IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 5448 of 2005

Date of Decision: November 26 , 2018.

M/s Saraswati Vidya Mandir Senior Secondary School, Jagadhri ...... APPELLANT(s)

Versus

Kamla Devi and others ...... RESPONDENT (s)

2. FAO No. 5449 of 2005.

M/s Saraswati Vidya Mandir Senior Secondary School, Jagadhri ...... APPELLANT(s)

Versus

Rajesh Kumar and another ...... RESPONDENT (s)

3. FAO No. 5686 of 2005.

Kamla Devi and others ...... APPELLANT(s)

Versus

Malkiat Singh and another ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Shifali Goyal, Advocate
for the appellant in FAO No.5448 and 5449 of 2005 and
for respondent No.2 in FAO No.5686 of 2005.

Mr. R.S.Mamli, Advocate
for respondents No.1 to 3 in FAO No.5448 of 2005 and
for the appellants in FAO No.5686 of 2005.

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1. Whether reporters of local papers may be allowed to see

the judgment?

2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This order shall dispose of FAO No.5448 of 2005 (M/s Saraswati Vidya Mandir Senior Secondary School, Jagadhri v. Kamla Devi and others), FAO No.5449 of 2005 (M/s Saraswati Vidya Mandir Senior Secondary School, Jagadhri v. Rajesh Kumar and another) and FAO No.5686 of 2005 (Kamla Devi and others v. Malkiat Singh and another) as all the three appeals arise out of the common award dated 14.09.2005 passed by the learned Motor Accident Claims Tribunal, Sangrur (for short, the 'Tribunal').

FAO Nos.5448 and 5449 of 2005 have been filed by M/s Saraswati Vidya Mandir Senior Secondary School, Jagadhri, District Yamunanagar (hereinafter referred to as, the 'Institution') challenging their liability to pay the compensation. FAO No.5686 of 2005 has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal vide impugned award dated 14.09.2005 on account of death of Ramesh Chander in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Ramesh Chander, who lost his life in a motor vehicle accident which took place on 22.05.2004. FIR No.48 dated 22.05.2004 under Sections 279/304A IPC was registered against driver of the offending vehicle, Malkiat Singh. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of bus bearing registration No.HR-02-PA-0134 by respondent-Malkiat Singh, driver of the offending bus.

Learned Tribunal awarded a sum of ₹11,00,000/- as compensation to the claimants vide impugned award dated 14.09.2005. Ramesh Chander (deceased) was employed as a teacher in a Government School and was aged 53 years at the time of the accident. Income of the deceased was assessed as ₹13,000/- per month. Deduction to the extent of 1/3rd on account of personal expenses was effected and multiplier of 11 was applied. The vehicle in question was not insured. The Institution was held liable to pay the compensation.

Learned counsel for the appellant-Institution submits that the institution has been wrongly held liable to pay the compensation as it is proved on record that the school had entered in an agreement with Mr.Devinder Kumar son of Jai Kumar for plying of the buses. The institution had agreed to finance the buses in question. Ownership of the vehicles would further remain with the school but as the buses were to be plied by Mr. Devinder Kumar son of Jai Kumar, he would be responsible for the insurance etc. of the vehicles in question. The school, despite being the registered owner of the vehicles, cannot be saddled with the liability. Earlier an agreement had been executed between the school and M/s Hemkunt Tourism for plying four buses. M/s Hemkunt Tourism without any rhyme or reason failed to abide by the agreement and stopped plying of the buses midway. The school was plying the buses in order to ensure that the interest of the students was not harmed in any manner. It is thus prayed that the appeals filed by the school be allowed and the Institution be absolved of its liability to pay the compensation to the claimants. It is further submitted that there is no merit in the appeal filed by the claimants seeking enhancement of the compensation. The widow duly received the family pension as per the rules and the claimants are not entitled for any further enhancement of the compensation. Arguments raised on behalf of the owner are refuted. It is thus prayed that appeal filed by the claimants be dismissed.

