IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.301

FAO No.3160 of 2011 (O&M)
Date of decision : 15.09.2017

Sandeep ..... Appellant

VERSUS

Smt. Jagmati and others ..... Respondents

(2) **FAO No.3161 of 2011 (O&M)**

Sandeep ..... Appellant

VERSUS

Dilawar Singh Dhonchak and others ..... Respondents

(3) **FAO No.3768 of 2011**

Virender ..... Appellant

VERSUS

Satyawan and others ..... Respondents

(4) **FAO No.3769 of 2011**

Virender ..... Appellant

VERSUS

Dilawar Singh Dhonchak and others ..... Respondents

(5) **FAO No.4307 of 2011 (O&M)**

Dilawar Singh Dhonchak and others ..... Appellants

VERSUS

Satyawan and others ..... Respondents

(6) **FAO No.4807 of 2011 (O&M)**

Smt. Jagmati and others ..... Appellants

VERSUS

Satyawan and others ..... Respondents

(7) **FAO No.4976 of 2011**

Sandeep ..... Appellant

VERSUS

Smt. Jagmati and others ..... Respondents

(8) **FAO No.4977 of 2011**

Sandeep ..... Appellant

VERSUS

Dilawar Singh Dhonchak and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Amit Kumar Jain, Advocate
for the applicant-appellant in FAO-3160-2011.

Mr. Vijay Jindal, Senior Advocate with
Mr. Aushay Jindal, Advocate
for the applicant-appellant in FAO Nos.4307 and 4807 of 2011.

Mr. Tara Chand Dhanwal, Advocate
for respondent No.5 in FAO-3160-2011.

Mr. S.K. Verma, Advocate
for the appellant and
for respondent No.7 in FAO-3768-2011
and for respondent No.10 in FAO-3160-2011 and
for respondent No.10 in FAO-3161-2011 and
for respondent No.7 in FAO-4307-2011.

Mr. Amrinder Singh Sidhu, Advocate
for respondent No.4 in FAO Nos.4307 and 4807 of 2011.

Mr. Mriyank Sharma, Advocate
for respondent No.4 in FAO-4307-2011.

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SUDHIR MITTAL, J.

This judgment shall dispose of FAO Nos.3160 (O&M), 3161 (O&M), 3768, 3769, 4307 (O&M), 4807, 4976 and 4977 of 2011 as all of them arise out of the accident dated 22.08.2009 resulting in death of Satpal Singh Dahiya and his sister, namely, Shakuntla.

2. On 22.08.2009, Satpal Singh Dahiya was riding a motor-cycle from Safidon to Jind and his sister-Shakuntla was pillion rider. At about 02.15 p.m., when he reached the turn of village Sunderpur, bus bearing Registration No.HR-56-1925 was coming from Jind side and was being driven rashly and negligently. It came on to the wrong side of the road and struck the motor-cycle. Shakuntla died on the spot, whereas Satpal Singh Dahiya succumbed to his injuries after some time in the General Hospital, Jind. Two separate claim petitions have been filed, one each, by the legal heirs of Satpal Singh Dahiya and Shakuntla.

3. The facts relevant for the purposes of deciding these appeals are that as per the claimants, the accident was caused because respondent Nos.5 to 7, who were passengers in the offending bus, wanted the driver of the bus to stop the vehicle at an un-scheduled stop and on his refusal to do so, there was an altercation, during which the driver lost control of the bus resulting in the accident. On the other hand, respondent Nos.5 to 7 denied this story and pleaded that they were not at fault. Respondent No.1 (driver of the bus) also pleaded that respondent Nos.5 and 7 were equally responsible for the accident on account of their riotous conduct. So far as, the deceased are concerned, Satpal Singh Dahiya was working as a building contractor apart

from being employed in Jind Cooperative L & C Society Limited and was 39 years of age. Shakuntla, on the other hand, was a house-wife.

4. The learned Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the learned Tribunal'), has held the driver and owner of the bus as well as respondent Nos.5 to 7 to be equally responsible for the accident. Accordingly, the liability has been apportioned fifty-fifty between them.

