

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.2563 of 1998

Date of Decision.08.09.2017

Harjinder Kaur and others

.....Appellants

Vs

Harbans Singh and others

.....Respondents

Present: Mr. Arvind Mittal, Advocate
for the appellants.

None for respondent Nos.1 and 2.

Ms. Anamika Mehra, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for death of one Malkiat Singh, who died in a road accident that took place on 5.11.1994. The deceased along with his wife was going on a Scooter bearing registration No.PB-25-1832 when a truck bearing registration No.PIP-5320 driven by respondent No.1 rashly and negligently going in the same direction applied sudden brakes without giving any indication, as a result of which scooter of the deceased dashed against the truck from behind. Due to the impact, the deceased received multiple grievous injuries which proved fatal. He was stated to working in the office of Chief Agricultural Officer, Ludhiana as Soil Testing Officer and earning ₹9000/- per month.

The Tribunal while assessing the compensation of ₹5,33,120/-, took the income of deceased as ₹8330/- per month, deducted 1/3rd of the same towards personal expenses and adopted a multiplier of 8. However,

the Tribunal found that the deceased was equally negligent and therefore, the claimants were entitled to only half of the amount assessed as compensation i.e. ₹2,66,560/- with interest @12% per annum from the date of filing the petition if the amount was deposited in the court or paid to the claimant within a period of three months, failing which the claimants shall be entitled to interest @15% per annum for the subsequent period till realization.

Mr. Mittal, learned counsel appearing on behalf of the appellants submits that the deceased was 50 years of age at the time of accident, therefore, the multiplier ought to have been taken as 13 instead of 8. The Tribunal did not provide any increase in the salary, while considering future prospects, as the deceased was in permanent employment and nothing has been provided for loss of consortium, loss of love and affection, loss of estate and funeral expenses. Moreover, the Tribunal has grossly erred in holding that the deceased was equally negligent when there was a specific version of the eye witness that the deceased was maintaining a safe distance. It was only negligence of the truck driver due to which accident took place, thus, urges this Court for modification of the award passed by the Tribunal.

Ms. Anamika Mehra, learned counsel appearing on behalf of the insurance company submits that had the deceased been vigilant and careful in maintaining the safe distance, the collision could have been avoided. The driver of the insured-truck applied sudden brakes in order to save a scooterist who was crossing the road which suddenly came in front of the truck, therefore, the finding rendered by the Tribunal qua contributory negligence cannot be interfered with. While awarding the compensation,

the Tribunal has taken care of all the heads of claim, therefore, there is no scope for further enhancement, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the award passed by the Tribunal is not in consonance with the formula prescribed by the Hon'ble Supreme Court in *Sarla Verma Vs. DTC 2009(6) SCC 121*. The deceased was in permanent employment, therefore, 30% increase in the salary ought to have been provided by the Tribunal as future prospects. The Tribunal also erred in applying the multiplier of 8 instead of 13 as the deceased was 50 years of age at the time of death. The Tribunal also provided nothing under the conventional heads i.e. loss of consortium, loss of love and affection, loss of estate and funeral expenses, therefore, the compensation is required to be re-assessed.

I will take the income of the deceased as ₹8330/- per month, provide an increase to the tune of 30% on the same as future prospect, make a deduction of 1/3rd towards personal expenses and adopt a multiplier of 13 to assess the loss of dependency at ₹11,26,216/-. I will further add to it ₹1 lac towards loss of consortium to the wife, ₹50,000/- each to the children, ₹10,000/- for loss of estate and ₹25,000/- towards funeral expenses. In all, the compensation payable shall be ₹13,61,216/-.

As regards the finding rendered by the Tribunal qua contributory negligence, I am in agreement with the same as the deceased was not vigilant and careful enough in maintaining the safe distance between two vehicles. Had it been so, the collision with the truck could have been avoided, therefore, I will uphold the finding viz-a-viz

contributory negligence and deduct half of the amount of compensation as assessed above. Therefore, the claimants-appellants shall be entitled to a compensation of ₹6,80,608/- . The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till realization. The enhanced amount shall be distributed equally amongst the claimants. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified to the above extent and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

September 08, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes