

In the High Court of Punjab and Haryana at Chandigarh

1. F.A.O No. 1956 of 2014 (O&M)
Date of Decision: 27.3.2017

The General Manager, Punjab Roadways and othersAppellants

Versus

Asha Rani and anotherRespondents

2. F.A.O No. 10121 of 2014 (O&M)

Asha RaniAppellant

Versus

Joginder Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Amit Chaudhary, Addl. A.G., Punjab
for the appellants.
(in FAO-1956 of 2014) and
for respondents No. 2 to 4
(in FAO-10121 of 2014).

Mr. Kushagra Mahajan, Advocate
for respondent No. 1
(in FAO-1956 of 2014) and
for the appellant.
(in FAO-10121 of 2014).

ANITA CHAUDHRY, J

Two appeals have been filed against the award dated 7.10.2013
passed by the Motor Accidents Claims Tribunal, Amritsar.

The claimants are seeking enhancement whereas PUNBUS is

disputing its liability and assailing the finding recorded on issue No. 1. The compensation was stated to be on the higher side for more than two reasons which I intend to refer to in the later part of the judgment.

Kushpreet was 18 years old and was unmarried when he met with an accident on 13.2.2013. He had passed his first year of diploma in Mechanical Engineering from Shaheed Bhagat Singh Polytechnic College at Patti. Lovepreet, his brother, boarded the same bus from the back door whereas Kushpreet and few others were about to board the bus from the front door when the bus suddenly started moving and Kushpreet fell on the road and was crushed by the front left tyre of the bus. It was claimed that the deceased was earning Rs. 6,000/- as he was giving tuitions. The Tribunal found that there was no evidence that he was earning any amount but considering the fact that he was meritorious student and had bright prospects, his income was taken to be Rs. 9,000/- per month and Rs. 4500/- per month was deducted as loss of dependency and applying the multiplier of 16, the compensation was calculated as Rs. 8,64,000/-. To this, a sum of Rs. 6,000/- was added for funeral expenses and Rs. 8,000/- for loss of estate.

The counsel appearing for PUNBUS has urged that minimum wages should have been taken as the notional income and there was no evidence that the child was bright or could earn that much. It was urged that the finding recorded on issue No. 1 was also incorrect as the Tribunal had ignored the evidence and the deceased himself was at fault as he was trying to board a moving bus. It was urged that the claimants have pleaded that the deceased was earning Rs. 6,000/- per month but the Tribunal had

been considering the age of the mother which should have been 15.

The submission on the other hand, while relying upon '*Bajaj Allianz General Insurance Co. Ltd. vs. Bacchu Singh and others 2013 ACJ 2364*', was that the facts of the present case are similar to the facts in *Bajaj Allianz's* case (supra) and there also the deceased was a third year student pursuing his Diploma in Engineering and his income was taken at Rs. 20,000/- per month. It was urged that the future prospects could also be added and multiplier should have been 18 and no amount has been allowed for loss of love and affection.

I find no infirmity in the findings so far as the negligence is concerned. The deceased was boarding the bus from the front door and the witnesses have stated that the driver suddenly moved the bus without waiting for the whistle and Kushpreet fell down and was crushed. The police had registered the FIR after verifying the facts. There is no reason to take a different view. The finding recorded on issue No. 1 is confirmed.

The Delhi High Court in *Bajaj Allianz's* case (supra) was dealing with the case of a third year student who was pursuing his diploma in Engineering. Considering the brilliant sports record, it was noted that he could be employed as a Physical Education Teacher in any Government School and could have earned Rs. 20,000/-. Para 6 of the judgment reads as under:-

“Apart from pursuing the Diploma in Electrical Engineering from a Govt. Polytechnic, the deceased had a brilliant record in sports. He represented Delhi State in State Judo Championship in the year 2005-06. He obtained first position in 1500 mtr. race in the Annual Sports Meet held by G.B. Pant Polytechnic in the year 2008; he got second position in 6th Sub-Junior Tug- of-War National Championship; and he

obtained third position in 1500 mtr. race in the year 2007-08 in Inter-Polytechnic Sports Meet. There are other certificates showing that he was an excellent sports person. He also obtained Diploma in Software Engineering from NIIT. These documents were available on the trial court record though were not specifically proved. ”

In the case in hand, the claimants had pleaded that the deceased was earning Rs. 6,000/- per month. The certificate with respect to his first year diploma is available which shows that the deceased had scored 248 marks out of 525. There was no other material for the Court to assume that he could earn Rs. 9,000/- per month or that he had brilliant record. The minimum wages in Punjab in 2013 were around Rs. 5200/- per month. Since the deceased was pursuing his diploma, the notional income could not be more than Rs. 8,000/- per month. The assessment taking Rs. 9,000/- per month as income was on the higher side. No addition towards future prospects should be made since the deceased was not earning. He was not employed and did not have a permanent job and the matter is pending with the larger Bench. Taking the income to be Rs. 8,000/- per month and deducting 50% and since the deceased was unmarried, the calculations have to be made again taking the age of the mother into consideration which was 38. Therefore, the multiplier applicable would be 15 and the compensation would be Rs. 7,20,000/-. To this, a sum of Rs. 1,00,000/- should be added for loss of love and affection, Rs. 19,000/- more are added for funeral expenses and Rs. 92,000/- more are added for loss of estate which makes the total to Rs. 9,31,000/-. The Tribunal had awarded Rs. 8,78,000/- which would be deducted and the remaining amount would be payable with interest at the same rate as was awarded by the Tribunal.

The appeal filed by PUNBUS is dismissed and the award is modified to the extent noted above. The appeal filed by the claimant is partly allowed.

(ANITA CHAUDHRY)
JUDGE

March 27, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No