5. I have heard learned counsel for the parties and with their able assistance have perused the record.

6. Two issues arise for consideration in these appeals:-

(A) Whether the driver of the bus and respondent Nos.5 to 7 were equally responsible for the accident, if yes, the proportion in which they are liable to compensate the claimants ?

(B) Whether the Tribunal had not properly assessed the compensation awardable to the claimants, if yes, then the compensation to which the claimants are entitled ?

<u>Question 'A'</u>

7. Learned counsel representing the appellants have vehemently submitted that only the driver of the bus was responsible for the accident. No incident of rowdyism as claimed by respondent No.1 (driver of the bus) took place. It was only a case of verbal altercation and the driver was not physically tackled by respondent Nos.5 to 7 nor was the steering wheel caught hold by any of them. It is further submitted that even if respondent Nos.5 to 7 were in anyway responsible for the accident, liability to pay compensation to the claimants was only of the owner and driver of the bus and the insurance company, as indemnifier. Attention has been drawn to

Section 168 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), in support of this contention. Reference has also been made to Ex.R-1 (challan filed in the criminal case) and the statement of PW-5, Satish Yadav, who was travelling by the same bus and was a dis-interested person. On the other hand, learned counsel for respondent No.1 (driver of the bus) has contended that the accident was the result of actions of respondent Nos.5 to 7. Had they not indulged in riotous behavior, the accident would not have been caused ? According to him, the accident was the result of the behavior of respondent Nos.5 to 7 only. He has relied upon Ex.P-1 (FIR registered on the basis of complaint of respondent No.1).

8. PW-5, Satish Yadav has categorically deposed as follows:-

> *"At about 02.15 p.m., when the said bus reached near Sunderpur turn, the respondent Nos.5 to 7 asked the respondent No.1 to stop the bus at said turn but there was no stoppage of said bus, thus the driver did not stop the bus and there took place some hot words exchanged between them. All of sudden, the respondent No.1 gave full speed to the bus and driven the same in rash and negligent manner. Passengers requested him to drive the bus on moderate speed but of no use. The respondent No.1 paid no heed and in this process he took his bus in to wrong side and given hit to a motor-cycle which was coming from Safidon side resultantly both occupants of motor-cycle fell down on road."*

9. Learned counsel for respondent No.1 (driver of the bus) did not cross-examine this witness on the aspect of man-handling of respondent No.1 by respondent Nos.5 to 7 and of physically taking hold of the steering of the bus. Ex.R-1 is the challan presented in the criminal case after investigation, wherein it is stated that the allegation regarding the steering of

the bus having been physically caught hold of by respondent No.5 is untrue. In view of this evidence, it cannot be said that respondent Nos.5 to 7 contributed towards the accident, in any manner. Findings to the contrary by the learned Tribunal, are erroneous and are set aside. It is held that the accident was caused only on account of the rash and negligent driving of respondent No.1.

10. Since, I have held that only respondent No.1 (driver of the bus) was responsible for causing the accident, the liability to pay compensation rests on the driver/owner and the insurance company. Respondent Nos.5 to 7 are not liable to pay any compensation.

Question 'B'

11. This question is being answered by taking the two deaths separately.

Compensation payable for the death of Satpal Singh Dahiya:-

12. It is not in dispute that the deceased was 39 years of age and was survived by a widow and three minor children. The learned Tribunal assessed the compensation by determining the monthly income of the deceased to be ₹10,000/-. The contentions of the claimants that the deceased was working as a building contractor and that he was an employee of Jind Cooperative L & C Society Limited were rejected. Further, it was held that income reflected in the income tax returns cannot be considered to be his recurring income.

