IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2323 of 2011 (O&M)
Date of decision: February 18, 2016

Surjit Kaur and another

...Appellants

Versus

M/s Punjab Container Services Jalandhar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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?**

Present: Ms. Sandeep Arora, Advocate,
for the appellants.

Mr. Naveen Chopra, Advocate,
for respondent No.3.

K. KANNAN, J. (Oral)

1. The appeal is for grant of compensation against the dismissal of a claim on alleged inability of the claimants to prove the negligence of the insured's vehicle. The deceased was 25 years of age who had been working in Dubai as a lift operator having income of of ₹35,000/- per month. He returned to India and at the time of accident, there is no proof that he was employed. The accident took place on 1.2.2008 when he dashed against a stationary truck which was said to have been parked on the middle of road without adequate caution with parking lights or reflector. The petition was dismissed because the father of the deceased attempted to say that he was an

eye witness and his own version was discrepant about the nature of the accident that has taken place. There was a DDR recorded which showed the fact of the collision of the motor cycle against a stationary truck.

2. In my view, the dismissal of the petition was wrong. Even if the evidence of the father must be described as discrepant, there was surely evidence that the truck did not have adequate signs of caution to warn a person using the road to stay himself out of danger to a path of safety. I take the deceased as having contributed to the accident and I will levy larger extent of contribution for accident on his part at 60% and take 40% as negligence contributed by insured driver in parking the vehicle without adequate safeguard for the user of the public.

3. As regards the income status, it was clear in evidence that he was a skilled person having been employed a lucrative earning but lost his life too soon on return to India. The widow appears to have re-married and did not even make the claim. She had a minor son who joined along with the mother of the deceased to lay the claim. I would take the average income what he would have earned as skilled employment at ₹10,000/-, making deduction of 1/3rd towards his personal consumption and apply a multiplier of 18. I will provide ₹1 lakh for loss of love and affection for the child and ₹50,000/- for the mother. Various heads of claim are tabulated as under:-

Fatal Accident		***Date of accident***	
Age		25	
Occupation	Skilled driver	1.2.2008	
Claimants:	Mother and minor son		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1	Income		10,000
2	Add, 50% of increase		

3	Deduction 1/3		6666.66
4	Multiplicand (annualized)		79,999.92 (rounded to ₹ 80,000)
5	Multiplier		18
6	Loss of dependence		14,40,000
7	Medical expenses		
8	Loss of Consortium		
9.	Loss of love and affection for the child and mother		1,50,000
10	Loss to estate		5000
11	Funeral Expenses		25000
	Total		16,20,000

4. The total compensation payable shall be 40% of ₹16,20,000/- that is attributed to the driver of the truck and it shall be borne by the insurer. This will also attract interest @ 9% from the date of the petition till the date of payment. The award of dismissal is set aside and the awarded amount shall be disbursed in the ratio of 2:1 between the child and the mother of the deceased.

5. As regards the share of the mother, it will be disbursed immediately and as regards the share of the child, the amounts shall be retained during the entire period of minority in a nationalized bank and the interest accumulation shall be paid quarterly to the mother of the deceased towards maintenance expenses of the child. The amount shall be paid directly by the bank by cheque or transferring to the account of the mother of the deceased under advice to the Tribunal. 75% of amount will be permitted to be withdrawn by the minor on attaining majority and rest 25% of the amount shall be again invested in a nationalized bank for a period of three years by splitting in into three equal portions, 1st portion for a period of one year, 2nd portion for a period of two years and the 3rd for a period of three years to the credit of the quondam minor with direction for disbursal

directly to the quondam minor as and when the amounts mature.

6. The appeal is allowed on the above terms.

February 18, 2016 **(K.KANNAN)**
prem **JUDGE**