

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

FAO No.10431 of 2014

Date of decision: 07.02.2017

Jagdev Singh and others

..Appellants

Versus

Parveen Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Dheeraj Narula, Advocate,
for the appellants.

Mr. Rajbir Singh, Advocate,
for the Insurance Company.

ANITA CHAUDHRY, J.

It is the claimant's appeal seeking enhancement in the award dated 07.07.2014, passed by the Motor Accidents Claims Tribunal, Sangrur, on account of death of Kushpreet Kaur in a motor vehicular accident.

Briefly stated Kushpreet Kaur was going to Government Primary School, Bhojowali, to attend to her duty on a scooty. Another teacher was following her on a separate motorcycle. At about 8.30 am, Kushpreet Kaur was a kilometer away from village Benra, when a Tata-407 driven by respondent no.1, came at a high speed from the opposite direction and went to the wrong side of the road and struck against the scooty driven by Kushpreet Kaur. The scooty was damaged and Khushpreet Kaur sustained multiple injuries and died on the spot. The FIR was registered the same day on the statement of Jasvir Singh.

The claimants had pleaded that Khushpreet was earning

Rs.25,000/- per month. The Tribunal held that the accident occurred on account of negligence of respondent no.1 and calculated the compensation but deducted 10% of the compensation as it found that the deceased was not wearing a helmet and it could be that she would not have died, had she worn the helmet. The Tribunal took the revised salary of Rs.9000/- per month on the basis of notification Ex.A-7 and made addition of 30% for future prospects and assessed the annual income to Rs.1,40,400/-. It made a deduction of 1/3rd for personal expenses and after applying the multiplier of 17, it calculated the total loss of Rs.15,91,200/-. The Tribunal had added Rs.25,000/- on account of loss of consortium, Rs. 10,000/- on account of loss of estate and Rs.25,000/- on account of funeral expenses.

Counsel for the appellant has urged that the Tribunal had wrongly assessed the income of the deceased as Rs.9,000/- as she was a housewife also and some addition towards the services rendered to the family and at least Rs.5000/- should have been added to calculate the income. It was urged that the deduction of 10% was wrongly made as there was no plea or evidence that the deceased had contributed in the accident and at the most it can be said that she was negligent in not wearing the helmet and this cannot be taken as a component for reduction of the compensation. It was urged that there should have been addition of 50% towards future prospects and the Tribunal should have awarded one lac under the head of loss of consortium and Rs.1 lac for loss of her estate and Rs.1 lac for love and affection for the minor child. Reliance was placed upon United India Insurance Co. Ltd. v. Sube Singh and others(FAO No.218 of 2014, decided on 15.01.2014), Jitendera Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others, 2015(1) Law Herald

(SC) 657, Paramjit Singh and another v. Dilbagh Singh alias Bagga and others, 2014 (4) AICJ 65, Vimal Kumar and others v. Kishore Dan and others, 2013 (2) RCR(Civil), 945, Rupinder Sharma alias Komal Sharma and others v. SPR Basant Kumar and another, 2013 (4) TAC 546 and India Lease Development Ltd. v. Savita and others, 2013 (2) AICJ 563.

On the other hand, the submission on behalf of the Insurance Company, is that the deceased was not a housewife and she was a teacher and only the income she was earning could be added. It was urged that the deceased was not wearing a helmet and it could be that the accident would not have been fatal and the injury was on the head and she had contributed and therefore, the cut was rightly made.

The Tribunal was in error in giving the finding that 10% reduction must be made for contributory negligence. There was no plea that the deceased had contributed in the accident, no issue was framed nor any evidence was led. The concept of contributory negligence was wrongly understood by the Tribunal in assuming that by not wearing a helmet she was guilty of contributory negligence. The contributory factor must be to the extent of collision and not because she was not wearing a helmet. The finding could not be given that she was negligent in causing the accident. At the most, it could be said that she was only negligent in not wearing the helmet that caused her death. This could not have been taken as a component for reduction of the compensation.

Considering the next submission, keeping in view the age of the deceased, which was 30 years, the addition towards future prospects should have been 50% and not 30%. The argument, however, of the appellant that some amount should be added to the income for the services

rendered by the housewife need to be rejected. The appellants have been unable to support their submissions with any case law. It is only the income that has to be taken into consideration and no addition can be allowed.

The Tribunal had rightly taken the salary to be Rs.9000/- per month keeping in view the latest notification, therefore, making an addition of 50%, the income would be Rs.13500/- per month and the annual income would come to Rs.1,62,000/-. Making a deduction of 1/3rd, the income available for the family would be Rs.1,08,000/- and applying the multiplier of 17, the compensation would be Rs.18,36,000/-, Rs.75,000/- should be added for loss of consortium (Rs.25,000/- had already been allowed by the Tribunal), Rs.90,000/- should be added for loss of estate (Rs.10,000/- has already been allowed by the Tribunal) and Rs.1 lac should be added for loss of love and affection for the minor child. The total of this would come to Rs.21,01,000/-. The Tribunal had allowed Rs.14,86,080/-, which would be deducted and the remaining amount of Rs.6,14,920/- would be apportioned in the same ratio as was allowed by the Tribunal. The share of the minor would be deposited in his name in the FDR till he attains majority and would be subject to any order passed by the Tribunal. The appellant would also be entitled to interest @ 6% per annum from the date of filing of the appeal till realization.

Appeal is allowed accordingly.

February 07, 2017
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No