

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

FAO No. 6004 of 2012 (O&M)

Date of decision: 25.01.2016

Gurmeet Kaur and others

... Appellants

versus

Harpal Singh and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ankush Singla, Advocate for the appellants.

Ms. Vandana Malhotra, Addl. Advocate General, Punjab.

K.Kannan, J. (ORAL)

CM No. 28241-CII-2015

For the reasons mentioned in the application, duly supported by an affidavit, delay of 177 days in filing the appeal is condoned.

CM is disposed of.

FAO No. 6004 of 2012

The appeal is for enhancement of claim for compensation for death of a driver of taxi car that dashed against the bus belonging to Punjab Roadways Transport Corporation. It appears to have been a FIR lodged by the passenger of the vehicle which the deceased was driving attributing negligence on the part of both the vehicles. The respondent-driver denied that there was an accident. The Court found the defendants to be false but all the same apportion the liability 50:50 and abated a part of the claim. As regards the quantum, the counsel argues

that the minimum wage was Rs. 6, 750/- against the evidence given by the claimants that the 1st claimant's husband was earning Rs. 15,000/-. On finding regarding contributory negligence, the contention is that the State filed written statement on 4 occasions with amendments but in none of the statements was there any plea of contributory negligence made. On the other hand, there was a plea of complete denial of involvement of the vehicle itself. According to the appellant, the accident had taken place when the respondent driver was overtaking another vehicle and dashed against the vehicle which the deceased was driving at the extreme end of the road.

If the would would set up a plea of contributory negligence in its statement it could only relied on the evidence of the driver who could speak about such a contributory negligence on the part of the deceased. If the driver of the State on whose evidence the State could place the reliance was taking a false defence that the vehicle was not involved at all, then there was no sympathy that was left for consideration against his estate to make partial abatement by 15%. There was simply no justification for a Tribunal to find that the defence was false but would still reward abjured evidence with the finding that there was a contributory negligence. I set aside the finding and hold the State to be wholly responsible for the accident and the driver of the State Vehicle as having fully contributed to the same.

As regards the quantum, the Court has taken the income at Rs. 4,500/- against the evidence of the claimants that 1st claimant's

husband was earning Rs. 15,000/-. I will take the income at Rs. 6,750/-, provide for the prospect of increase by 50% taking the age to be 40 years. I take the income as taken already and provide for prospect of increase at 50% and rework the compensation as under. The various heads of compensation are tabulated as under:

<u>Fatal</u>	Date of accident	09.10.2011	
Age		40	
Occupation			
Claimants	Widow, 2 daughters & son		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	Income	4,500/-	6,750/-
2.	Add, % of increase, 30%/50%		
3.	Deduction, 1/2, 1/3, 1/4,		5,062.50
4.	Multiplicand		60,750/-
5.	Multiplier		15
6.	Loss of dependence		9,11,250/-
7.	Medical Expenses	1,40,000/-	1,45,000/-
8.	Loss of Consortium		1,00,000/-
9.	Loss of love and affection		2,00,000/-
10.	Loss to estate		10,000/-
11.	Funeral	5,000/-	25,000/-

	Expenses		
	Total		13,91,250/-

The medical expenses according to the counsel for the appellant is relatively lower, for, there is a mistake in calculation and the aggregate would be Rs. 1,44, 807/- and not merely Rs. 1,40,000/-. I will make further provision for Rs. 1,45,000/-. One of the daughters was married and I will provide for loss of consortium to the wife at Rs. 1,00,000/-and Rs. 2,00,000/- for two daughters, son and father. The total compensation shall be Rs. 13, 91, 250/- and the additional compensation will attract interest @ 9% from the date of the petition till the date of payment. The liability shall be on the State. The amount shall be distributed in the ratio of 2:2:2:2:1 amongst the widow, two daughters, son and father respectively. As regards the share of the widow 40% of the amount shall be directed to be withdrawn and the remaining 60% shall be deposited for a period of 10 years splitting it into 10 portion. The amount shall be periodically released by the Bank directly to the widow without any intervention from the Tribunal, however, after due notice to the Tribunal for its certification.

As regards the share of the daughters and son 75% of the amount shall be permitted to be withdrawn and the remaining 25% will be deposited for a period of 3 years by splitting the sums into 3 equal shares. 1st share for a period of one year, 2nd share for two years and 3rd share for 3 years.

As regards father's share, the whole of the share is permitted to be withdrawn without any direction.

The award stands modified and the appeal is allowed to the
above extent.

25.01.2016

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(K.KANNAN)
JUDGE