13. I have seen the Income Tax Returns for the Assessment Year 2008-09 (Ex.P-3) and that for the Assessment Year 2009-10 (Ex.P-4). Ex.P-3 was received in the Income Tax Department on 22.12.2008 and

Ex.P-4 was received on 31.07.2009. Thus, it is apparent that both the income tax returns were filed prior to the date of the accident. The said returns have been proven by PW-4, Arun Mishra, Tax Assistant, office of Income Tax, Jind. Thus, the income reflected therein cannot be doubted. It is common knowledge that the income reflected in the income tax return is normally lesser than what an individual actually earns and therefore, logic dictates that the income reflected therein should be accepted. In both these income tax returns, income from business as well as from salary are shown under the respective heads. PW-3, Sanjay, Senior Stenographer, office of Superintendent Engineer, PWD (B&R), Kaithal, has proved that the deceased was a licensed contractor with the PWD (B&R), Haryana. This also shows that the deceased was working as a building contractor. Taking into account the evidence on record, I am of the firm opinion that annual income of the deceased was ₹3,42,545/- (as shown in Ex.P-4). He had four dependents and therefore, a deduction of 1/4th has to be made for personal expenses. Increase of 50% is required to be made on account of future prospects. The compensation payable to the claimants is thus, assessed as follows:-

(a)	Annual income, ₹3,42,545/- (increase of 50% on account of future prospects)	₹5,13,820/-
(b)	Annual dependency after deduction of 1/4th	₹3,85,365/-
(c)	Compensation after applying multiplier of 15	₹57,80,475/-
(d)	Loss of consortium	₹1,00,000/-
(e)	Loss of love and affection	₹1,00,000/-
(f)	Funeral expenses	₹25,000/-
(g)	Total compensation	₹60,05,475/-

14. The enhanced compensation shall be payable alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of payment. The said compensation be paid by respondent No.8-Insurance Company within a period of three months from the date of receipt of a certified copy of this judgment.

Compensation payable for the death of Smt. Shakuntla:-

15. The deceased was aged 43 years and was a house-wife. The claimants are her husband, son and daughter.

16. In the case of **Arun Kumar Aggarwal and Anr. Vs. National Insurance Company and Ors., 2010(3) RCR (Civil) 827,** the Hon'ble Supreme Court has held as follows:-

> *"23. In India the Courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children."*

It has further been held as follows:-

"32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents for a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in ***General manager Kerala State Road Transport Corporation V. Susamma Thomas (Mrs.) and others*** *(supra),* ***U.P.S.R.T.C V. Trilok Chandra*** *(supra),* ***Sarla Verma (Smt.) and others V. Delhi Transport Corporation and another*** *(supra) and also take guidance from the judgment in Lata Wadhwa's case. The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval*

because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker."

17. Thus, it is clear that in case of a house-wife income can be determined by applying 1/3rd deduction on the income of the spouse. In the present case, the husband has appeared as PW-1 and in his cross-examination, he has stated that he was working as District Food & Supplies Officer and drawing a salary of ₹35,000/- per month. This is further corroborated by his salary statement dated 12.05.2011 brought on record by way of additional evidence through CM No.18269-CII-2017 in FAO No.4307 of 2011. I have taken up this application along with the main appeal today. Since, the salary statement is a piece of evidence, which will enable me to decide this appeal more effectively, I allow this application. According to the salary statement, the income of the husband of the deceased, namely, Shakuntla was ₹39,365/- as on 12.05.2011. It would thus, be reasonable to accept the statement of this witness as PW-1 that on the date of the accident he was drawing ₹35,000/- per month.

18. Applying the ratio of the judgment in **Arun Kumar Aggarwal** (supra), the notional income of the deceased is assessed as ₹23,334/- per month. A multiplier of 14 is to be applied and no deduction is required to be made. Thus, the compensation is assessed as follows:-

(a)	Annual income	₹2,80,008/-
(b)	Annual dependency (applying a multiplier of 14)	₹39,20,112/-
(c)	Compensation for loss of love and affection	₹1,00,000/-

(d)	Compensation for Loss of consortium	₹1,00,000/-
(e)	Funeral expenses	₹25,000/-
(f)	Total compensation	₹41,45,112/-

19. The enhanced compensation shall be payable alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of payment. The said compensation be paid by the respondent-Insurance Company within a period of three months from the date of receipt of a certified copy of this judgment.

The appeals are allowed in the above terms.

(SUDHIR MITTAL)
JUDGE

September 15, 2017
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No