

In the High Court of Punjab and Haryana at Chandigarh

FAO- 6716 of 2010
Date of Decision:17.1.2018

Basna and others

---Appellants

vs.

SKH Metals Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kunal Dawar, Advocate
for the appellants
Mr. Rajneesh Malhotra, Advocate
for respondent No. 3

Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation in regard to death of Kiran Wali in a motor vehicular accident that took place on 25.3.2009.

The Motor Accidents Claims Tribunal, Gurgaon (in short “the Tribunal”) has assessed compensation to the tune of Rs. 3,08,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 2400/-
Multiplier	15
Deduction for personal expenses	1/3 rd
Loss of dependency	1600 x 12 x15= Rs.2,88,000/-
Expenses on funeral and transportation	Rs. 10,000/-
Loss of consortium	Rs. 10,000/-

Counsel for the appellant has submitted that the Tribunal has wrongly attributed 50% negligence to the deceased and accordingly,

allowed compensation to the extent of 50%. It is argued with vehemence that in the written statement filed by the respondents, no such plea of contributory negligence was raised , therefore, the Tribunal was not competent to introduce case of contributory negligence to disadvantage of the appellants. In support of his contention, he has relied upon judgments of this Court **Dashyant Kumar vs. Parvesh Kumar Gupta 2011 (54) R.C.R.(Civil) 134** and **Jarnail Kaur vs. Pepsu Road Transport Corporation, Patiala and others 2014 (75) R.C.R.(Civl) 264.**

With regard to compensation assessed by the Tribunal, it is submitted that the Tribunal has wrongly refused to rely upon testimony of Shyam Singh, Regional Manager, Group IV Security Services, Gurgaon whereby he has proved that the deceased was working with M/s Terra Force Security Services Private Limited as Inspector at a salary of Rs. 5800/- per month. It is further argued that the claimants are entitled to increase in income for future prospects and adequate compensation under conventional heads.

Counsel representing the insurance company, on the other hand, has supported findings of the Tribunal attributing 50% negligence to the deceased who was crossing the national highway without ensuring that no vehicle was running on the highway at that time which could possibly hit him. He has pointed out that in the written statement filed by respondents No. 1 and 2, they have raised preliminary objection No. 1 that the claim petition is not tenable. It is averred that from reading of the FIR, it is revealed that the deceased was crossing National Highway-8 fly over unlawfully and unauthorizedly, despite being publicly informed through

notices, newspapers and various displays. In support of his contention, he has relied upon judgment of this court **Ravinder Kaur vs. Haryana State 2000(2) R.C.R.(Civil) 746**, judgment of the Karnataka High Court **Koosappa Poojari vs. K.Sadabba and others 2004 ACJ 2102** and Division Bench judgment of the Bombay High Court **Anand Ramkrishna Raikar and others vs. Raghunath V.Keny and another 1996 ACJ 697**. It has further been argued that Shyam Singh has admitted in his cross examination that business of M/s Terra Force Security Services Private Limited was taken over by M/s Group IV Security Services on 1.7.2009 and office records of Ex. P6 to P9 were never maintained by their company nor the documents were issued by him or in his presence.

Indisputably, Kiran Wali was crossing National Highway-8 fly over when the occurrence in question took place. The claimants examined Vijender Singh to establish their plea that the accident was the result of rash and negligent driving of offending vehicle by its driver. Vijender Singh tendered into evidence his affidavit Ex. PW3/A. A relevant extract from para 2 of the affidavit reads as follows:-

“That on 25.3.2009 I alongwith Kiran Woli were coming from our company's site DJF (SCZ) Silokara to our office and at about 11.00 A.M. when we were crossing NH-8 near Signature Tower, Gurgaon, then suddenly a Maruti car bearing No. HR-26 AM 8334 came from Manesar side being driven by respondent No. 2 in a rash and negligent manner at a very high speed and directly struck to Kiran Woli, as a result of which Kiran Woli suffered

grievous and multiple injuries on her person.”

Perusal of the aforesaid extract makes it evident that the occurrence took place when the deceased was crossing NH-8 near Signature Tower, Gurgaon. Nothing has been deposed by Vijender Singh as to how driver of the car in question was rash and negligent in his driving. He has not even specifically mentioned about speed of the vehicle. On a national highway, it can be expected from the drivers to drive at a comparatively high speed viz-a-viz the speed to be maintained on the busy roads or roads which are not State or National highways. Taking into consideration testimony of Vijender Singh coupled with the plea raised by respondent Nos. 1 and 2 and the fact that the deceased was crossing NH-8 without ensuring that no vehicle was operating from either side of the road, it is difficult to accept contention of the claimants that findings recorded by the Tribunal attributing 50% negligence are liable to be interfered with by relying upon judgments referred to by counsel for the claimants. Accordingly, findings recorded by the Tribunal on Issue No. 1 are liable to be affirmed.

The claimants examined Sham Singh PW5 to establish income of the deceased while working with M/s Terra Force Security Services. He produced on record copies of attendance register Exs. P6 and P7, extract from wages register Ex. P8 and copy of appointment letter Ex. P9. It has been stated by him that Terra Force Security Services was taken over by M/s Group IV Security Services on 1.7.2009. In his cross examination, the witness failed to commit regarding authenticity and correctness of documents Exs. P6 to P9. A relevant extract from his testimony reads as

follows:-

“It is correct that Ex. P6 to P9 do not bear my signature. The same have been signed by authorized person of Terraforce. It is correct that the office record of Exs. P6 to P9 were not maintained by our company. It is also correct that the aforesaid documents were neither issued in my presence nor the same were issued by me. It is further correct that we had only taken over the business of Terraforce but record regarding employment is still with it. It is correct that the Terraforce Security Services is not merged in our company. All the records of their employee including the deceased is still with Terraforce. The record of aforesaid documents were not in my custody till yesterday however the same is given by an employee of Terraforce today in the Court. I and my company did not ever maintain the record of Terraforce. I do not know whether the deceased was employee with Terraforce or not. I have deposed only on the basis of record. I have no personal knowledge regarding the contents of Ex. P6 to P9. It is correct that before July 2009, our company had no concern with the record and business of Terraforce.”

A casual and plain reading of the aforesaid extract shows that testimony of Sham Singh and documents marked as exhibits in his statement cannot form the basis for recording a finding that the deceased was an

employee of M/s Terra Force Security Services Limited much less at a salary of Rs. 5800/- per month. Counsel for the claimants has fairly informed that there is no evidence on record with regard to educational qualification of the deceased. At the same time, there is nothing on record suggestive of the fact that the deceased was suffering from any disability to impair his capacity to earn livelihood for himself and his family. Taking a clue from the minimum wage fixed by the State of Haryana and available at the relevant time, income of the deceased is assessed at Rs. 3900/- per month. The Tribunal has rightly applied multiplier of 15 and deduction of 1/3rd for personal expenses. The claimants shall be entitled to increase in income for future prospects @ 40% . In this manner, loss of dependency comes to Rs. $3900 \times 12 \times 15 = 7,02,000 + 2,80,800 = 9,82,800 - 3,27,600 = \text{Rs. } 6,55,200/-$.

Under conventional heads, claimants shall be entitled to following compensation in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270:-**

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

The total compensation comes to Rs.7,25,200/- and the additional amount is Rs.4,17,200 (7,25,200- 3,08,000). The claimants shall be entitled to 50% of the additional amount as 50% negligence has been attributed to the deceased. The additional amount shall carry interest @ 7.5 % form the date of petition till realization, payable to children of the

deceased in equal proportion, to be deposited in fixed deposits till they attain the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

17.1.2018
paramjit

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