

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

FAO No.863 of 2004 (O&M)
Date of decision: 20.03.2018

Amarjit Kaur and others

... Appellants

Versus

Pal Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. V.K. Kataria, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate for
Mr. Pradeep Goyal, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Sukhpal Singh in a motor vehicular accident that took place on 11.01.2001.

The Tribunal has awarded compensation of Rs.4,20,000/-,
detailed hereunder:-

1. Monthly income of the deceased	Rs.9190/-
2. Annual dependency after deduction for personal expenses	Rs.60,000/-
3. Multiplier	14
4. Loss of dependency	Rs.8,40,000/-

However, claimants have been held entitled to 50% of the amount i.e. Rs.4,20,000/- as 50% negligence has been attributed to the

deceased, in causing the accident.

Counsel for the appellants has challenged findings of the Tribunal on issue No.1 attributing contributory negligence to the deceased by relying upon certain facts elicited in the statement of conductor of the ill-fated bus, driven by the deceased and testimony of Pal Singh, driver of the offending truck bearing No.PCX-1688. It is argued with vehemence that testimony of Sukhpal Singh, conductor of the bus that truck came on the wrong side of the road and collided with the bus driven by Sukhpal Singh (deceased) at the speed of 40 to 45 kmph has not been successfully assailed by the contesting party, during the course of cross-examination. Further argued that Sukhpal Singh AW2 was suggested that it was due to fog, bad weather and visibility being poor, accident had taken place. But this fact gets falsified and belied in view of testimony of Pal Singh, truck driver who admitted in his cross-examination that the weather was clear.

Another submission made by counsel is that merely because accident was head-on collision, ipso facto not sufficient to record a finding that accident was the result of contributory negligence of both the vehicles particularly in the circumstances that testimony of Sukhpal Singh AW2 is more than sufficient to establish that accident was the result of exclusive negligence of the truck driver.

To substantiate plea of the claimants for enhancement of compensation, it is argued that the deceased was 43 years old and the claimants are entitled to benefit of increase in income for future prospects

@ 30%. Deduction for personal expenses should be 1/4th as application for compensation was filed by the widow, three minor children and mother of the deceased. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 with the plea that as the present is a case of head-on collision, driver of the bus cannot escape his liability for causing the occurrence. He has also supported assessment made by the Tribunal on the premise that adequate compensation has been awarded.

I have heard counsel for the parties, perused the paper book particularly award dated 28.11.2003 passed by the Motor Accidents Claims Tribunal, Faridkot (in short 'the Tribunal').

Perusal of findings recorded in para 10 of the award makes it evident that Sukhpal Singh AW2 tendered into evidence his affidavit Ex.A3 and categorically deposed that the ill-fated bus was driven carefully and at a slow speed and truck bearing no.PCX-1688 came from the opposite side which was being driven by Pal Singh rashly, negligently and carelessly and came on wrong side of the road and stuck against the bus. As has been rightly argued by counsel for the appellants, the witness was suggested that the accident had taken place as it was fog, bad weather and visibility being poor. This fact has been sufficiently controverted by Pal Singh respondent No.1 driver of the offending vehicle who has admitted that the day was clear. Counsel for the insurance company has failed to point out any

materials elicited in cross- examination of Sukhpal Singh to arrive at a finding that driver of the ill-fated bus is also responsible for the occurrence much less he can be attributed negligence to the extent of 50%. The mere fact that the present is a case of head-on collision is not sufficient to attribute negligence to driver of the bus and that too to the extent of 50%. Under the circumstances, findings recorded by the Tribunal on issue No.1 attributing contributory negligence to the deceased cannot be allowed to sustain and liable to be set aside. In view of the facts recorded by Sukhpal Singh AW2, it can be safely held that the accident took place due to sole rash and negligent driving of offending vehicle by its driver, Pal Singh. Accordingly, findings recorded by the Tribunal on issue No.1 are modified in the aforesaid terms. As a result, issue No.1 is answered in favour of the claimants and against the respondents therein.

This brings the Court to quantum of compensation assessed by the Tribunal. The deceased was indisputably working as driver with Punjab Roadways, Muktsar and drawing salary of Rs.9190/- per month. He was born on 14.02.1957, therefore, he was less than 45 years of age at the time of occurrence. Claimants shall be entitled to increase in income for future prospects @ 30%. The deduction for personal expenses would be 1/4th as application for compensation was filed by the widow, three minor children and mother of the deceased, held to be dependent upon his earning. The multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.15,05,322/- (Rs.9190 x 12 x 14) + (30% future

prospects) – (1/4th deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.15,75,322/- and the additional amount is Rs.11,55,322/- (15,75,322 – 4,20,000). Claimants shall be entitled to entire amount assessed by this Court along with interest @ 7.5% per annum from the date of petition till realization subject, however, that amount already paid to the claimants shall be liable to adjustment. The additional amount shall be payable to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

20.03.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No