

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

FAO No.9854 of 2014 (O&M)

Date of decision: 06.10.2018

PARWINDER KAUR AND ORS

... Appellants

Versus

MANOJ KUMAR AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Naveen Gupta, Advocate for
Mr. Jatinder Pal Singh, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.27246-CII of 2014

Heard.

Allowed as prayed for. Delay of 83 days in filing the appeal
stands condoned.

Main Case

The claimants are in appeal seeking enhancement of
compensation on account of death of Darshan Singh in a motor vehicular
accident that took place on 09.08.2011.

The Tribunal has awarded compensation of Rs.10,28,000,
detailed hereunder:-

1. Monthly income of the deceased

Rs.8000/-

2. Multiplier	14
3. Deduction for personal expenses	1/4 th
4. Loss of dependency	Rs.10,08,000/-
5. Expenses on funeral	Rs.5,000/-
6. Loss of estate	Rs.5,000/-
7. Loss of consortium	Rs.10,000/-

However, claimants have been held entitle to 50% of loss of dependency i.e. Rs.5,08,000/- as 50% negligence has been attributed to the deceased. As such, total compensation paid to the claimants is Rs.5,28,000/-.

Counsel for the appellants would argue that income of the deceased assessed by the Tribunal is on lower side. Claimants are entitle to addition in income for future prospects and adequate compensation under conventional heads. Findings of the Tribunal attributing contributory negligence to the deceased are unfounded and liable to be set aside.

Counsel representing the insurance company has supported the award both in regard to attributing contributory negligence to the deceased and so also compensation assessed by the Tribunal.

I have heard counsel for the parties, perused the paper book particularly the award impugned.

Before proceeding with determination of issue No.1, it is pertinent to note that the Tribunal has not even bothered to examine that offending vehicle was driven by Manoj Kumar and not by Balwinder Singh but in all the paras under issue No.1, the Tribunal has mentioned that the offending vehicle was driven by Balwinder Singh.

Perusal of findings of the Tribunal on issue No.1 would reveal that claimants examined Harjinder Singh PW3 an eye-witness to the occurrence and he has supported version set up by the claimants attributing rash and negligent driving to offending vehicle i.e. truck No.PB-13-Y-9963, driven by Manoj Kumar, respondent No.1. Counsel for the insurance company has failed to point out any facts elicited in cross examination of Harjinder Singh to support findings of the Tribunal attributing contributory negligence to the deceased. The mere fact that the occurrence is a head on collision is not sufficient to attribute negligence to the deceased when the case is examined in view of duly sworn testimony of Harjinder Singh PW3. On the contrary, Manoj Kumar, driver of the offending vehicle did not appear in the witness box to counter case of the claimants and rebut testimony of Harjinder Singh, therefore, an adverse inference is to be drawn against the respondents for failure of Manoj Kumar to appear in the witness box without any tangible explanation. In this view of the matter, findings of the Tribunal on issue No.1 attributing contributory negligence to Sh. Darshan Singh cannot be allowed to sustain.

The plea of the claimants is that deceased was cultivating land and running dairy farming thereby earning Rs.32,000/- per month. The Tribunal has noticed that Kashmir Singh PW2 examined by the claimants to prove that deceased had been taking 5 acres land of Kashmir Singh on theka for cultivation did not produce any documentary evidence that he owned 5 acres of land at Guru Har Sahai or giving the same on theka to

Darshan Singh. Claimants have not produced any documentary evidence with regard to the deceased taking any land on theka. Similarly, they failed to adduce satisfactory much less cogent evidence to establish that deceased was involved in dairy business. However, it has been proved on record that deceased was owner of 3 acres of land, cultivated by him. After death of deceased, land would be available to his family.

The Tribunal has assessed income of the deceased at Rs.8000/- per month which is almost double the minimum wage of an unskilled labour available at the relevant time. That being so, there is no justification for increase in income of the deceased. However, claimants shall be entitle to addition in income for future prospects @ 25%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.12,60,000/- [(Rs.8000 x 12 x 14) + (25% future prospects) – (1/4th deduction for personal expenses)].

The application for compensation has been filed by the widow, two minor children and father of deceased Darshan Singh. Claimants No.1 to 3 shall be entitle to loss of consortium @ Rs.40,000/- each i.e. Rs.1,20,000/- in the light of latest judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018.** They shall also be entitle to Rs.30,000/-, i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss

to estate. Total compensation payable under conventional heads is Rs.1,50,000/-. In view of the above, total compensation payable to the claimants is calculated at Rs.14,10,000/- and the additional amount is Rs.8,82,000/- (14,10,000 – 5,28,000). The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization, to be paid to claimants No.1 to 3 in equal ratio. The amount falling to share of minors shall 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.

06.10.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No