

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

(1)

**FAO No.3608 of 2013 (O&M)
Date of decision : 21.04.2016**

General Manager, C.T.U. Chandigarh

.....Appellant

Versus

Ram Dulari and others

...Respondents

(2)

**FAO No.4019 of 2013 (O&M)
Date of decision : 21.04.2016**

Ashima and another

.....Appellants

Versus

Satish Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Ms. Sonia Sharma, Advocate for appellant
in FAO No.3608 of 2013 and
for respondent No.2 in FAO No.4019 of 2013.

Mr. Vivek Aggarwal, Advocate for respondents No.2 & 3
in FAO No.3608 of 2013 and
for appellants in FAO No.4019 of 2013.

Mr. Rajesh Hooda, Advocate for respondent No.4
in FAO No.3608 of 2013 and
for respondent No.1 in FAO No.4019 of 2013.

DARSHAN SINGH, J.

CM-16230-CII-2013 in
FAO No.4019 of 2013

There is delay of 46 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay in re-filing the appeal is hereby condoned.

Main Appeals

This judgment of mine shall dispose of both the appeals mentioned above, which have been arisen out of the same award dated 16.01.2013, passed by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter called the 'Tribunal'), vide which the claimants-appellants of FAO No.4019 of 2013 have been awarded the compensation to the tune of Rs.22,54,250/- on account of death of Shiv Rattan Bhardwaj in the motor vehicular accident, which took place on 10.08.2010.

2. FAO No.3608 of 2013 has been filed by the General Manager, Chandigarh Transport Undertaking, the owner of bus No.CH-01-GA-5025 (respondent No.2 before the Tribunal) to assail the impugned award dated 16.01.2013.

3. FAO No.4019 of 2013 has been filed by claimants Ashima and another for enhancement of the amount of compensation.

4. Learned counsel for the appellant-owner of the vehicle contended that the driver of the bus was not sole negligent for this accident. The accident was head on collision. Deceased was driving the motorcycle at a fast speed, so he was also the contributory negligent for causing this accident. She further contended that the multiplier has been wrongly applied by the learned Tribunal. The age of the deceased was more than 40 years at the time of the accident. She further contended that the future prospects should have been granted at the rate of 30% on the income of the deceased instead of 50% as awarded by the learned Tribunal. Thus, she contended that the compensation awarded by the learned Tribunal is exorbitant.

5. On the other hand, Mr. Vivek Aggarwal, Advocate, learned counsel for the appellants-claimants contended that less amount has been awarded towards loss of consortium to the widow as well as towards the funeral expenses. He further contended that the deceased was below 40 years of age. So, the future prospects at the rate of 50% of the income of the deceased have been rightly awarded by the learned Tribunal. He contended that Rs.1,00,000/- should have been awarded as loss of consortium to appellant-claimant Ashima the widow of deceased Shiv Rattan Bhardwaj and Rs.25,000/- should have been awarded as funeral expenses. Thus, he pleaded for enhancement of the amount of compensation.

6. I have duly considered the aforesaid contentions.

7. As per the case of appellant-owner of the vehicle, the

motorcyclist came from the opposite direction and when he saw the bus at small turn, he lost his balance, slipped and hit the front side of the bus. The driver of the bus was not at fault. This plea raised by the appellant-owner of the vehicle and the statement of RW-1 Satish Kumar the driver of the bus will not be sufficient to establish the contributory negligence on the part of the deceased. No evidence has been adduced by the appellant-owner of the bus to establish as to what was the width of the road at the place of accident. There is also no evidence to show as to whether the collision has taken place in the middle of the road or on the side of the road. In the absence of this evidence, no conclusion can be drawn that the deceased was contributory negligent. Appellant-claimant Ashima who was the pillion rider and the witness of occurrence, has categorically deposed that the bus in question came in a rash and negligent manner and hit the motorcycle in front. Due to the impact, they fell down and the bus crushed the motorcycle and leg of her husband who sustained grievous multiple injuries and died due to the said injuries. It is also not disputed that the criminal case has been registered against respondent No.1 Satish Kumar for causing this accident. He has admitted in the cross-examination that challan has been presented against him in the Court. So, he is facing the prosecution for causing this accident. Thus, no fault can be found with the findings recorded by the learned Tribunal that the present accident has taken place due to rash and negligent driving of the bus in question by its driver Satish Kumar.

8. The appellant-owner of the vehicle has not led any

evidence to show that the age of the deceased was more than 40 years at the time of the accident/death. In the postmortem report Ex.P4, the age of the deceased has been mentioned as 38 years. In the claim petition, the claimants have pleaded the age of the deceased as 40 years. Taking into consideration the age of the deceased recorded in the postmortem report as well as in the claim petition collectively, the age of the deceased was definitely below 40 years on the date of the accident.

9. As per the law laid down by the Hon'ble Supreme Court in ***Sarla Verma Vs. Delhi Transport Corporation , 2009(3) RCR (Civil) 77***, 50% of the income of the deceased is to be added towards future prospects where the deceased is below 40 years of age. So, the learned Tribunal has rightly added 50% of the income of the deceased towards future prospects. The learned Tribunal has correctly applied the multiplier of 15 as the deceased was below 40 years of age on the date of death.

10. The learned Tribunal has awarded only Rs.10,000/- towards loss of consortium. As per the law laid down by Hon'ble Apex Court in case ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, the loss of consortium should have been awarded Rs.1,00,000/-. So, the compensation towards loss of consortium is enhanced from Rs.10,000/- to Rs.1,00,000/-. Similarly, the funeral expenses are also enhanced from Rs.10,000/- to Rs.25,000/-. In this way, the total amount of compensation comes to Rs.23,59,250/- by giving the increase of Rs.1,05,000/-.

11. Thus, keeping in view my aforesaid discussion, FAO

No.3608 of 2013 filed by appellant-owner of the vehicle has no merits and same is hereby dismissed, whereas FAO No.4019 of 2013, filed by the appellant-claimants is hereby partly allowed. The appellants-claimants shall be entitled to compensation of Rs.23,59,250/- instead of Rs.22,54,250/- as awarded by the learned Tribunal. The appellants-claimants shall also be entitled to interest at the rate as determined by the learned Tribunal, on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

21.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**