

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : February 18, 2016

1. FAO No. 1525 of 1999 (O&M)

Nirmala Rani vs Santokh Singh and others

2. FAO No.1526 of 1999 (O&M)

Surinder Kumar vs Santokh Singh and others

3. FAO No.1527 of 1999 (O&M)

Sarla Devi and others vs Santokh Singh and others

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Ram Chander, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for the respondent/Insurance Company.

1. **Whether Reporters of Local Newspapers 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)

This order shall dispose of FAO Nos.1525 to 1527 of 1999, as the same arise from the same Award.

Brief facts are that on the fateful day viz 16.6.1997, Nirmala Rani was travelling pillion with her brother-in-law Harish Kumar on his scooter towards Dhand from Kurukshetra and when they reached near village Kamoda chowk on Kurukshetra-Dhand road, vehicle of respondent No.1 which was being driven rashly and negligently hit the scooter after coming wrong side on the road. As a result of this accident, Harish Kumar

died while Nirmala Rani sustained serious injuries.

The Tribunal held contributory negligence viz 60% of the offending vehicle and 40% of the scooter, and awarded a sum of ₹ 1.20 lac (-40%) for the death of Harish Kumar, and ₹ 32,400/- to Nirmala Rani, and ₹ 8,000/- for damages to the scooter.

Counsel for the appellants has argued that the Tribunal has based its finding of contributory negligence on the ground that as per the site plan, the scooter was not on the extreme left even though the Tribunal has recorded that the offending vehicle had strayed towards the right side of the road. As per him, the eye witness testimony of Nirmala Rani which went uncontroverted clearly pinned the entire blame on the vehicle of respondent No.1. Further, as per the site plan, it was clear that the offending vehicle had strayed to the right side of the road and, therefore, even if the scooter was not on the extreme left, no contributory negligence could have been attributed to the scooter driver.

Counsel for the respondent-Insurance Company is not in a position to deny this argument.

In the circumstances, the finding of contributory negligence is set aside.

As regards the compensation awarded to appellant-Nirmala Rani, counsel for the appellants has argued that the amount of ₹ 21,000/- on account of permanent disability to the extent of 21% is too low, and prays that it should have been at-least ₹ 42,000/-.

Counsel for the respondent-Insurance Company has argued that compensation of ₹ 42,000/- could have been awarded to Nirmala Rani only if her disability related to the whole body but as per the record this only

related to her right leg.

Keeping in view the entire facts and circumstances of the present case, I deem it appropriate to increase the compensation for permanent disability to ₹ 35,000/-.

As regards compensation for the death of Harish Kumar, counsel for the appellants has argued that the Tribunal erred in fixing lump-sum compensation of ₹ 1.20 lac. As per him, the deceased was working as a Mechanic and his income was claimed to be ₹ 6,000/- per month.

Counsel for the respondent-Insurance Company has fairly accepted that the compensation had to be worked out on the multiplier dependency system but argues that the income could not have been taken more than ₹ 40,000/- per annum which was the taxable limit in that year.

I agree with counsel for the respondent. Keeping in view all the facts and circumstances of the case, I deem it appropriate to take the income as ₹ 30,000/- per annum, and after deducting 50% as dependency (since the deceased was unmarried), the annual dependency would work out to ₹ 15000/- per annum.

As regards application of multiplier, this Court in Nanak Singh and another v. State of Punjab and another, FAO No.5181 of 2010, decided on 17.1.2014, this Court held as follows :-

“.....Keeping in view the conflicting decisions of the Hon'ble Supreme Court and taking support from the decision of Division Bench of our High Court in United India Insurance Company Limited v Raj Rani 1998 (1) ACJ 175, in my considered view, the age of the deceased as well as the age group of the claimants is required to be taken into consideration while adopting a multiplier for determining the dependency to award compensation to the claimant.”

Consequently, multiplier in this case would be 16 since the age

of the deceased was 20 years and the age of the mother-Sarla Devi was 46 years. Apart therefrom, a sum of ₹ 10,000/- is awarded for funeral expenses, a sum of ₹ 25,000/- is awarded to the mother/appellant-Sarla Devi for loss of love and affection, and a sum of ₹ 13,000/- is awarded to the unmarried sister/appellant-Anju Bala on account of loss of love and affection. Interest rate would be @ 8% pa on the enhanced amount from the date of the application.

February 18, 2016
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(AJAY TEWARI)
JUDGE