

argued with vehemence that as the deceased was going on kacha berm of the GT road for answering call of nature, he cannot be blamed for the accident caused by the motorcyclist who was proceeding towards Shahbad side. Another submission made by counsel is that if the injured victim after being hit by the motorcycle came on the metalled road as shown in the site plan, same is not sufficient to attribute negligence to the deceased.

Counsel has further submitted that compensation assessed by the Tribunal is on lower side. To substantiate his contention, it is argued that the Tribunal has wrongly assessed income of the deceased at Rs.1300/- per month when as a matter of fact, he was earning Rs.2000/- to Rs.2500/- per month by working as a barber in village Bhogpur. The Tribunal has not extended benefit of increase in income for future prospects to the extent of 40% and did not apply appropriate multiplier on the basis of age of the deceased. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal attributing 50% negligence to the deceased. It is argued that the site plan Ex.P2 was relied upon by the claimants themselves, therefore, they cannot wriggle out of what is reflected in the site plan Ex.P2. It is further argued that the man may tell lie but not the circumstances.

With regard to quantum of compensation assessed by the Tribunal, it is argued that the claimants failed to produce satisfactory much

less tangible evidence that deceased was earning Rs.2000/Rs.2500/- per month in the year 1994.

I have heard counsel for the parties, perused the paper book and records of the criminal case pertaining to the occurrence in question.

The Tribunal in para 12 of the award, on a detailed appreciation of testimony of Paramjit Singh PW3 and site plan Ex.P2 relied upon by the claimants, has recorded a finding that deceased was also negligent by moving on the metalled road without bothering about the vehicles coming from either side of the road. Records of the case got burnt in a fire incident. Perusal of the award would indicate that challan presented in the criminal case is marked as Ex.P1 and it can be inferred that the site plan prepared by the police during investigation is marked as Ex.P2 before the Tribunal. The said fact gets further confirmed from the observations recorded by the Tribunal that in the site plan Ex.P2, the place of accident is not on the kacha portion on left side of the road while going from Pipli towards Shahbad side but on the metalled portion of the road 1½ paces (sic) 1 ½ karam from the edge from which the metalled road starts. The position reflected in the site plan available at page 7 of the records of the criminal case exactly tally with the description noted by the Tribunal. Perusal of the site plan available in the criminal records would make it evident that the accident took place at point 'A' which is at a distance of 1.5 karams from edge of the road on left side leading from Pipli towards Shahbad. This fact is sufficient to corroborate findings of the Tribunal that

the accident did not take place on the kacha berm but it took place on metalled road at a distance of more than 8.25 ft. from the edge of metalled road. Under the circumstances, findings recorded by the Tribunal attributing 50% negligence to the deceased do not warrant intervention.

This brings the Court to quantum of compensation assessed by the Tribunal. One of the claimants namely Krishan Lal, father of the deceased appeared in the witness box to state that the deceased was working as barber by installing a khokha in village Bhogpur. Ranjit Thakur PW4 was examined and testified that the deceased learnt the work as a barber from him and he used to pay him salary of Rs.1200/- per month. Krishan Lal PW2 stated that the deceased had been maintaining accounts of his earning but failed to produce the accounts requiring the Tribunal to draw adverse inference against the claimants for their failure to produce material documents which would throw light on the issue in controversy. As per the notification issued by the State of Haryana fixing minimum wage, it was less than Rs.1200/- per month for an unskilled worker. The job of a barber involves skill. Taking a clue from notification issued by the State of Haryana coupled with the evidence available on record, interest of justice would be served if income of the deceased is assessed at Rs.1600/- per month. Counsel for the insurance company would say that the deceased did not have established income to claim benefit of future prospects but the contention is misconceived and untenable. The claimants shall be entitled to increase in income for future prospects to the extent of 40% as the

deceased was 21 years old at the time of occurrence. As the deceased was 21 years old, appropriate multiplier is 18. The Tribunal has rightly deducted 50% for personal expenses of the deceased. In this manner, loss of dependency comes to Rs.1600 x 12 x 18 + 40% (future prospects) – 50% (deduction towards personal expenses) = Rs.2,41,920/-.

The claimants shall be entitled to following compensation under conventional heads:-

1.	Expenses on funeral	Rs.10,000/-
2.	Loss of estate	Rs.10,000/-
	Total	Rs.20,000/-

The total compensation comes to Rs.2,61,920/- and the additional amount is Rs.1,60,520/- (2,61,920 – 1,01,400). The claimants shall be entitled to only 50% of the additional amount, in terms of the award passed by the Tribunal. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

20.11.2017
ashok

(REKHA MITTAL)
JUDGE

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