

Sr. No.213

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

**LPA No. 602 OF 2016(O&M)
Date of decision: 01.05.2018**

Pavita Devi and others

.....Petitioners

versus

Union of India and others

.....Respondents

**Coram: Hon'ble Mr. Justice Mahesh Grover
Hon'ble Mr. Justice Rajbir Sehrawat**

**Present: Mr. Surinder Sharma, Advocate
for the appellants.**

**Mr. Praveen Chander Goyal, Advocate
for the respondent(s).**

Mahesh Grover, J.(Oral)

This Order shall dispose of this appeal directed against the judgment of the learned Single Judge dated 07.01.2016.

The facts of the case are not in dispute. The husband of appellant No.1 lost his life while crossing the railway line at a manned crossing whose gate was left open by the railway employee on duty indicating sheer negligence. The respondent department admitted their negligence but also attributed some negligence to the appellant No.1 husband in not being watchful while crossing the railway line. Learned Single Judge awarded a compensation of Rs. 4 lakhs in terms of the Schedule to the Act.

Learned counsel for the appellants contends that the principles of the Motor Vehicles Act would prevail in assessing the awarded compensation which can not be limited to the schedule of the respondent.

On the other hand, learned counsel for the respondents

justifying the judgment of the learned Single Judge and further plead that on account of negligence partly being attributable to the husband of appellant No.1, no further enhancement is warranted particularly when the schedule provides a limit which has been satisfied upon the pronouncement of the judgment of the learned Single Judge.

Learned counsel for the appellants has relied upon the judgment of the Orissa High Court rendered in the case of ***Guri Behera & Ors. vs. D.R.M., East Coast Railway, Khurda & ors; 2012 AIR(Orissa)62*** where principles of Motor Vehicles Act were complied when a person lost his life while crossing an unmanned railway point.

We have heard learned counsel for the parties and are of the opinion that the appellants deserve an additional amount of compensation. The negligence on the part of the respondents is established and undisputed, rather conceded. However we would not resort to determine the compensation in terms of the principles governing on account of death in case of motor accident as these are issues that are determined before the Tribunal on the basis of evidence, person's age, income, dependency etc. are all subject to verifiable evidence. But concededly the appellants would deserve higher amount of compensation for the gross negligence that has resulted in cutting short the life of man who left behind his wife and two sons.

Consequently, we deem it appropriate to award another sum of Rs.3 lakhs to the appellants for the established negligence of the respondents which shall carry interest @ 7% per annum from the date of filing of the writ petition till its realisation. We also direct interest @7% per annum on the amount of Rs. 4 lakhs which has already been awarded by the

learned Single Judge from the date of order passed by learned Single Judge.
Hence we allow this appeal in the above said terms. The total amount be
calculated and released to the appellants within a period of 3 months from
today.

[MAHESH GROVER]
JUDGE

1st May, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*