

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

F.A.O. No. 3479 of 2001

DATE OF DECISION :- October 22, 2019

Chander Patti and others

...Appellants

Versus

Jai Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. D.S. Nain, Advocate for the appellants.

Mr. Gaurav Gupta, Advocate for Mr. D.D. Gupta
for respondent No. 4-Insurance Company.

Briefly stated the facts of the case are that on account of death of Amrit Lal, aged about 32 years, in a road side accident which took place on 6.7.2000 at about 8.00 A.M., in the area of village Fatehpur, statedly on account of rash and negligent driving of Haryana Roadways bus bearing registration No. HR-05-PA-0125(hereinafter referred to as the offending Bus) of Karnal Depot by respondent No. 1 Jai Pal, legal representatives of deceased namely his widow Chander Patti, minor daughter Kavita, aged about 12 years, minor sons Mohan Lal and Naveen aged about 10 years and 8 years respectively and mother Pari Devi, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Jaipal-driver, General Manager, Haryana Roadways, Karnal State Transport Commissioner, Haryana, Chandigarh- owner and National Insurance Company Ltd, Karnal insurer of the offending bus.

On notice, all the respondents appeared and offered a contest.

Thereafter hearing arguments advanced by learned counsel for the parties, the Motor Accident Claims Tribunal, Kaithal vide Award dated 28.3.2001 awarded compensation of Rs.3,46,000/- to the claimants payable by all the respondents jointly and severally along with interest at the rate of 9% per annum from the date of filing of claim petition till actual realization. The manner in which the compensation amount is to be apportioned amongst the claimants has been mentioned in the Award. However, the claimants were not satisfied with the compensation awarded to them by the Motor Accident Claims Tribunal, Kaithal and have brought the present appeal seeking enhancement of compensation of the said amount, notice of which was given to the respondents and respondent-Insurance Company has put in appearance through its counsel.

I have heard learned counsel for the parties besides going through the record.

A perusal of the impugned Award goes to show that on the basis of evidence adduced before it, the Tribunal has come to a conclusion that the accident in which Amrit Lal had lost his life had taken place on account of rash and negligent driving of offending Bus by respondent No. 1-Jaipal,. This finding is proper and appropriate. For that reason the driver, owner and Insurance Company of the Bus are liable to pay the compensation. While assessing the amount of compensation the Tribunal has taken the age of the deceased Amrit Lal to be 32 years keeping in view his date of birth as entered in his School Certificate (Ex.P5). His avocation has been taken to be dealing in furniture business but the version of the claimants that he was earning Rs.10,000/- per month from the said business was not believed due to non

existence of any documentary evidence in that regard. It has further been taken into consideration that he was having Rs.200/- in his bank account at the time of his death and he was not an income tax payee. He was taken to be an skilled carpenter and his monthly income was taken to be Rs.2500/- per month. However, no addition was made towards future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where age of the deceased was below 40 years an addition of 40% of the established income is to be made. Doing that the monthly income of the deceased is worked out to be Rs.3500/- (2500 + 1000).

The Tribunal, while taking the age of the deceased to be 32 years has deducted $\frac{1}{3}^{\text{rd}}$ of the amount towards personal expenses of the deceased. However, the Tribunal obviously fell in error in doing so since in terms of the observations made in a land mark authority "*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*" by the Apex Court where number of dependent family members is 5, the deduction should be $\frac{1}{4}^{\text{th}}$. Doing that the amount comes to Rs.875/- ($3500 \times \frac{1}{4}$). In that way the dependency of the claimants comes out to Rs.2625/- ($3500-875$). The annual dependency comes out to Rs.31,500/- (2625×12). The Tribunal has used multiplier of 16 which has been so done properly. Thus the total compensation comes out to Rs.5,04,000/-. The amount awarded under conventional Heads is on lower side that is Rs.10,000/- for funeral expenses only and no amount has been awarded under the Head of loss of estate and loss of consortium wherein in view of ratio of '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil)*

1009' the claimants are entitled to get total 70,000/- under those Heads. Making addition of that amount the total compensation amount comes out to Rs.5,74,000/- (5,04,000 + 70,000). The Tribunal has awarded compensation of Rs.3,46,000/-. In that way, the enhanced amount of compensation comes out to Rs.2,28,000/-. Accordingly, the appeal is allowed partly. The impugned award is modified and a sum of Rs.2,28,000/- as enhanced compensation is awarded to the claimants payable by all the four respondents jointly and severally with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization. The claim petition was filed in the year 2000 when the claimants Kavita, Mohal Lal and Naveen were minors. 19 years has been lapsed thereupon. They must have attained majority, therefore, the enhanced amount of compensation be apportioned among all the claimants equally by making payment to them in cash.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 22, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No