

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

FAO No. 1288 of 2010 (O&M)

Date of decision: 02.05.2017

Kulvir Kaur and others

... Appellants

Versus

Kailash and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. L.S. Mann, Advocate for the appellants.

Mr. M. B. Jain, Advocate for respondent No.3.

HARI PAL VERMA, J. (ORAL)

The appellants-claimants have filed the present appeal against the award dated 05.08.2009 passed by Motor Accident Claims Tribunal, Rupnagar (in short the 'Tribunal') seeking modification/enhancement of compensation. Vide aforesaid award, the Tribunal awarded a total compensation of Rs.1,25,000/- to the claimants on account of death of Khushpal Singh who died in a motor vehicular accident which took place on 31.12.2007. The claimants are widow, minor son and minor daughter of the deceased. Piar Kaur mother of deceased Khushpal Singh was arrayed as respondent No.4 in the claim petition and was also awarded compensation vide award dated 05.08.2009.

Learned counsel for the appellant has argued that the award dated 05.08.2009 is liable to be modified as the Tribunal has awarded compensation ignoring the age of the deceased. Even no amount of compensation has been awarded towards consortium, love and affection, funeral expenses, transport expenses etc. The deceased Khushpal Singh was about 44 years of age at the time of accident, while the Tribunal has awarded compensation considering his age as 62 years.

In order to substantiate the fact that Khushpal Singh was 44 years of age, the appellants-claimants has filed an application under Order XLI Rule 27 bearing CM No.6333-CII of 2010 for adducing additional evidence. Documents annexed along with the application i.e. Annexure-P1 is matriculation certificate and Annexure-P2 is a character certificate issued by Government High School, Rasanhari, District Ropar. As per these documents, the date of birth of the deceased Khushpal Singh is 06.11.1963 and at the time of accident i.e. on 31.12.2007 he was about 44 years of age.

Learned counsel for the respondent-Insurance company has filed the reply to the application for leading additional evidence. He has taken preliminary objection regarding maintainability of the application under Order XLI Rule 27 CPC at such a belated stage. He submitted that this fact was within the knowledge of the claimant at the time of filing of claim petition but they failed to bring this fact to the notice of the tribunal. Therefore, at this stage, no benefit can be given to the

appellants-claimants to get reviewed the amount of compensation already awarded by the Tribunal solely on the basis of matriculation certificate.

I have heard the learned counsel for the parties and have perused the file.

The Tribunal has considered the age of deceased as 62 years and has relied upon the bed head ticket of the deceased prepared during the course of his treatment. The deceased was not brought to the hospital by the claimants rather by some police officials. Therefore, they may not have the correct information regarding date of birth of the deceased. It is only the family members or close friends who may be knowing the age of the deceased.

Since the appellant has produced the matriculation certificate issued by the Board as Annexure P1 followed by the character certificate Annexure P2 issued by the school, the issue regarding the date of birth is required to be adjudicated by the Tribunal while affording an opportunity of hearing to the parties.

Accordingly, the award dated 05.08.2009 is set aside and the case is remanded back to the Tribunal to pass a fresh award after taking into consideration the matriculation certificate or any other document produced by the parties qua the age of the deceased in accordance with law.

The Tribunal is expected to pass a fresh award within a

period six months from today. It is also made clear that the parties would have opportunity to lead their respective evidence in respect of the age of the deceased in accordance with law.

02.05.2017

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(HARI PAL VERMA)
JUDGE

Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No