

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

**Date of decision: 07.09.2018**

**FAO No.3889 of 2014 (O&M)**

Jagroop Singh and another

... Appellants

Versus

Monu and others

... Respondents

**FAO No.4453 of 2014 (O&M)**

Rani Devi and others

... Appellants

Versus

Monu and others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Subhash Rana, Advocate for  
Mr. Harish Nain, Advocate  
for the appellants in FAO No.3889 of 2014 and  
for respondents No.4 and 5 in FAO No.4453 of 2014.

Mr. Kanav Bansal, Advocate  
for respondents No.1 and 2.

Mr. Neeraj Khanna, Advocate  
for the insurance company.

Mr. Munish K. Garg, Advocate  
for the claimants.

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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO Nos.3889 and 4453 of 2014 as  
these have emerged out of the same award dated 04.01.2014 whereby

compensation has been assessed on account of death of Dinesh Kumar in a motor vehicular accident that took place on 24.09.2012.

FAO No.3889 of 2014 has been filed by the driver and owner of tractor slender No.HR-40B-8290 to assail findings of the Tribunal fastening liability against them to the extent of 40% whereas the remaining 60% liability has been imposed upon the driver, owner and insurer of cruiser jeep No.HR-39B-8446. The other appeal has been filed by the claimants seeking enhancement of compensation.

#### **FAO No.3889 of 2014**

Counsel for the appellants has submitted that the tractor aforesaid was lying parked on katcha portion of the road on its correct left side, therefore, no negligence in causing the occurrence can be attributed to the driver of tractor much less to attribute 40% negligence to the said vehicle. Another submission made by counsel is that on the basis of FIR No.84 dated 25.09.2012 under Sections 283, 279, 336 and 304-A IPC against drivers of both the vehicles involved in the occurrence, due investigation was conducted by the police and report under Section 173 Cr.P.C. has been filed against driver of cruiser jeep No.HR-39B-8446.

Counsel representing the contesting respondents driver, owner and insurer of the aforesaid jeep have supported findings of the Tribunal on issue No.1 by relying upon version of the claimants and testimony of Sonu PW4, an occupant of jeep in question in which deceased Dinesh Kumar was also travelling. It is argued that Sonu PW4 has categorically deposed

that the tractor was lying parked in middle of the road without any indicator or light and the jeep struck against the tractor from behind resulting in the accident in which Dinesh Kumar sustained serious injuries that proved fatal.

I have heard counsel for the parties, perused the paper book and records.

Sonu PW4, one of the eye-witnesses to the occurrence and author of FIR No.84 dated 25.09.2012 appeared in the witness box and tendered into evidence his duly sworn affidavit and reiterated version of the claimants that the tractor was parked in middle of the road and cruiser jeep struck on the back side of tractor. The witness was cross examined at length at the behest of counsel for respondents No.1 and 2 before the Tribunal i.e. driver and owner of cruiser jeep. He has admitted in his cross examination that jeep driver was driving the vehicle at a high speed. At that time, it was dark. The witness was also cross examined by counsel for the appellants (respondents No.4 and 5 therein) and stated that the accident in question took place due to sole negligent driving by the driver of jeep No.HR-39B-8446.

There is no challenge to testimony of Sonu that the tractor was lying parked in middle of the road without light, indicators or signal etc. Even the report under Section 173 Cr.P.C. was submitted by the police against drivers of cruiser jeep and tractor. As per the settled position in law, in case testimony of a witness on a particular issue is not challenged in

cross examination, it amounts to admission. Statement of Sonu is more than sufficient to establish that the tractor was standing in middle of the road without any indicators.

The driver of the tractor did not appear in the witness box to counter testimony of Sonu or establish that the tractor was parked on katcha portion of the road as against plea of the claimants that it was lying parked in middle of the road. In this view of the matter, I do not find an error much less illegality in findings recorded by the Tribunal based upon correct appreciation of evidence on record that accident took place on account of composite negligence of cruiser jeep and tractor and 40% negligence can be attributed to driver of the tractor. As such, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

**FAO No.4453 of 2014**

The Tribunal has awarded compensation of Rs.16,10,000/-, detailed hereunder:-

|                                    |                   |
|------------------------------------|-------------------|
| 1. Monthly income of the deceased  | Rs.15,000/-       |
| 2. Multiplier                      | 11                |
| 3. Deduction for personal expenses | 1/4 <sup>th</sup> |
| 4. Loss of dependency              | Rs.14,85,000/-    |
| 5. Expenses on funeral             | Rs.25,000/-       |
| 7. Loss of consortium              | Rs.1,00,000/-     |

Counsel for the appellants would urge that income of the deceased assessed by the Tribunal is on lower side and needs enhancement at least to the tune of Rs.20,000/- per month. The Tribunal has accepted plea of the claimants that the deceased was running karyana shop. Claimants have placed on record documents to prove that the deceased had been consistently depositing money in various accounts and had been paying premium in respect of two policies referred to in para 22 of the award. Claimants may be allowed benefit of addition in income for future prospects @ 10%.

Counsel representing the respondents have supported assessment of compensation except that compensation allowed under conventional heads is liable to be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

The claimants have successfully proved that the deceased was running a karyana shop for the past 15/20 years. He had been maintaining three recurring deposit accounts in the Post Office, Alewa wherein he had been regularly depositing a sum of Rs.3000/- in all, as deposed by Ved Parkash, Sub Post Master, Alwea PW3. The deceased had purchased life insurance policy No.171176993 and annual premium was Rs.524/-. The shop was on rent @ Rs.350/- per month. The application for compensation has been filed by the widow and four children of deceased, aged 22 to 14 years. Taking a cumulative view from the oral and documentary evidence

on record, income of the deceased is assessed at Rs.18,000/- per month. Claimants shall be entitle to addition in income for future prospects @ 10%. The multiplier and deduction for personal expenses allowed by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.19,60,200/- [(Rs.18,000 x 12 x 11) + (10% future prospects) – (1/4<sup>th</sup> deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that 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.20,30,200/- and the additional amount is Rs.4,20,200/- (20,30,200 - 16,10,000), payable with interest @7.5% per annum from the date of petition till realization, to minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. Interest accruing on FDRs shall be payable to their mother for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

07.09.2018

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**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned:  
Whether reportable:

Yes / No  
Yes / No