- (5) Relief.

Perusal of the above issues shows that the same have not been aptly framed by the Tribunal as issue No.1 is as to whether accident took place due to rash and negligent driving of motorcycle by respondent No.1 which in fact is Pepsu Road Transport Corporation. The case of the claimants is that the accident had taken place due to rash and negligent driving of bus No.PB-11AK-9905 by Surjit Singh, who was impleaded as respondent No.3 in the claim petition. Issue No.3 does not arise in this case and has been wrongly framed. However, while discussing evidence on issue No.1, the rashness and negligence of respondent No.3 was discussed and observed, as such, the mistake in framing of issues is not material as the parties were aware of the pleadings of each other and the matter in controversy.

FAO-5263-2013

Learned counsel for the appellant-Pepsu Road Transport Corporation has argued that the Tribunal recorded a categorical finding that no documentary evidence with regard to income of Manjit Kaur was produced and in these circumstances, the assessment of her income as

₹6,000/- per month is on higher side.

On behalf of the claimants, it was alleged that deceased was earning ₹8,000/- per month by doing work of tailoring, stitching clothes and running dairy business but no documentary evidence has been produced to prove this averment. In case *Jitendra Khimshankar Trivedi & Ors Vs. Kasam Daud Kumbhar & Ors 2015(2) L.A.R. 566*, Hon'ble Apex Court has assessed the income of a housewife who died in a motor accident in the year 1990 as ₹3,000/- per month. It is common knowledge that due to steep hike in price index, salary/wages of working class has seen steep hike. For the services which the deceased was rendering to her family, husband and daughter and particularly care and management of household cannot find equivalent in monetary terms, as such, the assessment of notional income of the deceased as ₹3,000/- (after applying deduction of 50% to income of ₹6,000/-), in no manner, is on higher side. If one has to engage a domestic help for doing 3-4 household jobs like cooking, cleaning the household, washing and managing the clothes and household chores, one may have to spend more than this amount. In these circumstances, this argument of learned counsel for the appellant that the income of the deceased was assessed on higher side, has no merits and is discarded.

No other point has been argued in this appeal.

FAO-5860-2013

This is appeal by dependants of deceased (Manjit Kaur) seeking enhancement of compensation allowed by the Tribunal.

Learned counsel for appellants-claimants has argued that the

Tribunal has applied a cut of one half (1/2) towards the personal expenses of

the deceased while it should have been 1/3rd. No compensation has been allowed towards loss of love and affection for the minor daughter of the deceased and the compensation allowed towards loss of consortium is also on the lower side. In case of *Rajesh and others Vs. Rajbir and others (2013)9 SCC 54*, compensation of ₹1 lac was allowed towards loss of consortium.

Claimants in no manner were dependent on the income of the deceased, as such, the Tribunal has committed no error of law while applying the deduction of 1/2 towards her personal expenses. Even otherwise, in the absence of any proof of her income by doing any business, she is to be considered a housewife and notional income of housewife could be rightly assumed by the Tribunal as ₹3,000/- per month. So far as the compensation for loss of consortium and loss of love and affection are concerned, the claimants are entitled to the same as follows:-

- | | | |
|------|---|---------------|
| (i) | Loss of consortium | : ₹1,00,000/- |
| (ii) | Loss of love and affection, care and guidance for minor child | : ₹1,00,000/- |

In view of the above discussion, the appeal filed by Pepsu Road Transport Corporation (FAO-5263-2013) is dismissed. The appeal filed by the claimants (FAO-5860-2013) is allowed and the amount of compensation allowed by the Tribunal is enhanced from ₹7,48,000/- to ₹8,73,000/-. The claimants are also held entitled to interest as allowed by the Tribunal. The amount of compensation shall be shared equally by both the claimants.

(SURINDER GUPTA)
JUDGE

August 27, 2015.

Sachin M.