

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2013 of 2005 (O&M)
Date of Decision: 1.8.2018

Nirmal Verma and others

---Appellants

versus

Rajesh Anand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.K.Shukla, Advocate
for the appellants

Mr. Varinderjit Singh, Advocate,
for the insurance company

Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation on account of death of Ramesh Kumar Verma in a motor vehicular accident that took place on 10.5.2003.

The Motor Accidents Claims Tribunal, Patiala (in short “the Tribunal”) has awarded compensation of Rs. 7,60,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 7914/-
Multiplier	8
Loss of dependency	Rs. 7,60,000/-
Loss of consortium	Rs. 5000/-
Expenses on funeral	Rs. 2000/-

Claimants have been held entitled to 50% of loss of dependency i.e. Rs. 3,80,000/- plus Rs. 7,000/- under conventional heads

making it to Rs. 3,87,000/- as 50% negligence has been attributed to the deceased.

Counsel for the claimants would urge that Atul Verma son of the deceased and an eye witness to the occurrence appeared in the witness box to prove that the deceased was on kacha berm of the metalled road when the offending vehicle, truck No. PB-11-2100 hit him resulting in serious injuries sustained by Ramesh Kumar Verma. It is further argued that the Tribunal by taking into consideration the point at which dead body of the deceased was lying after the accident, in view of the site plan Ex. R6, came to record a finding that deceased was standing at a corner of the metalled road at the time of accident, therefore, he is to be attributed contributory negligence to the extent of 50%. It is vehemently argued that site plan Ex. R6 depicts the scene of crime after the occurrence but that is not sufficient to record a finding that the deceased was on a corner of the metalled road because his dead body was lying at a corner of the metalled road. In addition, it is argued that Mohinder Pal driver of offending vehicle did not appear in the witness box to counter testimony of Atul Verma when otherwise, no such plea has been raised by the respondents in the written statement that any negligence in the occurrence can be attributed to the deceased.

With regard to compensation assessed by the Tribunal, it is argued that total salary of the deceased was Rs. 12,377/- per month and the same is required to be taken into account for computing loss of dependency. Claimants are entitled to benefit for addition in income for future prospects @ 15%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported

findings of the Tribunal attributing 50% negligence to the deceased and the claimants being entitled to compensation to the extent of 50%. It is argued that though the Tribunal has adverted to the question of deduction for personal expenses but actually no deduction was made while making calculations for loss of dependency.

I have heard counsel for the parties, perused the paper book particularly the copy of award, testimony of Atul Verma PW2 and copies of documents supplied during the course of hearing as records have been burnt in a fire incident.

Atul Verma PW2 has reiterated version of the claimants that accident is the result of rash and negligent driving of offending vehicle truck No. PB-11-2100 which hit the deceased who was standing on kacha berm of the road after urinating. Counsel for the insurance company has failed to point out tangible materials brought forth in cross examination of Atul Verma to discard or disbelieve his testimony or substantiate findings of the Tribunal that the deceased was standing on a corner of metalled road at the time of occurrence. The Tribunal has attributed contributory negligence to the deceased on the basis of facts recorded in the site plan Ex. R6, prepared during investigation. The mere fact that dead body of the deceased was lying at a corner of the metalled road cannot lead to conclusion that the deceased, at the relevant time, was standing at a corner of the metalled road or that he was not standing on kacha berm.

The driver of the offending vehicle did not appear in the witness box to counter case of the claimants or testimony of Atul Verma. An adverse inference is liable to be drawn against the respondent for failure of the driver to examine himself and explain the circumstances under which

the occurrence in question took place. In this view of the matter, I find merit in contention of the appellants that findings recorded by the Tribunal attributing contributory negligence to the deceased cannot be allowed to sustain and accordingly set aside.

This brings the court to quantum of compensation assessed by the Tribunal. The deceased was an employee of the Punjab State Ware Housing Corporation. His gross salary was Rs. 12,377/- out of which an amount of Rs. 4463/- was deducted towards GPF, GIS, EWS, HBA and car advance. All these deductions cannot be excluded for computing loss of dependency. That being so, claimants shall be entitled to loss of dependency on the entire salary drawn by the deceased at the relevant time. The deceased was 52 years old at the time of occurrence and the appropriate multiplier would be 11. The application for compensation was filed by the widow and three children of the deceased. In the light of judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**, deduction for personal expenses would be 1/4th. Claimants shall be entitled to benefit of future prospects @ 15%. In this manner, loss of dependency is calculated at Rs. 14,09,121/- [12377 x 12 x 11 = 16,33,764 + 2,45,064(15%) = 18,78,828 - 4,69,707(1/4th)].

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

Loss of consortium to widow	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 14,79,121/- and the additional

amount is Rs. 10,92,121/- (rounded off to Rs. 10,92,125/-) (14,79,121-3,87,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

1.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No