

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

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FAO 569 of 1991 (O&M)

Date of decision: 29.10.2019

Laxmi Parshad and another

.....Appellants

Versus

Ram Pal and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R S Sihota, Senior Advocate with
Mr. B R Rana, Advocate
for the appellants

Mr. Rohit Arya, AAG, Haryana
for respondent No. 2

Mr. Neeraj Khanna, Advocate
for respondent No. 3

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Rekha Mittal, J. (Oral)

Counsel for the appellants has failed to take steps for impleading legal representative(s) of respondent No. 1 (since deceased). As a consequence, appeal against respondent No. 1 is dismissed.

The claimants are in appeal seeking enhancement of compensation on account of death of Prema wife of Jagdev in a motor vehicular accident that took place on 27.05.1989.

The Tribunal awarded Rs.64,000/-, detailed hereunder:-

-Annual loss of income	Rs.4,000/-
-Multiplier	16
-Loss of dependency	Rs.64,000/-

However, the claimants were paid Rs.52,000/- as 20% negligence has been attributed to Jagdev, husband of deceased.

Counsel for the appellants would argue that findings of the Tribunal, attributing contributory negligence to Jagdev are the result of misreading of evidence, thus, cannot sustain. It is further argued that income of the deceased assessed by the Tribunal is on lower side and merits enhancement. It is argued that the claimants are entitled to loss of value of services of deceased as a house maker as well. As the deceased is held to be 30 years, admissible multiplier should be 17. Adequate compensation may be allowed under conventional heads.

Counsel representing the respondents, on the contrary, have supported findings of the Tribunal on issues No. 1 to 3 and 8.

The Tribunal framed issues No. 1 and 8 to the following effect:-

- 1) *Whether the death of Smt. Prema was occasioned on 27.05.89 at a place specified in the petition due to rash and negligent driving of bus No. HRW 4557 driven by Ram Pal, respondent No. 1, owned by Haryana Roadways respondent No. 2 and insured with respondent No. 3, as alleged?OPP*
- 8) *Whether the driver of cycle on which the deceased was seated was guilty of contributory negligence and its effect?OPR*

The Tribunal attributed 20% negligence to Jagdev, husband of deceased, in view of observations made in para 15 of award. Indisputably, the deceased was seated on the cycle paddled by Jagdev, husband of the deceased when unfortunate occurrence took place in which Prema and a

minor child aged about 2 years of the couple succumbed to the injuries.

Jagdev, an eye witness to the occurrence appeared in the witness box and reiterated version of claimants that accident is the result of rash and negligent driving of offending bus, by its driver. He was cross examined at length but nothing tangible and material has been brought forth to discard or disbelieve his testimony. No such fact has been elicited in his cross examination that the present is a case of contributory negligence or negligence to a particular extent can be attributed to Jagdev for the unfortunate incident.

Ram Pal, driver of offending bus appeared in the witness box and he tried to blame the Rickshaw wala for giving push to the cyclist, on which one lady and an infant were seated on carrier of the cycle. The Tribunal has rejected testimony of Ram Pal, driver of offending bus whereby he tried to escape his liability for the occurrence. Nothing has been brought forth in the statement of Ram Pal that Jagdev can be accused or attributed negligence for the occurrence. In the given scenario, it can safely be held that findings of the Tribunal attributing contributory negligence to Jagdev are not based upon material on record and liable to be set aside. As a natural corollary, the entire negligence for causing accident is attributed to driver of the offending bus. Findings of the Tribunal on issues No. 1 and 8 are modified accordingly. Consequently, issues No. 1 and 8 are decided in favour of claimants and against the respondents.

This brings the Court to quantum of compensation assessed.

The plea of claimants is that deceased was working as a labourer on construction site. They examined R.P.Rana, Building

Contractor (PW2) to prove employment of the deceased. The Tribunal has assessed income on the basis of statement made by Shri R.P. Rana (PW2). I do not find any reason to interfere in assessment of annual income of deceased as labour.

The claim has been filed by two minor children but husband of the deceased is also held entitle to loss of dependency. Deduction for personal expenses would be $1/3^{\text{rd}}$. As the deceased is held to be 30 years, appropriate multiplier of 17 and addition for future prospects @ 40% is applied. In this manner, loss of dependency qua earning of the deceased is assessed at Rs.63,467/- (Rs.68,000/- i.e. $4,000 \times 17 + \text{Rs.}27,200 - \text{Rs.}31,733$ (1/3rd deduction))

The family of deceased belongs to a poor strata of society as both husband and wife had been working as labourer on construction site. The deceased had a family consisting of her husband and three minor children, out of which one child aged about 2 years died in the accident. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with that a house maker has multifarious duties to perform, loss of value of services of deceased is assessed at Rs.800/- per month. No deduction for personal expenses would be made in the light of Division Bench Judgment of this Court *Paramjit Singh and another vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730*. A multiplier of 17 is available, in view of discussion made hereinbefore. As such, loss of value of services of deceased is assessed at Rs.1,63,200/- ($800 \times 12 \times 17$). In view of the above, loss of dependency comes to Rs.2,26,667/- ($63,467 + 1,63,200.00$)

Under conventional heads, claimants shall be entitle to Rs.50,000.00 (Rs.30,000.00 for loss of consortium, Rs.10,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court *National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270* and *Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034*.

Total compensation is Rs.2,76,667/- and additional amount is Rs.2,24,667/- (2,76,667 – 52,000), payable with interest @ 6% per annum from the date of petition till realization.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

29.10.2019
Mohan Bimbura

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