

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

Date of decision: 22.05.2018

FAO No.5305 of 2014 (O&M)

Joginder

... Appellant

Versus

Suresh Kumar and others

... Respondents

FAO No.5306 of 2014 (O&M)

Smt. Asha and others

... Appellants

Versus

Suresh Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Amit Singla, Advocate
for the appellants.

Mr. B.S. Walia, Advocate
for respondents No.1 and 2.

Mr. R.S. Sharma, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5305 and 5306 of 2014
filed by the claimants seeking enhancement of compensation awarded by
the Motor Accidents Claims Tribunal, Hisar vide award dated 17.10.2013.

FAO No.5305 of 2014 has been filed by Joginder for grant of

more compensation qua injuries sustained by him in the accident that took place on 29.07.2011 whereas the other appeal has been filed by Smt. Asha and others for enhancement of compensation on account of death of Bijender.

FAO No.5305 of 2014

With regard to injuries sustained by Joginder, the Tribunal has awarded compensation of Rs.1,15,000/-, detailed hereunder:-

1. Compensation for grievous injuries	Rs.40,000/-
2. Medical expenses	Rs.35,000/-
3. Loss of income	Rs.20,000/-
4. Pain and mental agony	Rs.20,000/-

However, Joginder has been held entitled to 50% of compensation to the tune of Rs.57,500/- as 50% negligence has been attributed to Bijender (since deceased), driver of TATA 1109 Canter bearing No.HR-61A-4418. First of all, no negligence in the occurrence has been attributed to Joginder who was travelling in aforesaid canter driven by Bijender. Even if findings of the Tribunal with regard to contributory negligence of two vehicles, i.e. one driven by Suresh Kumar respondent No.1 and the other by Bijender (since deceased) are upheld, the same shall be treated as composite negligence of two vehicles so far as Joginder is concerned. Joginder is entitled to receive compensation from either of the tort-feasers. In the given scenario, Joginder would be entitled to entire compensation assessed by the Tribunal. Findings of the Tribunal with regard to entitlement of Joginder to get compensation are modified

accordingly.

So far as plea of the claimants for enhancement of compensation, I have gone through findings of the Tribunal in the light of materials on record but find that there is no justification for enhancement of compensation payable to Joginder. As a matter of fact, the Tribunal has shown magnanimity in assessing compensation payable to Joginder.

In view of what has been discussed herein above, appeal is partly allowed in the aforesaid terms.

No order as to costs.

FAO No.5306 of 2014

The Tribunal has assessed compensation of Rs.5,52,000/- on account of death of Bijender, detailed hereunder:-

1. Monthly income of the deceased	Rs.4000/-
2. Multiplier	16
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.5,12,000/-
5. Expenses on funeral	Rs.20,000/-
6. Loss of consortium	Rs.20,000/-

However, claimants have been held entitled to 50% of compensation i.e. Rs.2,76,000/- as 50% negligence has been attributed to Bijender.

The first submission made by counsel for the claimants is that findings of the Tribunal attributing 50% negligence to the deceased are not based upon correct appreciation of testimony of Joginder PW2, injured in

the case. It is argued with vehemence that Suresh Kumar, driver of the offending vehicle did not appear in the witness box to say as to how the occurrence in question took place or negligence in causing the accident can be attributed to Bijender, driver of canter No.HR-61A-4418.

With regard to enhancement of compensation, it is argued that the deceased was a skilled worker being driver of a transport vehicle as he met with an accident while driving canter no.HR-61A-4418. Claimants are entitled to benefit of future prospects @ 40%. 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 assessment made by the Tribunal.

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

Joginder PW2 tendered into evidence his affidavit Ex.PW2/A.

A relevant extract from para 1 of the affidavit reads as follows:-

“At about 2.30 am the above canter reached some distance ahead of petrol pump situated ahead of village Talwandi Rana, Bijender was crossing a truck which was ahead of him, then in the meantime offending canter bearing registration No.HR-38-E-3843 which was being driven by respondent No.1 at a very high speed, rashly, negligently, carelessly in zigzag manner came from opposite side and respondent No.1 without caring for the dipper given by Bijender to stop his canter. Due to this impact the deponent and Bijender received serious, grievous, multiple injuries on

their person.”

In his cross examination, he has deposed to the following effect:-

“The truck was coming from Hisar side and our vehicle was coming from Barwala side. The road is wide enough and three vehicles can pass simultaneously at the place of accident. It is correct that there is a head on collision between truck and canter. The speed of the truck was 60 Kmph. Our canter was at a speed of 40 Kmph. There was no other vehicle in between truck and canter at the time of accident. Volunteered we were on our correct side of the road and they were coming in a zigzag manner. It is incorrect that respondent No.1 was driving the vehicle at a very moderate speed and by observing all the traffic rules.”

Perusal of the aforesaid extracts from examination-in-chief and cross examination of Joginder leaves no manner of doubt that the accident took place when Bijender was in the process of overtaking another truck going ahead of him and the alleged offending vehicle came from the opposite direction which resulted in head on collision between the two vehicles. As per statement of Joginder, Bijender gave a dipper to the vehicle coming from the opposite direction to stop. However, there is nothing in the statement of Joginder that the vehicle driven by Suresh Kumar was at such a distance that the same could be safely stopped by Suresh Kumar to provide space for Bijender to overtake the vehicle without causing collision. The mere fact that Bijender had given a dipper is not sufficient

unless he had ensured that vehicle coming from the opposite direction was at a sufficient distance and could be stopped by the driver without resulting in collision between the vehicles coming from opposite direction. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal attributing 50% negligence to Bijender. That being so, claimants shall be entitled to 50% of compensation payable qua death of Bijender.

Indisputably, Bijender was driving the canter that met with the accident. Taking a clue from the minimum wage available at the relevant time, income of the deceased is assessed at Rs.5200/- per month. Claimants shall be entitled to benefit of future prospects @ 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.9,31,840/- [(Rs.5200 x 12 x 16) + (40% future prospects) - (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.10,01,840/-. Claimants shall be entitled to 50% compensation i.e. Rs.5,00,920/- and after adjustment of the compensation allowed by the Tribunal, additional amount of Rs.2,24,920/- (Rs.5,00,920 – 2,76,000), shall be payable with interest @ 7.5% per annum

from the date of petition till realization, to Annu, minor daughter of the deceased, to be invested in fixed deposit till she attains the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

22.05.2018
ashok

(REKHA MITTAL)
JUDGE

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