

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

1. FAO No.1916 of 2001
Date of decision : 05.07.2017

The Oriental Insurance Company Ltd.

...Appellant

Versus

Smt. Janki Devi and others

...Respondents

2. FAO No.2833 of 2001
Date of decision : 05.07.2017

Smt. Janki Devi and others

...Appellants

Versus

Ved Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Kulwant Singh Dhanora, Advocate for the appellant.

Mr. Atul Gaur, Advocate for
Mr. Sumit Goel, Advocate for the Insurance Company.

Mr. Surinder Gandhi, Advocate for respondent Nos.8 and 9.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two aforementioned
appeals.

There are two appeals on behalf of claimants seeking
enhancement of compensation of amount of ₹5,05,200/- on account of death

of the deceased stated to be aged between 36 to 40 years and multiplier of 13 has been applied. The deceased was employed with Indian Railway and drawing salary of ₹4617/- and there is no future prospect awarded and even deduction of 1/3rd is incorrect whereas it should have been 1/5th as claimants are seven in number.

On behalf of Insurance Company, it has been urged that in view of cross-examination of PW3, eye witness, the deceased had entered GT road from the link road without looking on the right and left side, thus himself was responsible for causing accident for not taking preventive measures while entering GT Road, resulting into accident with TATA-609 bearing No.HR46A-5532 coming from Ambala, whereas deceased was on Scooter bearing No.HR07A-5774 and accident had taken place at 7.00 PM on 01.12.1999 when it was pitch dark.

I have heard learned counsel for the parties and appraised the paper book.

The statement of PW3 relied upon by the Insurance Company along with cross-examination reads as under:-

“PW3:- Sham Lal son of Ram Nath son of Surju, aged 52 years Gangmat, Railway Department, Shahbad on SA:

On 1.12.1999, I alongwith Prem Singh had gone to Ladwa road, Devi Mandir, Shahabad for personal work on Scooter No.HR07A-5774 and at about 7.00 pm, we were coking back and Prem Singh dropped me on the STD Booth near T-point near G.T. Road and he was crossing the road and he crossed almost all the road, in the meanwhile offending Tata-609-HR46A-5532 came from Ambala side in very rash and negligent manner and came on the wrong side of the

road and struck against the scooter. As a result of which Prem Singh suffered multiple injuries and died on the way to hospital. This accident took place due to rash and negligent driving of driver of Tata-609. The respondent No.1 ran away from the spot, after causing the accident and left Tata-609 at the spot. My statement was recorded by the police, on the same day at C.H.C. Shahabad, which is Ex.PB (objected to).

Xxx for all the respondents.

It is correct that Prem Singh had come from Ladwa road and had entered the GT Road. It is correct that the Ladwa road is link road and G.T. Road is a main road. It is correct that heavy traffic flow on G.T. Road every time. It is correct that the accident in question took place at T. point. Volunteered that it took place on the right side of the road. The deceased was my colleague and used to live in the same colony. It is incorrect to suggest that there was no negligence of the driver of Tata-609. It is incorrect to suggest that no accident took place with vehicle No.HR-46A-5532. It is incorrect to suggest that the deceased entered the G.T. Road, all of a sudden without caring for the traffic going on the G.T. Road and was hit by some unknown vehicle and later on I had procured a false case, involving vehicle No.HR46A-5532 in collusion with the police. It is incorrect to suggest that i have deposed falsely.

RO & AC

MACT Kurukshetra, 11.1.2001”

On going through the aforementioned statement, it is admitted that deceased had entered GT Road from the link road and existence of the heavy traffic on the GT Road is also not denied.

In my view, there is some force in the submission of counsel for insurance company as deceased had not taken proper care and

precautions while entering the GT Road from the link road. He should have stopped and have to look right and left side. Having not taken care so, he has been crushed to death with the vehicle while travelling on scooter. Thus, in my view, 50% of negligence should have been attributed to the deceased instead of 100% on the Insurance Company, being insurer of the truck.

On the quantum, the Tribunal while assessing the compensation, adopted multiplier of 13 which should have been 15 and also not awarded the future prospect of the deceased. The Tribunal has grossly erred in making a deduction of 1/3rd towards personal expenses instead of 1/5th as the dependents are seven in number. The Tribunal has assessed a sum of ₹15,000/- towards loss of consortium which is on lower side much less, not provided any sum under the heads of loss of love and affection and loss to estate, however, sum of ₹10,000/- has been provided towards funeral expenses. In my view, the compensation assessed by the Tribunal does not meet out the parameters laid down by Hon'ble Supreme Court in *Sarla Verma Vs. Delhi Transport Corporation and another, 2009(6) SCC 121*. The same is required to be reassessed and tabulated as under:-

FATAL ACCIDENT			
Age	40 yrs		
Occupation	Railway employee		
Claimants	Widow, 4 children and parents		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (₹)	Amount (₹)
1	Income	4617	4617
2	Add, % of increase 50%	----	6925
3	Less, Deduction	1/3 rd	5540 (1/5 th)
4	Multiplicand (annualized by multiplying 12)	36936	66480

FATAL ACCIDENT			
5	Multiplier	13	15
6	Loss of dependence	480168	997200
7	Medical Expenses & Transportation	--	--
8	Loss of Consortium	15,000/-	1,00,000/-
9	Loss of love and affection @ 50,000/- for each child and parents	--	3,00,000/-
10	Loss to estate	--	5,000/-
11	Funeral expenses	10,000/-	5,000/-
	Total	5,05,200/-	14,07,200/-

The total amount of compensation comes to ₹14,07,272/-. However, after deduction of 50% towards contributory negligence of the deceased, the amount of compensation payable shall be ₹7,03,636/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing appeal till the date of realization. The liability of the insurance company shall be to the tune of ₹7,03,636/-.

The award is modified and both the appeals are disposed of to the above extent.

05.07.2017
pawan

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No