

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7343 of 2010
Date of decision: 22.09.2017

Raj Kumari and Others

...Appellants

Versus

Sanjeev Kumar and Others

...Respondents

FAO No. 7344 of 2010

Biru

...Appellant

Versus

Sanjeev Kumar and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vikram Bali, Advocate for the appellants.

Mr. S.P. Garg, Advocate
for respondents No. 1 and 2.

Mr. Vinod Gupta, Advocate
for New India Assurance Company Limited.

AVNEESH JHINGAN, J. (ORAL)

These two FAOs have been filed against award dated 11.06.2010 passed by the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal').

On 10.10.2005 a Canter bearing registration No. HR-37-A-1625 was transporting apple boxes. The said vehicle was being driven rashly and negligently, as a result of rash driving it turned turtle near HMT Pinjore. As consequence of the accident Siri Niwas lost his life and Biru suffered injuries. Both of them were travelling in the Canter.

Two claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, 'The Act') were filed.

The Tribunal after considering the witnesses and evidence awarded a sum of ₹3,98,000/- to the legal heirs of Siri Niwas and ₹ 1,20,000/- to Biru (injured), the said amounts were awarded along with interest @ 9% per annum.

Aggrieved of the said award the present appeals have been filed for enhancement of compensation. As the appeals arise out of the same award and originated from the same accident these are being decided by common order.

The facts have not been disputed by any of the party.

I have heard learned counsel for the parties and perused the paper-book and record.

FAO No. 7343 of 2010

Learned counsel for the appellants has argued that the amount of ₹3,98,000/- awarded by the Tribunal to the legal heirs of Siri Niwas is on the lower side. He further contended that amounts awarded for loss of estate, funeral expenses and loss of consortium are very meager. His further grievance is that nothing has been awarded for loss of love and affection.

Learned counsel for the respondents argued that the claimants were not able to prove the income of the deceased in spite of that Tribunal had awarded sufficient amount and no further enhancement is called for.

The contentions raised by learned counsel for the appellants deserve acceptance.

The loss of dependency has been challenged on the ground that the deceased was 40 years of age at the time of accident and the Tribunal

has applied a multiplier of 14. Counsel for the respondents could not raise any serious objection to the said averment.

Hon'ble the Apex Court in Smt. Sarla Verma Vs. Delhi Transport Corporation 2009(3) RCR (Civil) 77. has specified the multipliers to be applied as per the age of the deceased. The Apex Court has held that in case the deceased is 40 years of age multiplier of 15 has to be applied. Since the income assessed and the deduction for self expenses is not in dispute the loss of dependency would be re-calculated in the table below by changing the multiplier from 14 to 15.

Counsel for the appellants has argued that amount of ₹ 5,000/- for loss of estate, ₹ 5,000 for funeral expenses and ₹ 10,000 for loss of consortium awarded by the Tribunal are on the lower side.

Learned counsel for the respondents resisted any enhancement.

The Hon'ble Apex Court in case of Asha Verman and Others Vs. Maharaj Singh and Others, 2015(4) SCC (Civil) 767 and in case of Rajesh and Others Versus Rajbir Singh and Others, 2013 (9) SCC 54, has held that in case of death in the accident the compensation has to be awarded under various conventional heads including for loss of love and affection. It has further been held that the amount of compensation to be awarded under the various heads has to be increased from time to time.

In the present case the deceased was 40 years of age and was survived by a young widow, three minor daughters and one major daughter. The widow was aged 37 years, the age of the minor daughters at the time of accident was from 8 to 18½ years. Due to loss of father in such a young age, not only up-brining, education of children will also suffer. As per the aforesaid decision of the Hon'ble Apex Court the children should have been

compensated for loss of love and affection of their father. Keeping in view the facts of the case and the law laid down by the Hon'ble Apex Court the amount for loss of love and affection is awarded as per the table given below. The amounts awarded by the Tribunal are enhanced.

Head	Awarded by Tribunal	Now granted by this Court
Loss of dependency	₹ 3,78,000/- (2250x12x15)	₹4,05,000/-
Loss of estate	₹5,000	₹25,000
Funeral Expenses	₹5,000	₹25,000
Loss of Consortium	₹10,000	₹50,000
Loss of love and affection	Nil	₹ 75,000
Total	₹ 3,98,000/-	₹ 5,80,000/-

The award dated 11.06.2010 passed in claim petition No. 2 of 06.01.2006 is modified to the extent that amount awarded of ₹3,98,000/- is enhanced to ₹5,80,000/-.

The claimants would be entitled to enhanced compensation along with interest at the rate of 6% per annum from the date of filing of the claim petition, till realization of the amount.

FAO No. 7344 of 2010

This appeal has been filed by Biru (injured). The facts so far as accident is concerned are same as referred to in FAO No. 7343 of 2010.

In the present case the injured suffered 30% disability due to stiffness of knee with inability to squat and sit cross legs. The Tribunal after considering the disability awarded a sum of ₹1,20,000/-

Counsel for the appellant argued that there was 30% permanent disability, his leg was affected which resulted in hindering his working ability as a cleaner of the truck. He contends for enhancement of compensation of the amount awarded.

Learned counsel for the respondents defended the award. After

hearing learned counsel for the parties it has come on record that injured was 42 years of age at the time of an accident. His 30% disability with regard to the lower limb was duly proved by the doctor who appeared as PW-1. The Disability Certificate and deposition of the doctor has proved that the injury has resulted in stiffness of knee with in ability to squat and to sit cross legs. The injured was admitted in the hospital from 11.10.2005 to 13.10.2005. The duties of the cleaner of the truck are such that restricted movement in his leg will act as a hindrance in performing his duty.

Keeping in view the facts of the case and the nature of injury another sum of ₹ 50,000/- is awarded to the appellant.

The award dated 11.06.2010 passed in MACT petition No. 1 of 06.01.2006 is modified to the extent that the amount awarded of ₹ 1,20,000/- is enhanced to ₹1,70,000/-. The claimant shall be entitled to the enhanced compensation along with interest at the rate of 6% per annum from the date of filing of the claim petition, till realization of the amount.

Both the appeals are partly allowed in the aforesaid terms.

September 22, 2017

Poonam (II)

**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned:

Yes

Whether reportable:

Yes