

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

FAO No. 7974 of 2017(O&M)

Date of decision: 12.1.2018

Mohan Lal

.....Appellant

VERSUS

Vidya Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pushpinder Kaushal, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 14.03.2017 passed by the Motor Accidents Claims Tribunal, Fazilka (in short 'the Tribunal') whereby compensation has been assessed in respect of death of Prem Kumar in a motor vehicular accident that took place on 20.08.2014.

Counsel for the appellant (registered owner of Bus No.PB-05-G-8888, the alleged offending vehicle) has assailed the award primarily on two counts. The first submission made by counsel is that testimony of Sho Parkash son of Harzi Ram, the alleged eye witness to the occurrence is not worthy of credence and reliance, therefore, insufficient to discharge onus of issue No.1 placed upon the claimants. The second submission made by counsel is that compensation awarded by the Tribunal is on higher side as the Tribunal has allowed increase in income for future prospects at the rate of 50% and Rs.1,25,000/- under conventional heads which is not in consonance with latest judgment of Hon'ble the Supreme Court of India

National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017**SCC 1270.**

I have heard counsel for the appellant, perused the paper-book particularly the award passed by the Tribunal.

The Tribunal in para 16 of the award has adverted to issue No.1 with regard to the accident being the result of rash and negligent driving of the offending vehicle by Darshan Lal, its driver. It has been noticed that Sho Parkash CW2 tendered into evidence his affidavit Ex.CW2/A deposing about rash and negligent act on the part of respondent No.1 in driving the bus in question. Further held that despite lengthy cross examination, testimony of the witness could not be shattered in any manner. FIR No.201 dated 20.08.2014 under Sections 304-A, 279, 427 IPC was registered at Police Station Sadar Fazilka, District Fazilka on the statement of Sho Parkash. Driver of offending vehicle did not appear in the witness box to counter testimony of Sho Parkash CW2. Counsel for the appellant has failed to point out any materials in cross examination of Sho Parkash to assail evidential value of his testimony or record a finding that he was not present at the spot. In this view of the matter, I do not find an error much less perversity in findings of the Tribunal upholding plea of the claimants while answering issue No.1 against the respondents before the Tribunal. That being so, contention raised by counsel for the appellant to assail findings of the Tribunal on issue No.1 is not meritorious and deserves outright rejection.

This brings the Court to quantum of compensation assessed by the Tribunal. Counsel has assailed assessment on two counts namely grant of future prospects to the extent of 50% and compensation under

conventional heads. When the case is examined in the light of enunciation laid down in **Pranay Sethi and others case** (supra), I find merit in contention of the appellant. The claimants shall be entitled to increase in income for future prospects at the rate of 40%. In this manner, loss of dependency comes to Rs.14,28,000/- [Rs.20,40,000/- (Rs.10000 x 12 x 17) + Rs.8,16,000/- (40% future prospects) – Rs.14,28,000/- (50% deduction towards personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is limited to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

In view of the above, total compensation comes to Rs.14,58,000/- As such, compensation awarded by the Tribunal is reduced to the extent of Rs.7,07,000/- (Rs.21,65,000/- - Rs.14,58,000/-).

The appeal is disposed of in the aforesaid terms.

Before parting with this order, it is pertinent to mention here that amount of compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of the appeal filed by the insurance company would not cause prejudice to their rights.

JANUARY 12, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no