

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

X Obj No.23-CII of 2004 and
FAO No.459 of 2000
Date of Decision.10.01.2018

Karamjit Singh

.....Appellant

Vs

Tej Kaur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. IPS Mangat, Advocate
for the appellant.

Mr. H.S. Dhandi, Advocate
for the cross objectors-claimants.

Ms. Akansha, AAG, Punjab.

Mr. R.K. Bashamboo, Advocate
for the insurance company.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of appeal bearing No.459 of 2000 and the cross objection bearing No.23-CII of 2004 arising out of the same accident. The appeal bearing No.459 of 2000 is at the instance of the owner of the Tempo bearing No.PB-09-7032 challenging the liability fastened upon it and the cross objection aforementioned at the instance of the claimants for seeking enhancement of compensation for death of one Chanan Singh, who unfortunately died in a motor accident occurred on 20.03.1994. He left behind widow, five children and mother. He was stated to be engaged in agriculture and dairy farming and earning ₹5000/- per month.

Mr. IPS Mangat, learned counsel appearing on behalf of the appellant-owner submitted that the Tribunal has grossly erred in fastening

the liability upon the owner and driver of the aforementioned tempo when it has specifically come on record i.e. in the claim petition and the FIR that both drivers of the vehicles i.e. tempo and bus were equally rash and negligence therefore, a contributory negligence was required to be apportioned between the tempo and bus involved in the accident. The finding of the Tribunal that the offending tempo was not insured is based on conjectures and surmises, for, on the one hand the insurance company admitted that the vehicle registered in the name of Karamjit was insured with them but on the other hand, stated that it was not the same vehicle which was involved in the accident. It cannot blow hot and cold in same breath. Moreover, the amount of compensation assessed is on higher side, thus, urges this Court for modification of the award passed by the Tribunal.

Mr. H.S. Dhandi, learned counsel appearing on behalf of the claimants-cross objectors submitted that the income taken by the Tribunal as Rs.1500/- per month is on lower side when there was a specific pleading that the deceased was earning Rs.5000/- per month. It did not provide anything towards future prospects, much less, the deduction of 1/3rd towards personal expenses is on higher side keeping in view the fact that there were seven dependents at the time of accident, thus, urges this Court for enhancement of compensation.

Mr. Bashamboo, learned counsel appearing on behalf of the insurance company and Ms. Akansha, AAG, Punjab submit that the finding of the Tribunal on the issue of liability is perfectly legal and justified and the appeal filed by the owner sans merit, thus, urges this Court for dismissal of the same.

I have heard leaned counsel for the parties and appraised the paper book.

As regards the appeal filed by the owner, I am of the view that there is no force and merit in the submissions of Mr. Mangat. Though the eye witnesses, PW1 and PW2 stated in examination-in-chief that it was a head on collision but in the cross-examination deposed that the tempo was being driven at a very high speed and in the process of overtaking a tractor trolley, the tempo collided with the bus and stuck in the rear portion of the bus. Had it been a head on collision, the impact of the accident could have been on the front side of the bus and not the rear side. This could have only been possible if the bus was being driven behind the tractor trolley and in the process of overtaking the tractor trolley the tempo driver lost control over the vehicle and collided with rear side of the bus. Even the driver of the tempo did not step into the witness box. The insurance policy of the vehicle had not seen the light of the day. In the absence of insurance policy, the Tribunal has rightly held the owner and driver of the offending tempo to satisfy the claim.

As regards the enhancement of compensation, I am of the view that the accident had taken place in the year 1994 and the income taken by the Tribunal to the tune of Rs.1500/- per month as per minimum wages, in the absence of any documentary evidence, is little on higher side, for, a labourer at the relevant point of time was used to earn Rs.40/- per day. The deceased was 60 years of age at the time of his death, therefore, there was hardly any scope for future prospects. All the children of the deceased were major at the time of his death, therefore, the deduction made towards

personal expenses seems reasonable. In my view, there is hardly any scope for enhancement.

Keeping in view the aforementioned, I do not find any reason for interference in the award passed by the Tribunal. Both the appeal and the cross objections are dismissed.

(AMIT RAWAL)
JUDGE

January 18, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes