

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

FAO No.125 of 2011 (O&M)

Date of decision: 01.08.2018

KESHAR DEVI & ORS.

... Appellants

Versus

HARENDER SINGH & ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajesh Lamba, Advocate for
Mr. S.K. Yadav, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.728-CII of 2011

Heard.

Allowed as prayed for. Delay of 42 days in filing the appeal stands condoned.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Gopi Ram in a motor vehicular accident that took place on 18.05.2009.

The Tribunal has awarded compensation of Rs.1,16,000/-,
detailed hereunder:-

1. Monthly income of the deceased Rs.2400/-

2. Deduction for personal expenses	1/3 rd
3. Multiplier	5
4. Loss of dependency	Rs.96,000/-
5. Expenses on funeral and transportation	Rs.10,000/-
6. Loss of consortium	Rs.10,000/-

However, claimants have been held entitled to an amount of Rs.58,000/- though negligence to the extent of 25% has been attributed to the deceased.

Counsel for the appellants would urge that findings of the Tribunal attributing 25% negligence to the deceased are not based upon correct appreciation of the controversy in the light of materials on record. It is argued that it was the duty of driver and conductor of bus No.HR-47A-2724 to ensure that none of the passengers was standing much less standing near the door when the bus was in motion, therefore, entire negligence is to be attributed to the driver, owner and insurer of the vehicle in question.

With regard to quantum of compensation, it is argued that income of the deceased assessed by the Tribunal is on lower side. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported findings of the Tribunal attributing 25% negligence to the deceased and so also compensation assessed by the Tribunal.

Be that as it may, it is undisputed position of the case that Gopi Ram was standing near front gate of the bus, fell down on the road and his both legs were run over under rear wheel of the bus. Though it was an

obligation of the driver and conductor of the bus to ensure that all the passengers travelling in the bus had a safe journey and no harm was caused to them in case brakes were applied suddenly but at the same time, the passengers also had an obligation to ensure their safety and not to stand near the door while travelling. In the given scenario, findings of the Tribunal, attributing 25% negligence to the deceased cannot be faulted with.

This brings the Court to quantum of compensation assessed by the Tribunal. The deceased was 68 years old at the time of occurrence. Taking a clue from the minimum wage available at the relevant time coupled with age of the deceased, interest of justice would be served, if income of the deceased is assessed at Rs.3000/- per month as against minimum wage of an unskilled labour @ Rs.3840/- per month. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.1,20,000/- [(Rs.3000 x 12 x 5) - (1/3rd 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.1,90,000/- and the additional amount is Rs.74,000/- (1,90,000 - 1,16,000). Claimants shall be entitled to 75% of

the amount assessed by the Tribunal and additional amount allowed by this Court. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization, payable to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

01.08.2018
ashok

(REKHA MITTAL)
JUDGE

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