

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.642-2001(O&M)
Date of decision: 16.05.2019

Smt.Jyoti and another

.....Appellants

versus

Maghar Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Abhinav, Advocate for the appellants
Mr.Suvir Dewan, Advocate for respondent no.3

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

This is an appeal against award dated 16.3.2000 passed by Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') vide which, a compensation to the tune of Rs.3,46,000/- was awarded to the claimants-appellants, which was to be apportioned as mentioned in the award. Rs.50,000/- each were given to the parents of the deceased, Rs.46,000/- were given to the claimant-appellant No.1 (widow of the deceased) and Rs.2,00,000/- were given to the claimant-minor-appellant No.2 (son of the deceased). As the vehicle was insured, the Insurance company was directed to deposit the amount of compensation within three months, failing which the respondents shall pay interest @ 12% per annum from the date of filing of claim petition till realization. Further directions

were given to deposit the amount in the FDR for certain period.

Facts of the case are that on 7.4.1994 at about 4.00 P.M., Anil Kumar, husband of claimant-appellant No.1 Jyoti, accompanied by Sushil Kumar was going on separate scooters from Patiala to Rajpura. When they reached near Mukat Pipe Factory, Patiala-Rajpura road, scooter of Anil Kumar was hit by a bus bearing Registration Number PB-11B-2977 coming from Rajpura side, being driven by Maghar Singh- respondent no.1. As a result of the accident, Anil Kumar suffered multiple injuries. He was taken to Rajindra Hospital, Patiala by Sushil Kumar, who witnessed the accident. Anil Kumar succumbed to the injuries in the hospital.

It comes out that the deceased was 34 years of age at the time of accident. He was working as Technical Assistant Grade-II in FCI and was getting salary of Rs.5163/- p.m. . The claim petition was filed by widow, minor son, father and mother of the deceased.

The Tribunal, after considering that the gross salary was Rs.5163/- p.m., took into consideration only the basic salary, 1/3rd was deducted as personal expenses, multiplier of 10 was applied and the amount was calculated as Rs.3,36,000/-. Rs.10,000/- were granted on account of consortium, love and affection. Therefore, total amount of compensation was awarded as Rs.3,46,000/-.

I have heard learned counsel for the parties and have also carefully gone through the file.

It is not disputed that the offending bus was insured with the respondent no.3- United India Insurance Company Limited.

So far as calculation is concerned, I am of the view that the Tribunal has grossly erred in calculating the compensation. For the purpose

of income, gross salary is to be seen and not basic salary. Future prospects were also not considered. Therefore, compensation is recalculated. The proved income of the deceased was Rs.5163/- p.m. and considering the age of the deceased to be 34 years, 50% is to be added as future prospects, which comes to Rs.2581/- and total income comes to Rs.7744/-. Since, there were four dependents, $\frac{1}{4}^{\text{th}}$ is to be deducted as personal expenses, which comes to Rs.1936/-. The total dependency of the claimants comes to Rs.5808/-. Since, the deceased was 34 years of age, multiplier of 16 was to be applied. Therefore, amount of compensation comes to Rs.5808/-x12x16= Rs.11,15,136/-. Rs.70,000/- under the conventional head i.e. loss of consortium, funeral and loss of estate are allowed to wife. In view of Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram, 2018(4)R.C.R. (Civil) 333, Rs.40,000/- each are allowed to minor son, father and mother of the deceased, which comes to Rs.1,20,000/-. Total amount of compensation comes to Rs.13,05,136/-.

I am of the view that the Tribunal also erred in not allowing any interest. Therefore, 7.25% per annum is also allowed on the entire amount of compensation from the date of filing of claim petition till realization. The payment already made by the insurance company shall be adjusted and from the said date, interest will be payable only on the balance amount. Since, the offending bus was insured with the insurance company, insurance company shall be liable to pay the entire compensation.

Order of the Tribunal regarding apportionment and depositing of amount in FDRs is also set aside. Out of the amount of compensation, it is directed that a fixed sum of Rs.one lakh shall go to the father and mother of the deceased in equal shares. Out of the remaining amount, 75% shall be

given to the wife of the deceased who has to run day-to-day affairs of the family and spend money on upbringing and education of minor. Remaining 25% shall go to the then minor son of the deceased, who has now become major. Amount paid to them shall be used by them the way they like.

Appeal is accordingly allowed.

16.05.2019

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No