

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

**F.A.O No. 1599 of 2005(O&M)
Date of decision :18.01.2016**

Smt. Rita Saini

..... Appellant

Versus

Rajesh Saini and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.V.K.Sandhir, Advocate
for the appellant.

Mr. Neeraj Kumar, Advocate
for Mr. Anil Chawla, Advocate
for respondent no.1.

Mr. J.S.Chahal, Advocate
for respondent no.2.

Mr. Lalit Garg, Advocate
for respondent nos. 4 and 5.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

The present appeal has been preferred against the award dated 02.11.2010⁴ passed by the learned Motor Accident Claims Tribunal (for short 'Tribunal'), Amritsar, by Smt. Rita Saini, who was respondent

no.5 in MACT case No. 12/FTC/2004. The said petition was filed by respondent no. 1 Rajesh Saini, his wife Smt. Kamni Saini, his minor sons namely Harmanjit Singh Saini and Bhavanjeet Singh Saini and Rattan Saini for grant compensation on account of the death of Smt. Sudesh Saini in the motor vehicular accident, which took place on 19.01.2001.

2. As per the case of the claimants, on 18.01.2001, Sheetal Singh Saini and his wife Sudesh Saini were traveling in Maruti Car No.PB-02-W-7072 and were going from Amritsar towards Fazilka. When, they reached in the area of village Mauja at about 2.00 P.M, a truck bearing registration No. RNK-2065 being driven rashly and negligently by Harmit Singh came and dashed with the car. The said car was entangled with the truck and was dragged on the road. Jaswant Singh, Sarpanch of the village Lamochar Kalan and his brother Baldev Singh witnessed the accident. All the four occupants of the car were found dead as a result of the injuries suffered in the accident including Sudesh Saini, the mother of present appellant as well as respondent no.1-Rajesh Saini. Respondent no.1-Rajesh Saini and others filed the claim petition for grant of the compensation.

3. The claim petition was contested by respondent-insurance company as well as the driver and owner of the truck in question.

4. The learned Tribunal awarded the compensation to the tune of Rs. 6,64,660/- to respondent no.1-Rajesh Saini/claimant on account of death of Sudesh Saini along with interest at the prevalent rate of Reserve Bank of India from the date of petition.

5. Appellant-Rita Saini has preferred this appeal claiming the

share in the compensation awarded in MACT No. 12/FTC/2004, decided on 02.11.2004 in equal share with respondent no. 1-Rajesh Saini.

6. I have heard Mr. V.K.Sandhir, Advocate, learned counsel for the appellant, Mr.Neeraj Kumar, Advocate for Mr. Anil Chawla, Advocate, learned counsel for respondent no.1, Mr. J.S.Chahal, Advocate, learned counsel for respondent no.2 and Mr. Lalit Garg, Advocate, learned counsel for respondent nos.4 and 5 and has meticulously examined the paper book.

7. Initiating the arguments, learned counsel for the appellant contended that this fact is not disputed that respondent-Rita Saini was the daughter of the deceased-Sudesh Saini. He contended that learned Tribunal has also returned the findings that the appellant had no source of income and her husband was also not employed nor he was doing any business. Therefore, her father used to help her by providing monthly maintenance. Thus, he contended that the appellant was also dependent upon deceased-Sudesh Saini and the learned Tribunal has erred in not granting the equal share in the compensation to appellant.

8. On the other hand, learned counsel for the respondent no.1 contended that appellant Rita Saini is married and residing in the matrimonial house. She was not dependent upon the income of deceased-Sudesh Saini. So, she was not entitled for any share in the compensation.

9. I have duly considered the aforesaid contentions.

10. This fact is not disputed that appellant Rita Saini is the daughter of deceased Sudesh Saini. So, she was her class one heir. The

learned Tribunal has returned the categorical finding that appellant Rita Saini had no source of income. Her husband was also not employed nor he was doing any business. Therefore, her father used to help her by providing her monthly maintenance. It is not disputed that under Section 166 read with Section 168 of the Act, all the legal representatives of the deceased can claim the compensation. The learned Tribunal has further observed on the basis of the case law referred in the impugned award that there can be no dispute that appellant-Rita Saini is entitled to share in the estate of the deceased. The learned Tribunal has awarded the share of compensation to the appellant for the death of her father-Sheetal Singh Saini. But, this relief has not been granted to the appellant qua the compensation awarded on account of the death of her mother-Sudesh Saini.

11. The findings of the learned Tribunal that appellant-Rita Saini was having no source of income and her husband was also not earning hand has not been challenged by the contesting respondent no.1-Rajesh Saini. The learned Tribunal has held that the appellant used to receive the money for her maintenance from her father. In my opinion, the learned Tribunal has fallen into error considering the appellant dependent only upon her father-Sheetal Singh Saini. Deceased-Sudesh Saini, the mother of appellant was also an earning hand and was the employee of the telephone department. So, the mother of appellant was also having the independent source of income. So, it is not believable that only the father of appellant was contributing the money towards the maintenance of the appellant. Certainly, she might be getting the money for maintenance

from her parents as both of them were the earning hand. Thus appellant was also dependent upon the income of deceased-Sudesh Saini her mother and was also her class one heir. Once, she has been found entitled to share the compensation awarded on account of death of her father-Sheetal Singh Saini in this accident, she cannot be denied the share in the compensation awarded on account of death of her mother-Sudesh Saini in MACT No. 12/FTC/2004. The learned Tribunal has wrongly deprived of her to share the compensation alongwith her brother-respondent no.1 Rajesh Saini. .

12. In view of my aforesaid discussion, as appellant Rita Saini was dependent upon the income of her parents and she was also the class one heir of deceased-Sudesh Saini, she will be entitled to receive the compensation in equal share with respondent no.1-Rajesh Saini on account of death of their mother-Sudesh Saini in this motor vehicular accident.

13. Resultantly, the present appeal is hereby allowed. Appellant Rita Saini is also held entitled to receive the compensation in equal share along with respondent no.1-Rajesh Saini on account of the death of their mother-Sudesh Saini in the present motor vehicular accident. In this manner, the appellant shall be entitled to 50 % of the awarded amount of Rs.6,64,660/- alongwith interest as awarded by the learned Tribunal.

January 18, 2016

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**(DARSHAN SINGH)
JUDGE**