IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202 FAO-1944-1996 (O&M)
Date of decision: 22.10.2019

Lajwanti and others ... Appellants

Versus

Krishan Kumar and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Nagar Singh, Advocate for
Mr. Amarjit Singh Virk, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Kishori Lal in a motor vehicular accident that took place on 14.03.1992.

The Tribunal awarded Rs.2,45,400/- payable with interest @ 12% per annum from the date of filing of petition till realization, detailed hereunder:-

Monthly income of the deceased	Rs.1800/-
Multiplier	16
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.2,30,400/-
Medical expenses	Rs.15,000/-

However, as 50% negligence has been attributed to the deceased, claimants are held entitle to 50% of the amount i.e. Rs.1,27,700/-

(rounded off to Rs.1,30,000/-).

Counsel for the appellants would argue that findings of the Tribunal attributing 50% negligence to the deceased are not based upon correct appreciation of materials on record. It is argued that no plea was raised by the respondents therein that accident is the result of contributory negligence of the deceased.

With regard to quantum of compensation, it is argued that claimants have adduced evidence to prove that the deceased was earning Rs.2400/- per month but the Tribunal has wrongly assessed his income at Rs.1800/- per month. The application for compensation has been filed by seven persons, therefore, admissible deduction should be $1/5^{th}$. Claimants are entitle to addition in income for future prospects @ 40%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No.1 attributing contributory negligence to the deceased to the extent of 50%.

The claimants examined Inder PW-4, to discharge onus of issue No.1, reads thus:-

> Whether accident in question took place due to rash and negligent driving of vehicle No.CH-01E-8384 by respondent No.1?OPP

The Tribunal, in para 10 of the award, has noticed that Inder PW-4 stated that he was conductor on metador bearing registration No.HR-05-4837 and the metador was driven by Krishan Lal (deceased). When they reached near Haryana Steel Factory, Murthal, Swaraj Mazda Canter No.CH-01E-8384 overtook the metador and its driver applied brakes all of a sudden without any indication. He further stated that Swaraj Mazda had no back-light. The Tribunal, in para 12 of the award, has held, reads thus:-

> This Tribunal is supposed to assess the evidence in an objective manner. To me it appears that even though Krishan Kumar respondent No.1 had applied brakes to Swaraj Mazda canter abruptly then also Kishori Lal deceased cannot be absolved from his liability. His metador being behind the Swaraj Mazda canter, it was his duty also to maintain a reasonable distance from the same anticipating that the Swaraj Mazda canter which was going ahead could stop at any moment on the GT road where normally the traffic is very heavy. Applying the principle of res ipsa loquitor it can be said that notwithstanding the application of brakes by respondent No.1 abruptly, Kishori Lal deceased himself had contributed in this accident at least to the extent of 50%. Thus I hold that this accident resulting into the death of Krishan Lal occurred because of composite negligence of Krishan Kumar respondent No.1 and Kishori Lal deceased himself. Their negligence is assessed in the ratio of 50:50.

Counsel for the insurance company has failed to point out any facts elicited in cross examination of Inder PW4 to assail his testimony that driver of Swaraj Mazda overtook the metador driven by the deceased and applied brakes all of a sudden without any indication and Swaraj Mazda had no lights on its back side. Krishan Kumar, driver of the offending vehicle did not appear in the witness box to counter case of the claimants or rebut testimony of Inder PW-4. Had the offending vehicle going ahead of the metador driven by Kishori Lal for some distance before applying brakes, in that eventuality driver of metador had an obligation in law to maintain safe distance from the vehicle going ahead in order to avoid collision in case of application of sudden brakes by vehicle going ahead. In the instant case, Krishan Kumar did not appear in the witness box either to deny application of sudden brakes or to justify his act of applying sudden brakes immediately after overtaking the metador driven by Kishori Lal. In the given scenario, findings of the Tribunal attributing negligence to the deceased cannot be allowed to sustain and accordingly set aside. The entire negligence for the accident is attributed to driver of offending vehicle. Accordingly, issue No.1 is answered in favour of the claimants and against respondents before the Tribunal.

This brings the Court to compensation assessed by the Tribunal. The plea of claimants is that deceased was getting Rs.1800/- per month plus Rs.30/- daily allowance for outstation stay, thus, earning Rs.2400/- per month. Lajwanti, widow of the deceased appeared in the witness box and stated that her husband was earning Rs.1800/- per month. She did not state that he was getting any extra allowance for staying away from the place of his work. Ram Lal PW3 stated that besides salary of Rs.1800/-, he was paying Rs.30/- per day to Kishori Lal towards diet money. However, he did not state that diet money was paid on account of the deceased staying away at night. In the given scenario, the Tribunal has rightly assessed income of the deceased at Rs.1800/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied by the Tribunal is correct and affirmed.

The application for compensation has been filed by the widow, one son, three daughters and parents of the deceased. Claimants No.2 to 5 were minor and sued through their mother and next friend Smt. Lajwanti. Lal Chand, father of the deceased did not appear in the witness box to substantiate his plea that he was dependent upon income of his married son. There is nothing on record suggestive of the fact that Lal Chand had any disability to impair his capacity to earn his livelihood. In the given circumstances, Lal Chand cannot claim loss of dependency. Accordingly, admissible deduction would be $1/4^{th}$. In this manner, loss of dependency is calculated at Rs.3,62,880/- [(1800 x 12 x 16) + (40% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.50,000/-, detailed hereunder:-

1. Loss of consortium	Rs.30,000/-
2. Loss of estate	Rs.10,000/-
3. Funeral expenses	Rs.10,000/-

The sum of Rs.15,000/- towards medical expenses allowed by the Tribunal is correct and affirmed.

Total compensation is Rs.4,27,880/- and additional amount is Rs.2,97,880/- (4,27,880 – 1,30,000), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased, to be invested in fixed deposit for a period of two years.

The appeal is partly allowed in the aforesaid terms.

22.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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