

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.939 of 2010
Date of Decision.22.01.2016

Ajaib Kaur and others

.....Appellants

Vs.

Mahadev and others

.....Respondents

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Harjinder Singh, Advocate
for respondent No.3.

Ms. Anju Bansal, Advocate for
Mr. M.S. Sachdeva, Advocate
for respondent No.4.

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?

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K. KANNAN J.

1. The appeal is against the dismissal of the claim petition for death of a male aged 50 years. He was stated to be working as driver in Swaraj Mazda Ltd, Asron, District Nawanshehar in the monthly salary of ₹10,000/-. At the time of accident, he was driving the chassis to a purchaser on behalf of the company and the vehicle driven by the 1st respondent coming from the opposite direction dashed against the vehicle which the deceased was driving and he died on the spot. Yet another person who was said to be travelling at the same time and driving a new chassis had spoken about the accident and the involvement of the vehicle. The police had also noticed the 1st respondent's vehicle as

having been abandoned near the spot when the rough sketch was drawn.

When all the evidence available about the site of the accident, the fact of lodging the FIR soon after the accident and the fact that the vehicle which was said to have been involved in the accident and responsible for the accident was seen at the site of accident, the Tribunal has taken a view that the negligence of the driver of the 2nd respondent's vehicle or its involvement was not established. It is an utter travesty of justice that the Tribunal must have found that the insured's vehicle had not been proved to involved and more so, in a situation where neither the owner nor the driver took courage to come to the Court and the Tribunal ought to have drawn an adverse inference for non-examination of the driver and owner. There was simply no reason to suspect that there was any collusion between the claimants and the respondents No.1 and 2 to keep them out of court process. I set aside the finding of the Tribunal as regards involvement of the vehicle and the lack of proof of negligence and hold that it was only the 2nd respondent's vehicle which was involved in the accident causing the death of the 1st claimant's husband and that the 1st respondent was the driver of the vehicle at the relevant time of the accident.

2. As regards the quantum, the claim petition had been filed under Section 166 read with Section 163-A of the Motor Vehicles Act. The evidence was that he was earning ₹10,000/- and the Tribunal observed that if he was earning ₹10,000/- resort to Section 163-A of the Act itself would not be possible. Since the petition has also been presented under Section 166 and having regard to the finding already recorded that the 2nd respondent's vehicle was involved in the accident

and the accident took place on account of 1st respondent's negligent driving who was the driver of the vehicle, I will apply the scales of compensation as would be permissible under Section 166 of the Motor Vehicles Act.

3. I will take the income at ₹10,000/- as spoken to by the witness and make a provision for 1/4th deduction and apply a multiplier of 11 considering that he was above 50 years of age. The 1st claimant was 48 years and I would believe that the decease must have been over 50 years of age although there was no definite evidence available in that regard. I will make a provision for loss of consortium at ₹1 lac and provide also towards loss of love and affection for the three children at ₹25,000/- each that includes a major daughter as well. I will make a further provision for ₹25,000/- towards funeral expenses and ₹5,000/- towards loss to estate. The various heads of claim are tabulated as under:-

FATAL ACCIDENTS			
Age	50 years		
Occupation	Driver		
Claimants	Widow and three children		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income		10,000
2	Add, % of increase 30% / 50%		
3	Less, Deduction 1/4 th		7500
4	Multiplicand (annualized by multiplying 12)		90,000
5	Multiplier		11
6	Loss of dependence		9,90,000
7	Medical Expenses & Transportation		
8	Loss of Consortium		1,00,000
9	Loss of love and affection		75,000

FATAL ACCIDENTS			
10	Loss to estate		5,000
11	Funeral expenses		25,000
	Total		11,95,000

4. The total amount of compensation payable shall be ₹11,95,000/-. This amount shall also attract interest @7.5% from the date of petition till the date of payment. The award passed by the Tribunal is set aside making the 3rd respondent as liable to satisfy the award and the appeal is allowed to the above extent. The 4th respondent which is the company that owned the vehicle which the deceased was driving and the insurance company of the said vehicle which was arrayed as 5th respondent are not in any way responsible and they are exonerated.

(K. KANNAN)
JUDGE

January 22, 2016
Pankaj*