

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

XOBJC-270-CII of 2015 in
FAO No. 2725 of 2013
Date of decision: 22.09.2017

Maninder Singh and Another

...Appellants

Versus

Rajinder Kaur and Others

...Respondents

FAO No. 2726 of 2013 (O&M)

Maninder Singh and Another

...Appellants

Versus

Raghubir Singh and Another

...Respondents

FAO No. 693 of 2017

Rajinder Kaur & Others

...Appellants

Versus

Maninder Singh & Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Vikram Bali, Advocate
for cross-objector/respondents No. 1 to 4.

Mr. D.P. Gupta, Advocate
for respondent No. 5-Insurance Company.

AVNEESH JHINGAN, J. (ORAL)

The present three FAOs and a cross objection are filed against
the award dated 16.04.2013 passed by Motor Accident Claims Tribunal,
Panchkula (for short, 'The Tribunal').

FAO No. 2725 of 2013 and 2726 of 2013, these two appeals

have been filed by owner and driver of the truck and FAO No. 693 of 2017 and Cross objection No. 270-CII of 2015 has been filed by the claimants for enhancement of the compensation.

Since all the cases pertain to same award and consequence of the same accident, these are being decided by a common order.

The facts relevant for the disposal of the present cases are that on 30.07.2010 a Scooter bearing registration No. PB-16-B-9137 was struck by a truck bearing registration No. HR-37-A-0814. The accident occurred near Kali Mata Mandir, Kalka. As a result of the accident Rajinder Kumar aged 47 years who was driving the scooter lost his life on the spot and the pillion rider Raghbir suffered injuries.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'The Act') was filed by the LRs of the deceased and Raghbir Singh (injured) also filed a claim petition. The Tribunal after considering the evidence and witnesses awarded a sum of ₹ 13,56,936/- to the LRs of the deceased and amount of ₹2,62,292/- was awarded to the injured along with interest at the rate of 6% per annum.

The facts regarding rash and negligent driving, involvement of the vehicle in the accident etc. are not disputed.

The only issue raised in the appeals of owner and the driver is that the issue with regard to liability has not been correctly decided, after appreciating the material which was before the Tribunal. The appeal filed by the claimants is only with regard to the enhancement of the amount awarded under the conventional heads.

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

Counsel for the appellant i. e. owner and driver has contended that the driver had a valid driving licence and same was produced before the Tribunal as Ex. R-2. He further contended that the Junior Clerk Faizal Khan who appeared from the office of RTO Agra admittedly appeared without record and hence his statement is not worth reliance. He argued that in such circumstances the liability should not have been fastened upon the owner and the driver.

The learned counsel for the Insurance Company has argued that the driving licence Ex. R-1 was found to be a fake licence.

After hearing both the counsel and going through the record it is deemed appropriate that the matter only with regard to fixing the liability should be remanded back to the Tribunal. The remand in such circumstances is necessitated for the reason that two different driving licenses i.e. Ex.R-1 and Ex.R-2 were produced before the Tribunal. Junior Clerk who appeared from the RTO office admits that he had come without record, as the records were with the police with regard to some investigation. In such circumstances his appearance was of no use as he was not in a position to depose about the validity of either of the driving licence. It is also a suspense that where from Ex. R-1 was procured and produced before the Tribunal.

From the facts mentioned above it is necessitated that the matter of fixing liability should be decided, afresh. Both the parties should be given effective opportunities to lead evidence or to produce material in support of their respective cases.

The net result is that the appeals of the driver-cum-owner are allowed to the extent that for deciding the issue of liability the matter is

remanded to the Tribunal.

The Tribunal shall provide three effective opportunities to each party to support their case.

It has been pointed out that the accident occurred in the year 2010 and till date neither the deceased nor the injured got any substantial amount except the minimum statutory requirement for filing the appeal. In such circumstances and to balance the equity between the parties the remand is made subject to the condition that the owner and driver would jointly and severally furnish surety to the satisfaction of the Tribunal. This surety is being asked for so that the amount disbursed to the claimants would not be affected by the out-come of the remand proceedings.

The Insurance Company shall disburse the compensation to the claimants along with interest after furnishing of surety by owner and driver.

With regard to FAO No. 693 of 2017, there is an application for condonation of delay of 1061 days. The said application is supported by an affidavit. For the reasons mentioned therein the said delay is condoned. The appellants in this FAO had earlier filed the cross-objections, this appeal is nothing but is pertaining to the same prayer which was made in the cross-objections.

Counsel for the appellants has argued that Tribunal has awarded an amount of ₹13,56,936/- which includes only ₹30,000/- under the Conventional Heads. His prayer is that the amount awarded under the Conventional Heads should be enhanced.

The learned counsel for the Insurance Company has opposed the said prayer stating that firstly the amount awarded is sufficient, secondly in any case there is long delay in filing the appeal, therefore,

either the amount should not be enhanced or the interest for the intervening period should not be granted.

There is no dispute on facts by the parties.

The counsel for the appellants has not challenged the dependency compensation awarded. But his contention with regard to conventional heads deserves acceptance. So far as the enhancement of compensation under conventional heads is concerned, the Hon'ble the Apex Court in *Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767*, held as under:

*“17. Further, the High Court has erred in awarding only ₹ 5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award ₹1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil) 876: 2014 (3) Recent Apex Judgments (R.A.J.) 112: 2014 (5) SCALE 479, ₹ 25,000/- towards funeral expenses and ₹ 1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (3) R.C.R. (Civil) 170; 2013(3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.*****

*18. Further, we award ₹ 1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors., 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166. Further, a sum of ₹ 50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs.*****

United India Insurance Co.Ltd., 2013(4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance to the minor children.

Hon'ble the Apex Court in ***Rajesh and others Versus Rajbir Singh and others***, 2013 (9) SCC 54, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased.”

A perusal of the above decisions shows that the compensation under the heads mentioned therein is to be awarded. The Apex Court has even enhanced the amount awarded by the High Court under the Conventional Heads.

Keeping in view the fact that the deceased has survived by old father and 2 major children and taking into consideration the facts of the case and the arguments raised, the just and equitable compensation could be

arrived at by awarding another sum of ₹ 2,00,000 in lump sum to the appellants. It may be clarified that while arriving at this figure, component of interest to be granted under Section 171 of Act has been taken care of.

Learned counsel for the appellants in view of the enhancement of compensation, has stated that cross objection be dismissed as withdrawn.

The net result is that the appeals of the driver and owner are allowed to the extent the matter is remanded back to the Tribunal to decide the issue of fixing liability afresh. The appeal of the LRs of the deceased is partly allowed by awarding another lumpsum amount of ₹ 2,00,000/-. All the cases are disposed of in above terms.

The owner and the driver and the Insurance Company should appear before the Tribunal on 24.10.2017.

September 22, 2017
Poonam (II)

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned:

Yes

Whether reportable:

Yes