

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

Date of decision: 08.05.2018

FAO No.5317 of 2014 (O&M)

Kiran Bala and others

... Appellants

Versus

Rajesh and others

... Respondents

FAO No.5329 of 2014 (O&M)

Kiran Bala and others

... Appellants

Versus

Rajesh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Naveen Chopra, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5317 and 5329 of 2014 as these have emerged out of the same award dated 20.11.2013 passed by the Motor Accidents Claims Tribunal, Kaithal whereby compensation has been awarded on account of death of Sukhbir Singh in a motor vehicular accident that took place on 12.01.2012 but claim for compensation qua damage to motorcycle Hero Honda Splender Plus bearing No.HR-31-E-8412 on which deceased was travelling at the time of occurrence has been

rejected.

FAO No.5317 of 2014 has been filed seeking enhancement of compensation qua death of Sukhbir Singh whereas FAO No.5329 of 2014 has been filed for award of compensation qua damage to the aforesaid motorcycle.

FAO No.5317 of 2014

The Tribunal has awarded compensation to the tune of Rs.17,08,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.10,000/-
2. Addition in income for future prospects	30%
3. Multiplier	14
4. Deduction for personal expenses	1/4 th
5. Loss of dependency	Rs.16,38,000/-
6. Expenses on last rites and transportation of dead body etc.	Rs.20,000/-
7. Loss of consortium	Rs.50,000/-

The claimants examined Yogesh Kumar, Accounts Assistant from the office of Additional Deputy Commissioner, Kaithal to prove employment and income of the deceased. Appointment letter Ex.P1, copy of contract employment agreement Ex.P2 and salary certificate Ex.P3 were produced by Yogesh Kumar PW1. The deceased was working on contract basis at salary of Rs.15,000/- per month. The mere fact that the deceased was not in regular employment is not sufficient to deny benefit of salary drawn by him at the relevant time. However, claimants shall be entitled to addition for future prospects @ 25% as the deceased was 42 years old.

Multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.23,62,500/- (Rs.15,000 x 12 x 14) + (25% future prospects) – (1/4th deduction for personal expenses).

Under conventional heads, compensation awarded 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.24,32,500/- and the additional amount is Rs.7,24,500/- (24,32,500 - 17,08,000).

Perusal of the award would reveal that the Tribunal has not awarded any interest on compensation found payable to the claimants. No reason has been assigned by the Tribunal for denying pendente lite interest and interest from the date of award till realization. The claimants shall be entitled to interest @ 7.5% per annum on the entire amount found payable to the claimants from the date of petition till realization. The additional amount with interest at the aforesaid rate shall be payable 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.

The appeal is partly allowed in the aforesaid terms.

FAO No.5329 of 2014

The Tribunal has negated claim for grant of compensation qua damage to the motorcycle involved in the occurrence for the reason recorded in para 39 of the award. A relevant extract therefrom reads as under:-

“The claimant has sought compensation for damage to the motor cycle bearing registration No.HR-31-E-8412 but failed to establish the exact damage occurred to said motorcycle. No report of Mechanic, Surveyor has been tendered on record to know as to what extent or how much vehicle in question was got damaged. No photographs were tendered to show the damage. In absence of the same, statements of PW2 and PW3 and documents Ex.P4 to Ex.P7, cannot be taken into consideration. Thus, in absence of definite and positive evidence as to damage to the vehicle, the claimants failed to establish the claim for damage to vehicle in question. It is such a claim that needs to be based on the definite and concrete evidence. No assumption and presumption can be drawn in favour of claimants.”

Counsel for the claimants would urge that the claimants examined witnesses to prove expenses incurred on repair of the motorcycle, approximately Rs.10,000/-. It is argued that even though the claimants have not produced any report of mechanic or surveyor or photographs of damage caused to the motorcycle but the Court can take judicial notice of the fact that Sukhbir Singh who was travelling on the motorcycle sustained such

serious injuries that proved fatal to him.

Counsel for the insurance company has supported findings of the Tribunal.

Be that as it may, it is undisputed position of the case that deceased was travelling on the motorcycle when he met with an accident resulting in his death. The claimants have produced the documents by examining the witnesses with regard to repair of the motorcycle in question. Taking a cumulative view of the facts and circumstances on record, it is expedient in the interest of justice that the claimants are allowed compensation to the tune of Rs.5000/- qua damage to the motorcycle, payable with interest @ 7.5% per annum from the date of petition till realization, to Smt. Kiran Bala.

The appeal is partly allowed in the aforesaid terms.

08.05.2018

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No