

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

FAO No.272 of 2002

Date of decision : 03.11.2016

Manjit Kaur and others

.....Appellants

Versus

Alla Dutta and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vivek Suri, Advocate for appellants.

Mr. R.M. Suri, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 01.06.2001, passed by learned Motor Accidents Claims Tribunal, Ludhiana (hereinafter called the “Tribunal”), vide which they have been awarded compensation to the tune of ₹ 1,63,500/- on account of the death of Gurpal Singh in the motor vehicular accident which took place on 08.10.1999.

2. The present appeal has been preferred by the appellants-claimants for the enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through the record of the case meticulously.

4. Learned counsel for the appellants-claimants contended that the learned Tribunal has wrongly held the deceased to be contributory

negligent to the extent of 50%. He contended that the accident has occurred as respondent No.1 the driver of the truck has applied the sudden brakes and stopped the truck on the road.

5. He further contended that even the compensation awarded by the learned Tribunal is highly inadequate. The learned Tribunal has wrongly deducted 1/3rd of the income of the deceased towards his personal and living expenses. No future prospects have been awarded. No amount has been awarded to the children and parents towards loss of love and affection. Less amount has been awarded towards loss of consortium and funeral expenses. Thus, he contended that the compensation awarded by the learned Tribunal is not just and adequate.

6. On the other hand, learned counsel appearing for respondent-Insurance Company contended that the deceased did not maintain the sufficient distance, so he has been rightly held to be contributory negligent.

7. He further contended that the deceased was not having any permanent job, so future prospects were not admissible towards his income. He contended that the compensation awarded by the learned Tribunal is just and appropriate keeping in view the antecedents, age and income of the deceased.

8. I have duly considered the aforesaid contentions.

9. As per the case of the appellants-claimants on 08.10.1999 deceased Gurpal Singh was coming from Machiwara on his scooter to his village Katani Khurd. When he reached near bridge Gari, suddenly a truck bearing registration No.HIS-271 which was going ahead of the deceased

and was being driven by respondent No.1 stopped on the road without giving any indication. As a result of which the scooter of the deceased struck against the said vehicle from behind and he suffered the bodily injuries. Thus, even as per the admitted version of the claimants at the time of the accident deceased Gurpal Singh was himself driving the scooter and was following truck bearing registration No.HIS-271. The accident has occurred as the truck going ahead was stopped by respondent No.1.

10. Regulation 23 of the Rules of the Road Regulations, 1989 reads as under:-

“23. Distance from vehicles in front.—The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

11. The aforesaid regulation clearly provides that the driver of the motor vehicle moving behind of another vehicle shall keep a sufficient distance from that vehicle to avoid collision if the vehicle in front suddenly slows down or stops. There was clear violation of the said regulation by the deceased. If he would have followed the said regulation, he could have certainly avoided the accident. So, I do not find any fault in the findings recorded by the learned Tribunal that the deceased himself was contributory negligent to the extent of 50%.

12. However, I found considerable substance in the contentions raised by learned counsel for the appellants that the amount of compensation has not been properly assessed/computed by the learned

Tribunal.

13. The learned Tribunal has determined the income of the deceased to be ₹2500/- per month *i.e.* ₹30,000/- per annum. The learned Tribunal has not awarded any compensation towards the future prospects. As per the case of the claimants the deceased was a carpenter by profession. So, the income of the deceased was bound to increase with the passage of time. The learned Tribunal has determined the age of the deceased to be 38 years. So, 50% of the income of the deceased should have been added towards future prospects. Thus, the total income of the deceased comes to ₹45,000/-.

14. There were five claimants. Even if the father of the deceased is not considered to be dependent, still there were four dependents. So, 1/4th of the income of the deceased should be deducted towards his personal and living expenses. The remainder comes to ₹33,750/-. As per the age of the deceased, multiplier of 15 would be applicable. The loss of dependency comes to ₹5,06,250/-.

15. In addition to the aforesaid amount, appellant-claimant Smt.Manjit Kaur the widow of the deceased will be entitled to a sum of ₹1,00,000/- towards loss of consortium. Appellants-claimants No.2 and 3, the children of the deceased shall also be entitled to a sum of ₹1,00,000/- towards loss of love, care and guidance of their father. Appellant No.5 Smt. Satya Wanti, the mother of the deceased shall also be entitled to a sum of ₹1,00,000/- towards loss of love and affection of her son. Besides, the appellants-claimants shall also be entitled to a sum of ₹25,000/- towards last

rites and funeral expenses. The total amount of compensation payable to the claimants comes to ₹8,31,250/-. As the deceased himself was contributory negligent to the accident of 50%, so the claimants shall be entitled to ₹4,15,625/- as compensation on account of death of Gurpal Singh in this motor vehicular accident.

16. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellants-claimants is enhanced to ₹4,15,625/- from ₹1,63,500/- as awarded by the Tribunal. The enhanced amount of compensation be deposited with the learned Tribunal within a period of 60 days from today, failing which the appellants-claimants shall be entitled to interest @ 9% per annum from the date of filing the claim petition till realisation. The liability to pay the enhanced amount and the apportionment amongst the claimants shall remain as determined by the learned Tribunal in the main award.

17. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, (2015) 9 SCC 166***, in order to safeguard the interest of respondent No.3-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the future prospects, then they will be bound to refund the

amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

03.11.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No