

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

Date of Decision : 01.03.2016

1) F.A.O. No.281 of 1996 (O&M)

Mukesh

..... Appellant

versus

Ashok Kumar and another

..... Respondents

2) F.A.O. No.282 of 1996 (O&M)

Prem Wati and others

..... Appellants

versus

Ashok Kumar and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Kulvir Narwal, Advocate
for the appellant(s).

Mr. R.K. Bashamboo, Advocate
for the respondent No.2-insurance company.

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?

AJAY TEWARI, J. (Oral)

These are two appeals against the consolidated award of the Tribunal whereby the claim petition with regard to the injured has been dismissed and in the claim petition which was filed by the claimants of the

deceased an amount of Rs.50,000/- was awarded on account of no fault liability. The appeal bearing FAO No.281 of 1996 has been filed by the injured and the appeal bearing FAO No.282 of 1996 has been filed by the claimants of the deceased.

Brief facts of the case are that on the fateful day the injured and the deceased were travelling in the Matador bearing registration No.DL-4C-B-3105 and due to rash and negligent driving of the driver the accident occurred and the death/injury took place. The injured had appeared as PW2 and had stated that when they reached near Daboda Khurd, a truck came and the driver who was driving Matador rashly and negligently abruptly turned the vehicle and because one of the tyres was damaged it burst and the vehicle fell into the pits on the side of the road resulting into the death and injury. The Tribunal held that in the DDR lodged by the driver it had been mentioned that it was a rainy day and a tyre had burst and, since no police report was lodged on behalf of the appellants, the version given in the DDR had to be accepted and came to the conclusion that rash and negligent driving was not established.

Learned counsel for the appellants has argued that finding of the Tribunal is completely vitiated, since once it was accepted that the tyre burst, rashness and negligence had to be assumed and there are a string of authorities on this point. He has further argued that while relying upon the following judgments it had erroneously distinguished between them :-

**i) Sabira Begam and ors. vs. Raipur Transport Co. Pvt. Ltd.
of the High Court of Madhya Pradesh, reported as 1986
(2) ACJ 713**

ii) Bimla Devi and others vs. Pepsu Road Transport Corporation and others, reported as 1984 A.C.J. 423

Learned counsel for the respondent No.2 – insurance company is not in a position to deny these facts.

In the circumstances, it has to be held that the finding that rashness and negligence was not established is incorrect and consequently it is held that the respondent No.1 was rash and negligent while driving the said Matador.

Coming to the issue of compensation, as per the evidence the deceased was 50 years of age and he was an agriculturist. Learned counsel for the appellants has fairly argued that since there is no other evidence the income has to be taken as that of skilled labourer.

Learned counsel for the respondent No.2– insurance company on the other hand has argued that the income should be taken as that of unskilled labourer.

In my opinion, the argument of learned counsel for the appellants is correct. An agriculturist by no stretch of imagination can be called an unskilled labourer since agriculture requires a very considerable degree of domain knowledge. As per the relevant notification of State of Haryana, the minimum wages for a skilled labourer in 1993 were Rs.1326/- p.m. Therefore, his income is taken as Rs.1326/- p.m. The deceased left behind mother, widow and a major son. In the circumstances, the deduction of 1/3rd is applied and the dependency would come to Rs.884/- p.m. The multiplier to be adopted is 13 as per the age of the deceased as held by the Hon'ble Supreme Court in *Sarla Verma and others v. Delhi Transport*

Corporation and another, 2009 ACJ 1298. The total compensation thus works out to Rs.884x12x13 = Rs.1,37,904/-. I further award Rs.50,000/- each towards loss of consortium and loss of love and affection to the appellant No.1-widow. I further award Rs.25,000/- to the appellant No.3-mother towards loss of love and affection. I further award Rs.10,000/- towards funeral expenses. It is stated that the deceased was taken to the hospital and died after five days i.e. on 17.09.1993. Therefore, I award Rs.3000/- towards medical expenses. The enhanced amounts shall be paid along with interest @ 8% p.a. from the date of filing of the claim petition till realization. Apart from the individual amounts awarded, the compensation shall be disbursed to the appellant No.1-widow.

As regards the injured who was 19 years of age, both his legs were fractured in the accident but he did not suffer any permanent disability. In the circumstances, I deem it appropriate to award him Rs.2000/- for medical expenses, Rs.1000/- for attendant charges, Rs.1000/- for transportation and Rs.8000/- for pain and suffering. The enhanced amounts shall be paid along with interest @ 8% p.a. from the date of filing of the claim petition till realization.

Consequently, both the appeals stand allowed in the above terms and the award is modified accordingly.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 01, 2016

ashish

**(AJAY TEWARI)
JUDGE**