Learned counsel for the claimants submits that the amount of medical allowance has been wrongly deducted while assessing the income of the deceased as ₹13,000/- per month. Moreover, increment on account of future prospects has not been afforded. Compensation under the conventional heads has also not been awarded by the learned Tribunal. It is thus prayed that the compensation be re-worked accordingly.

I have heard learned counsel for the parties and have gone through the photocopy of the relevant record furnished in Court today.

There is no dispute that the Institution i.e., M/s Saraswati Vidya Mandir Senior Secondary School, Yamunanagar is the registered owner of the vehicle in question. As far as the agreement between the appellant-Institution and M/s Hemkunt Tourism (Ex.R2) is concerned, the offending bus bearing registration No.HR-02-PA-0134 is duly mentioned in the said agreement. It is however not disputed that the bus in question was being plied by the Institution and not M/s Hemkunt Tourism, even if in order to protect the interest of the students. Moreover, it has been rightly observed by the learned Tribunal that the terms of agreement (Ex.R2) had come to end on 31.03.2004. The accident in question took place on 22.05.2004. Further argument raised by the learned counsel for the appellant-Institution that pursuant to execution of the agreement

(Ex.R1) with Mr. Devinder Kumar son of Jai Kumar the school would not be liable to pay the compensation as it was for Devinder Kumar to have insured the vehicle in question, is devoid of any merit, hence rejected. This is so for the reason that a bare perusal of photocopy of Ex.R1 reveals that the offending vehicle is not the subject matter of the said agreement. There is mention of the school financing the vehicles to be purchased by said Devinder Kumar though they would remain under the ownership of the appellant-Institution. The offending bus bearing registration No.HR-02-PA-0134 is clearly a vehicle already in the ownership of the appellant-institution. This is so reflected in Ex.R2.

Moreover it has been held by the Hon'ble Supreme Court in **Naveen Kumar v. Vijay Kumar and others**, ***2018(3) SCC 1***, that the registered owner of the offending vehicle cannot escape from his liability and the claimant is entitled to receive compensation from the registered owner. If at all the registered owner sets up a case where he seeks to shift the burden on another person, the owner is at liberty to recover the amount paid to the claimants from the persons to whom the vehicle was transferred and the claimants are not to run after the said persons. Therefore, I do not find any merit in the appeals i.e., FAO No.5448 and 5449 of 2005 filed by the appellant-Institution. The same are accordingly dismissed.

In respect to FAO No.5686 of 2005 filed by the claimants seeking enhancement of compensation, there is no dispute that deceased was about 54 years old at the time of the accident and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent-Malkiat

Singh. The deceased was employed as a Hindi teacher at the Government Middle School, Mehar Majra, Yamunanagar, receiving a salary of ₹13,601/- per month as reflected in Ex.P1. It is a settled position that medical allowance available to the deceased as well as the amount of family pension cannot be deducted while calculating the dependency of the claimants. Income of the deceased is thus assessed as ₹13,600/- instead of ₹13,000/- per month. Deduction of 1/3rd has been correctly effected. Multiplier of 11 has also been rightly applied. Increase in income at the rate of 15% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. ₹15,000/- each towards funeral expenses and loss of estate are awarded to the appellants. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**, the appellants are entitled to ₹40,000/- each on account of loss of consortium.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	13,600 p.m. i.e. ₹1,63,200/- per annum
2.	Total income after addition at the rate of 15% on account of future prospects	1,63,200 + (1,63,200 **x** 15%) = 1,87,680
3.	Income after 1/3rd deduction on account of personal expenses	1,87,680 – (1,87,680 **x** 1/3) = 1,25,120
4.	Total dependancy after applying a multiplier of 18	(1,25,120 **x** 11) = 13,76,320
5.	Loss of estate	15,000

6.	Funeral expenses	15,000
7.	Loss of consortium	(40,000 **x** 3) = 1,20,000
	Grand Total	₹15,26,320/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

With the abovesaid modification in the compensation, FAO No.5686 is disposed of. FAO No.5448 and 5449 of 2005 are accordingly dismissed with no order as to cost.

(LISA GILL)
JUDGE

November 26 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No