

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

FAO No.5698 of 2013

Date of decision: 27th February, 2015

Harjinder Kaur and others

... Appellants

Versus

Jaswant Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Suri, Advocate
for the appellants.

Respondent No.1 and 2 – ex parte.

Mr. R.N. Singal, Advocate – Standing Counsel
for respondent No.3.

FATEH DEEP SINGH, J.

The claimant/appellants have invoked jurisdiction of this Court in this appeal against the Award of learned Motor Accident Claims Tribunal, Patiala dated 28.05.2013.

After hearing arguments of Mr. Vivek Suri, Advocate for the claimant/appellants and Mr. R.N. Singal, Advocate for the insurer/respondent No.3 and after perusal of the records.

Learned counsel for the appellants has laid dual attack on the Award, firstly on issue No.1 as to the mode of the accident and secondly as to its consequence quantum of compensation. The factual aspect that needs to be highlighted is that on 04.11.2011 in the area of Police Station Shambhu, deceased Avtar Singh was going on his scooter bearing registration No.99-KJ-5689 (T) when tractor-trolley bearing No.HR-01-AA-6775 being driven by its driver Jaswant Singh in a rash and negligent manner hit the scooter leading to this death regarding which an FIR was also registered. The eye-witness account comprises of Parkash Chand PW1 who through his affidavit Ex.PW1/A has detailed the manner of the accident and has categorically stated that the offending vehicle was at a high speed being driven rashly and negligently and when Avtar Singh tried to cross the tractor-trolley the driver of the offending vehicle due to his rash and negligent act hit the scooter leading to the accident and resultant death. The learned Tribunal merely on this ground has held that it was a case of contributory negligence when there is nothing more that has come on the record to substantiate these findings and a close look at the testimony of this witness reveals that no defence has been put to the witness and it is the categorical stand of the owner and driver of total denial and the driver in his written reply claims that he has been falsely implicated. More so, the entire evidence has remained unrebutted. Neither the driver nor owner have testified as to their side of the story and therefore, an adverse presumption needs to be drawn against them in terms of Section 114 of the Evidence Act and the

entire evidence having remained unrebutted and the stand of respondents being false and not bonafide the evidence of claimants needs to be accepted and therefore, findings of the learned Tribunal qua issue No.1 needs to be rectified holding that the accident resulting into the death was due to rash and negligent driving of the offending tractor-trolley.

It is submitted that the deceased was working as a driver of a truck however no cogent evidence as has been held by the learned Tribunal has been brought about in this regard. The proven age of the deceased is shown to be 40 years and his earnings are claimed to be ₹20,000 per month from agriculture and ₹18,000 from his avocation as a driver, but to the very query of the Court there is nothing documentarily proved on the record in this regard and what is there is the lone testimony of the widow PW2 and a semblance of support laid by PW1 Parkash Chand brother of the deceased. Even no 'J' form has been proved on the record regarding agricultural income and therefore, keeping in view the same the learned Tribunal has assessed earnings of the deceased to be ₹5,000 per month which need not be disturbed and keeping in view that the deceased left behind a widow, three minor daughters, a minor son and aged mother and the learned Tribunal has deducted 1/4 of the income of the deceased for his own upkeep and maintenance which is certainly contrary to the factual aspect as well as legal situation as laid down in **'New India Assurance Company Ltd. v. Gopali and others'** reported in **2012 (3) RCR (Civil) 818**. Keeping in view the socio

economic status of the deceased, 1/5 needs to be deducted and therefore, he must be contributing ₹4,000 per month towards the family which is a reasonable amount keeping in view large number of family members and the rising trend of prices and therefore, the annual dependency comes to ₹48,000. Keeping in view age of the deceased to be 40 years and in view of the ratio laid down in '**Sarla Verma & others v. Delhi Transport Corporation & another**' reported in **2009(6) SCC 121** multiplier of 15 needs to be applied and therefore compensation comes to ₹7,20,000.

Besides this, the family must have spent money on the last rites and ceremonies of the deceased, widow has lost her life companion and ought to be compensated for the loss of consortium, children their father a source of love and affection for everyone as well as aged mother and under all these conventional heads ₹1.50 lacs is awarded which has escaped the sight of the learned Tribunal which has only awarded a mere pittance and therefore, total compensation comes to ₹8,70,000 (rupees eight lacs seventy thousand only).

Keeping in view requirements of the widow and minor children which are on the higher side than that of the aged mother, it would be in the interest of justice to hold that the widow and children shall be entitled to 90% of the total amount of compensation in equal shares whereas the aged mother shall be entitled to remaining 10% of the compensation amount.

Besides this, the claimants are also entitled to interest @7.5% p.a. on the enhanced amount from the date of filing of the

appeal till realization. Interim compensation paid, if any, shall be adjusted. However, it is made clear that if any of the claimants has attained the age of majority, his/her share shall not be resorted to by way of FDR. Rest of the stipulations laid down by the learned Tribunal need not be disturbed.

No other argument has been raised.

With these discussions, the impugned Award is modified by way of acceptance of the instant appeal in those terms.

(FATEH DEEP SINGH)
JUDGE

February 27, 2015

rps