

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2159 of 2000

Date of Decision: August 25, 2017

Amarjit Singh

.....Appellant

versus

Asha Bhalla and others

.....Respondents

FAO No. 801 of 2001

Asha Bhalla and others

.....Appellants

versus

Amarjit Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: None for the appellant(s)

Mr. A.S. Khosla, Advocate
for respondents No. 1 to 4 in FAO No. 801 of 2001

Mr. Harsh Aggarwal, Advocate
for respondent No. 6 in FAO No. 2159 of 2000 and
for respondent No. 4 in FAO No. 801 of 2001

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Sudhir Mittal, J.

1. By this common judgment, I propose to decide both the appeals (FAO No. 2159 of 2000 and FAO No. 801 of 2001) as the same arise out of one and the same accident.

Bhalla was travelling in a three wheeler bearing No. PB-07-3219. The three wheeler was boarded by him from Bankhandi and was going towards Hoshiarpur. There were six more people also boarded the said three wheeler. The driver of the three wheeler viz. Amarjit Singh was driving rashly and negligently and did not restrain himself even when asked to do so by the passengers. As a result, the three wheeler hit a sheesham tree in the area of village Chak Sadhu . As a result of this accident Inder Raj Bhalla died at the spot while the other passengers suffered injuries. FIR No. 49 dated 13.03.1998 was registered at the instance of Mangal Singh son of Kartar Singh (one of the passengers in the three wheeler). The learned Tribunal awarded a sum of ₹ 4,89,600/- on account of death of Inder Raj Bhalla and the liability to pay the same was imposed on Amarjit Singh. The Insurance Company and respondent No. 6 were discharged.

3. The claimants and Amarjit Singh (owner and driver of the offending vehicle) have filed these appeal for enhancement of compensation and for removal of liability, respectively.

4. None has put in appearance on behalf of Amarjit Singh (owner and driver of the offending vehicle). With the assistance of the learned counsel appearing for the respondents - claimants and respondent No. 6 – Deepak Kumar (alleged owner and driver of the three wheeler as per Amarjit Singh), I have gone through the record of this case and I am proceeding to decide the same. These appeals are of the year 2000 and 2001 and counsel for the appellant has not put in appearance despite an opportunity having been granted to him vide order dated 18.08.2017.

5. It is not in dispute that the deceased Inder Raj Bhalla was employed as a Head Constable in the Punjab Police. He was aged 42 years at the time of his death and was drawing a salary of ₹ 7,780/- per month as has been proved by

pairing down his monthly income to ₹ 6,000/- merely on the ground that AW-2 did not give details regarding basic salary, dearness allowance and other allowances. In my opinion, even if such details were forthcoming, the compulsory deductions made from the salary from an employee can not be deducted from his salary for the purpose of calculating his monthly emoluments. Thus, accepting the statement of AW-2, I hold that the last drawn salary of Inder Raj Bhalla was ₹ 7,780/- per month.

6. The deceased left behind the widow and three minor children. Accordingly, a deduction of 1/5th is to be made on account of personal expenses. The monthly dependency, therefore, works out to ₹ 6,224/-. Since the deceased was 42 years of age, 30% of the monthly dependency is to be added on account of future prospectus which works out to ₹ 8091.20. Accordingly, the annual dependency is ₹ 9709.40/-, applying a multiplier of 14, the total compensation works out to ₹ 13,59,321.60.

7. The question now arises whether the learned Tribunal was justified in deducting an amount of 15% from the compensation on account of contributory negligence. There is no evidence on record to show that the deceased boarded an already overloaded three wheeler. Infact the evidence suggests that the other passengers boarded the three wheeler later on. Under such circumstances, it can not be said that the deceased did not exercise reasonable caution or that his action was negligent. Moreover, *ipso facto* it can not be said that the overloading was a contributory factor in causing the accident. My view is supported by ***New India Assurance Company Limited vs. Amanbir Kaur and others, 2016(2) RCR(Civil) 909***, therefore, reduction of 15% on account of contributory negligence is not justified in the facts and circumstances of case.

8. The total compensation awardable to the claimants is, thus, assessed as mentioned in the table given below:-

(i)	Total compensation	-	₹ 13,59,321.60
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(ii)	Loss of consortium	-	₹ 1,00,000/-
(iii)	Loss of love and affection	-	₹ 1,00,000/-
(iv)	Funeral expenses	-	₹ 25,000/-

Total rounded off to ₹ 15,84,330/-

9. The unpaid amount shall carry interest @ 7.5 % from the date of filing of claim petition.

10. The learned Tribunal has rightly fastened the liability on Amarjit Singh (owner and driver of the three wheeler) as he did not bring on record his driving licence. Be that as it may, in the facts and circumstances of this case, I consider it expedient to direct respondent No. 5 (Oriental Insurance Company Limited) to pay the compensation assessed above in the first instance and then to recover the same from Amarjit Singh (owner and driver of the three wheeler). The needful shall be done within a period of three months from the date of receipt of certified copy of this judgment and payment shall be made by way of demand draft drawn in favour of the claimants.

11. The appeal (FAO No. 801 of 2001) of the claimants is allowed in the above said terms and that of filed by Amarjit Singh (owner and driver of the three wheeler) (FAO No. 2159 of 2000) is dismissed.

August 25, 2017

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No