IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 3366 of 2013 (O&M)
Date of Decision : 07.01.2016

Yash Pal and another ....Appellants

Versus

Karambir and others ....Respondents

2. FAO No. 3367 of 2013 (O&M)

Yash Pal and another ....Appellants

Versus

Karambir and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Parmod Chauhan, Advocate
for the appellants.

None for respondents no. 1 and 2.

Mr. D.K. Prajapati, Advocate
for Mr. R.S. Madan, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This judgment will dispose of above captioned appeals filed against award dated 04.02.2013 passed by the Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the Tribunal'). The Tribunal awarded compensation of ₹ 50,000/- for the damages to the shop of claimants and another compensation of ₹ 1,78,000/- for the death of mother of claimants in the motor accident.

2. The case of claimants, in brief, is that on 30.10.2011 at about 08.30 p.m., Shakuntala Devi (since deceased) their mother was sitting on wooden bench in front of her *karyana* store at

village Bakali, when combine bearing registration no. HR-05V-3269 came from Mustfabad side. It was being driven by respondent no. 1-Karambir son of Kartara Ram in a rash and negligent manner. He hit Shakuntala Devi and then front portion of the shop of claimants as a result of which Shakuntala Devi suffered injuries and was taken to CHC, Ladwa. After first aid, she was shifted to LNJP Hospital, Kurukshetra, where she succumbed to her injuries.

3. The claimants alleged that they have suffered loss of ₹1,38,000/- due to damages to the shop and of ₹27,730/- of the material lying in the shop. They also suffered loss in business as the shop was closed due to damage . Deceased Shakuntala Devi was 55 years of age. She was shopkeeper and engaged in dairy farming thereby earning ₹20,000/- per month. A sum of ₹ 30,000/- was spent on her treatment and last rites.

4. In the written statement filed by respondents no. 1 and 2 i.e. driver and owner of the offending vehicle, the accident and involvement of the vehicle in accident was denied. It was alleged that the offending vehicle was insured with respondent no. 3.

5. The Insurance Company in its separate written statement denied the accident resulting into any loss to the shop, material lying there or causing death of Shakuntala Devi. It was alleged that in order to extort money the offending vehicle was falsely involved by the claimants.

6. I have heard learned counsel for the parties and perused record of the Tribunal with their assistance.

FAO No. 3367 of 2013 (Compensation for the death of Shakuntala Devi, mother of claimants)

7. Learned counsel for the appellants has argued that the deceased was running a *karyana* shop and was having the income of ₹20,000/-. However, the Tribunal has not taken note of this fact and has assessed her income as ₹ 3000/- per month, which is less than the income that can be assessed even for a house-wife. The Tribunal has also not allowed any compensation towards loss of love and affection and funeral expenses allowed as ₹10,000/- are also on lower side.

8. Learned counsel for respondent no. 3-Insurance Company has argued that the decease was 65 years of age. There was no evidence that she was doing any business. Her ration card, placed on record by claimants, shows that her income was below poverty line (BPL), as such, the Tribunal has rightly assessed her income as ₹3000/- per month and after making 1/3rd deduction towards her personal expenses, the compensation was rightly assessed by the Tribunal. Even otherwise, claimants are major sons of the deceased and were not dependent on her income, as such, are not entitled to any compensation except the compensation for no fault liability.

9. In case of ***Gujarat State Road Transport Corporation** vs. **Ramanbhai Prabhatbhai**, AIR 1987 (SC) 1690*, it was observed that a legal representative is one who suffers on account of death of a person due to motor vehicle accident and need not necessarily be a wife, husband, parent and child. The claimants, though, are major still for all type of assistance and guidance were dependent on their mother, who was living with

them. Even otherwise, the Insurance Company has not come up with appeal against the award of compensation to claimants for the death of their mother, as assessed by the Tribunal, as such, the argument of learned counsel for respondent no. 3-Insurance Company that claimants are not entitled to any compensation is without merit.

10. The Tribunal while assessing income of the deceased appears to have not relied on the contention of claimants that she was doing any business. While appearing as PW-1 claimant-Subhash has stated that he has no proof that his mother was running any shop or business of dairy farming and earning ₹20,000/- per month. In the absence of any proof of income of the deceased, the Tribunal has assessed her notional income as ₹3000/- per month. However, while assessing this income, the Tribunal has not clarified that this income is being assessed from her business or for her status as house-wife. As it was not proved that deceased was doing any business, her notional income is to be assessed as that of a 'housekeeper/house-wife'. Keeping in view the price index and the services rendered by mother towards her children and family, I am of the opinion that income of the deceased assessed by the Tribunal as ₹3000/- per month is appropriate. However, no deduction from this income towards personal expenses of deceased is to be made. The Tribunal has not allowed any compensation for the loss of love and affection. As per parameters discussed in case of ***Rajesh and others vs. Rajbir and others***, ***(2013) 9 SCC 54***, the claimants are entitled to compensation of ₹1 lac towards loss of love and affection and

₹25,000/- for the funeral and transport expenses.

11. In view of my above discussion the compensation to which claimants are entitled is assessed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Income of the deceased	₹3000 per month
(ii)	Multiplier as applied by the Tribunal	7
(iii)	Amount of dependency	(₹3000X12X7)= ₹252000
(iv)	Loss of love and affection and estate	₹100000
(v)	Funeral and transport expenses	₹25000
Total		**₹377000**

12. The award of the Tribunal is modified and the compensation allowed by the Tribunal is enhanced from ₹1,78,000/- to ₹3,77,000/- for the death of Shakuntala Devi. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

FAO No. 3366 of 2013 (Compensation for damages to the shop)

13. The Tribunal has allowed compensation of ₹50,000/- for damages to the shop. In para 19, the Tribunal has discussed in detail the damages to the shop and has reached the conclusion that evidence of damage produced on record by the claimants is exaggerated. Even the photographs placed on record by the claimants show that two walls of the shop were damaged and wooden batten and girders in the roof were intact and could be reused. Reconstruction of two walls and repair of front shutter and other damages will in no manner entail the expenses more than what has been allowed by the Tribunal. This calls for no further enhancement, as such, the appeal filed by the claimants

seeking enhancement of compensation for the damages to the shop has no merits.

14. In view of my above discussion, FAO No. 3366 of 2013 seeking enhancement of compensation for the damages to the shop is dismissed and FAO No. 3367 of 2013 seeking enhancement of compensation for the death of Shakuntala Devi is allowed in terms of observations in paragraphs No. 11 and 12 above.

January 07, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No