

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

FAO No. 2323 of 2016 (O&M)

Date of decision: 03.06.2016

Nishan Singh

... Appellant

versus

Gurbhej Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Monika Jalota, Advocate for the appellant.

K.Kannan, J. (ORAL)

The only issue in appeal is a matter of apportionment of the awarded amount for the death of a child that is made equally between the father and mother of the child. The mother was attempted to have been served at the address in Ludhiana but indeed she was not even served. On the admission of the counsel for the appellant, it is stated that the mother has gone abroad and since she has gone abroad she is not entitled to an equal amount. It is also the contention that the wife had deserted the husband and left to a foreign country.

The desertion of a spouse ought not to be understood as deserting a child. The compulsions for the extra ordinary act ought not to be taken as casting away her right of a parent to claim compensation for the death of a child. The assessment itself must be taken as going towards the component of love and affection for a child and I have no doubt in my mind that there is a greater filiality for a mother to a child even when physically separated than what a father could bear to a child. It may not be possible to weigh the component of love for a child in metric tonnes or weights, but it is immeasurable at all times. I will

find no error in the order directing the equal apportionment but I will not make any fetter to the appellant-father to claim the entire amount since the 4th respondent-mother of the child is reported to be not living in India. One half of the amount will be given without security and remaining half of the amount will be permitted to be withdrawn by the appellant with security to the satisfaction of the MACT so that the mother can approach the appellant at any time to demand her own share and if it is not paid, she will have the option to press for realization of the amount by proceedings against the security. I dispense with the notice to the 4th respondent, in view of the fact that she had not already been served even at the time of trial and it appears to have been merely shown as performa respondent. The remaining half of the amount of what has been assessed as payable to the mother of the child must be construed as being allowed to be taken by the father in his capacity as a trustee for the mother's share.

The appeal is disposed of with the above observation.

(K.KANNAN)
JUDGE

03.06.2016

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