

In the High Court of Punjab and Haryana at Chandigarh

FAO-980-1988 (O&M)

Date of Decision:- 14.5.2018

Kamla Devi and others

....Appellants

Versus

Pepsu Road Transport Corporation, Patiala through its General Manager,
Patiala and others

....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vipul Aggarwal, Advocate for the appellants.

Mr. Aman Sharma, Advocate for respondent No.1.

Mr. R.C. Gupta, Advocate for respondent No.5.

GURVINDER SINGH GILL J. (ORAL)

1. Kamla Devi and others have filed this appeal challenging award dated 15.6.1988 passed by Motor Accident Claims Tribunal, Sangrur seeking enhancement of compensation, as awarded to the claimants on account of death of Kaur Sain in vehicular accident which took place on 13.4.1986. While the claimant Kamla Devi is widow of deceased Kaur Sain, claimants Jagdish Chand, Surinder Singla, Pardeep Kumar and Inderjit Singla are sons of Kaur Sain and claimants Pushpa Jain, Sarita Bansal, Prem Lata Mittal, Santosh Goyal, Kusum Lata and Kiran Bala are daughters of Kaur Sain.
2. The case set up by the claimants is that on 13.4.1986, Kaur Sain had boarded bus bearing registration no. PJG-7341 belonging to the Pepsu Road Transport Corporation, Bathinda Depot-II at Patiala for going to Sangrur. However, the said bus was being driven rashly and negligently by its driver and the same struck against a truck bearing registration no.RSC-8939 coming from opposite

side, which was also being driven rashly and negligently. The claim was resisted by the respondents who filed separate written statements.

3. The parties were put to proof on the following issues :-

1. Whether death of Kaur Sain was caused due to rash and negligent driving of Bus NO.PJG-7341 by Kulwant Singh, respondent No.2 and Truck No.RSC-8939 driven by Dalip Singh, respondent No.4? O.P.A.
2. If issue No.1 is proved to what amount the claimants are entitled to compensation and from whom? O.P.A.
3. Whether Dalip Singh, respondent NO.4, was holding a valid driving license and route permit at the time of alleged accident? O.P.R. No.4.
4. Relief.

4. The learned Tribunal, after going through the evidence on record held that the accident in question had occurred due to rash and negligent driving on part of the driver of the truck in question and consequently awarded compensation to the tune of ₹ 85,000/- to the claimant Nos.1,5, 10 and 11 in equal shares.
5. The learned counsel for the claimants, while assailing the impugned award as regard quantum, has submitted that the same has been passed against the settled principles of law and that while assessing income neither the multiplier has been applied appropriately and nor anything has been awarded towards future prospects, loss of consortium, funeral expenses and loss to estate.
6. On the other hand, the learned counsel for the respondent No.5-Insurance Company has submitted that bearing in mind the fact that the accident had taken place in the year 1986, the compensation awarded is adequate and there is no room for enhancement.

7. I have considered the rival submissions and have also gone through the impugned judgment.
8. The deceased was a commission agent and was an income tax assessee. The learned Tribunal by taking his annual income to be ₹ 25,120/-, assessed the dependency of claimants as ₹ 17,000/-, being 2/3rd of his income. The said assessment cannot be accepted to be a correct assessment inasmuch as neither the personal expenses have been assessed correctly nor any deduction has been made towards income tax and nor “future prospects” have been taken into account. Keeping in view the income of the deceased, it can safely be said that he must have been paying at least ₹ 1,700/- towards income tax. Thus, after deduction of income tax, his net annual income can be said to be ₹23,420/-. Keeping in view the dictum of Hon'ble Supreme Court in (2017) 16 SCC 680 National Insurance Company Limited Vs. Pranay Sethi and others, an amount equal to 10% needs to be added to the aforesaid income towards “future prospects” i.e. the likelihood of increase in income and future. By adding the same, the amount works out to ₹ 25,762/- (23,420+10%=25,762). Keeping in view the large number of dependents including his widow, the personal expenses could not have been deducted more than 1/4th of his income. Thus, by deducting personal expenses to the tune of 1/4th, the annual dependency works out as ₹19,321 per annum.
9. Keeping in view the age of the deceased which has been assessed as 56 years and bearing in mind the dictum of Hon'ble the Supreme Court in (2009) 6 SCC 121 - Sarla Verma and others vs. Delhi Transport Corporation and another, a multiplicand of '9' would be appropriate in the present case. By applying the multiplier of 9 to the above assessed dependency of ₹ 19,321/-, the

compensation works out to ₹1,73,889/- (19,321 x 9 = 1,73,889). In addition to the above assessed amount, the claimant No. 1, being widow, is entitled to an amount of ₹ 40,000 towards loss of consortium. Another amount of ₹15,000/- towards loss to estate and ₹ 15,000/- towards funeral expenses also needs to be added to the above assessed amount of compensation. Thus, the total compensation works out to ₹ 2,43,889/-.

10. The appellants are thus held entitled to compensation to the tune of ₹ 2,43,889/- along with interest at the rate of 7½%, payable w.e.f. the date of filing of claim petition till realisation, to be paid by respondent No.3, 4 and 5 jointly and severally. However, the present accident having taken place in the year 1986 i.e. prior to amendment of the Act in the year 1988, the liability of the insurer is held to be limited to the extent of ₹ 1,50,000/- as per provisions of Section 95(2)(a) of the Motor Vehicles Act, 1939. Nothing has been shown to this Court as to whether any extra premium had been paid by the insured to extend the liability beyond ₹ 1,50,000/-. Thus, it is held that the liability of the insurer i.e. respondent No. 5 would be limited to indemnify the insured upto an amount of ₹ 1,50,000/- only. The appellants would, however, be at liberty to recover the balance amount from respondent No.3 and 4 i.e. the owner and driver of offending truck, who are also responsible to pay the same jointly and severally. The aforesaid amount of compensation shall be shared by the appellants equally. The claim petition stands accepted in above-mentioned terms.

14.05.2018

kamal

(Gurvinder Singh Gill)

Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No