

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

Decided on: 06.12.2016

1. FAO No.388 of 2015

Sarinder Kaur and othersAppellants

Versus

Himachal Roadways Transport Corporation and others
.....Respondents

2. FAO No.1513 of 2015 (O&M)

Himachal Road Transport Corporation and another
.....Appellants

Versus

Sinder Kaur and othersRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vikram Bali, Advocate
for the appellants (in FAO No.388 of 2015)
and for respondents No.1 to 3 (in FAO No.1513 of 2015)

Mr. Neeraj Khanna, Advocate
for Mr. Ravinder Arora, Advocate
for respondents No.1 and 2 (in FAO No.388 of 2015)
and for the appellants (in FAO No.1513 of 2015)

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.388 of 2015 '*Sarinder Kaur and others vs Himachal Roadways and others*' and No. 1513 of 2015 '*Himachal Road Transport Corporation and others vs Sinder Kaur and others*', as these have emerged out of the same award dated 01.10.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been awarded in favour of Sarinder Kaur and others in regard to death of Taljinder Singh in a motor vehicular accident that took place on

12.04.2013.

The Tribunal assessed annual income of the deceased at Rs.4,45,000/-, deducted 1/3rd for personal and living expenses, adopted multiplier of 10 to compute loss of dependency at Rs.29,66,670/-. In addition, an amount of Rs.1,00,000/- for loss of consortium, Rs.25,000/- each for loss of love and affection and funeral expenses was awarded making total compensation to Rs.31,16,670/- payable with interest @ 6% per annum from the date of petition till realization.

The sole submission made by counsel for Himachal Road Transport Corporation (hereinafter to be referred to as 'the Corporation') is that as driver of the car bearing No.CH04-E-5542 in which the deceased was traveling at the relevant time was found to be under influence of liquor, the present is a case of composite negligence of the aforesaid car and bus No.HP37-C-1042, therefore, the driver, owner and insurer, if any, of the car cannot escape their liability to pay compensation to the claimants to the extent of negligence attributable to driver of the car.

Counsel for the claimants, while refuting contention of counsel for the Corporation would submit that even if it is assumed that the present is a case of composite negligence, the claimants are at liberty to seek compensation from either of the tort feasons. In order to justify enhancement of compensation, it has been argued that the Tribunal has adopted a multiplier of 10 in place of 11 as the deceased was 52 years old. No compensation has been awarded for increase in income for future prospects. Compensation awarded under conventional heads needs enhancement.

Counsel for the Corporation, in reply, has supported the assessment of compensation.

I have heard counsel for the parties, perused the paperbook particularly the award and the records.

Perusal of the award makes it evident that the claimants impleaded only owner and driver of the bus bearing No.HP37-C-1042. As the claimants have not impleaded the driver, owner and insurer, if any, of the car in which the deceased was traveling, there was no occasion with the Tribunal to determine question of composite negligence much less the extent to which each of the vehicles can be attributed negligence. However, the claimants have the liberty in law to seek compensation from either of the tort feasons, the Corporation cannot escape its liability to pay compensation. Nevertheless, the Corporation may take recourse to appropriate proceedings under law for redressal of its grievance against driver/owner/insurer of the car.

Counsel for the claimants has not disputed findings of the Tribunal with regard to annual income of the deceased. As the deceased was more than 50 years of age, in view of judgment of Hon'ble the Supreme Court "***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another***", 2009(3) R.C.R. (Civil) 77, the claimants are not entitled to benefit of increase in income for future prospects. However, in view of age of the deceased, admissible multiplier would be 11 in place of 10. In this manner, loss of dependency comes to **Rs.32,63,337/-** (Rs.2,96,667 x 11).

Under conventional heads, compensation awarded by the

Tribunal with regard to loss of consortium and funeral expenses is affirmed. The claimants shall be entitled to an amount of **Rs.1,00,000/-** for loss of love and affection to children of the deceased and an amount of **Rs.25,000/-** for loss of estate. The total compensation comes to Rs.35,13,337/- and the enhanced compensation is **Rs.3,96,667/-** (Rs.35,13,337/- – Rs.31,16,670/-) payable with interest @ 7.5% per annum from the date of petition till realization exclusively to widow of the deceased. The additional compensation shall be deposited in a nationalized bank for a period of two years.

The appeal filed by the claimants is partly allowed in the aforesaid terms. As a natural corollary, the appeal filed by the Corporation fails and is accordingly dismissed.

06.12.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No