

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

Date of decision : 5.8.2019

(1) FAO-3726-2004

Smt. Poonam and others

.....Appellants

Versus

Raj Kumar and others

..... Respondents

(2) FAO-3727-2004

Khazani and another

.....Appellants

Versus

Raj Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Poonam-appellant in person
in FAO-3726-2004

KULDIP SINGH, J (ORAL)

This order shall dispose of abovementioned two appeal i.e. *FAO-3726-2004* and *FAO-3727-2004* as the same arise out of the same award dated 9.6.2004 passed by Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal'). For brevity, the facts are being taken from *FAO-3726-2004*.

The facts of the case are that on 4.5.2003, Jaibir, aged about 21 years, (date of birth 12.11.1981), along with Yashbir, aged about 20 years, (date of birth 4.9.1983), as pillion rider, were riding a motor cycle bearing registration number HR-11/4325. At about 7.00 p.m., when they reached near the bridge on Rohtak-Jind Road, a vehicle make Tata 407 bearing

registration number HR-56/0875 being driven by respondent No. 1-Raj

Kumar rashly & negligently and at a very high speed came from Lakhan Majra side and hit the motorcycle. Respondent No. 1-Raj Kumar fled away from the spot. Both the Jaibir and Yashbir were injured. Raj Kumar and Om Parkash who were working in the nearby fields removed the injured to Post Graduate Institute of Medical Sciences (PGIMS), Rohtak. Jaibir was declared brought dead whereas Yashbir was having serious injuries. He also scummbed to the injuries on 9.5.2003. An FIR under Sections 279/337/304-A of the Indian Penal Code 1860 was registered at Police Station Meham.

It is stated that Jaibir was serving in Haryana Armed Police and was getting salary of Rs. 5447/- per month. He was sole bread earner of the family and his wife-Poonam, minor son-Aakash and mother-Ram Rati along with other claimants were dependents upon him.

Regarding Yashbir, it is stated that he was 20 years of age. He was a good athlete. He represented Maharishi Dayanand University, Rohtak in basket ball. He was selected as Commando in Haryana police and was to join his duties on 22.5.2003 but he met with an accident and expired on 9.5.2003. He was earning Rs. 5325/- per month.

In the reply, respondent No. 1 claimed that respondents No. 2 and 3 are the owners of the vehicle in question. He was working under one Rajmal son of Shri Ram Dhan. He also denied the accident. Respondents No. 2 and 3 also claimed that they never employed respondent No. 1-Raj Kumar as their driver. They have sold the vehicle to Rajmal son of Ram Singh resident of Ahiraka on 4.9.2001. An affidivat and special power of attorney was executed in this regard and was given to the vendees.

From the pleadings following issues were framed: -

1. Whether the accident took place due to rash and negligent driving of Tata 407 bearing registration No. HR-56/0875 by respondent No. 1 resulting into death of Jaivir and Yashbir as alleged? OPP.
2. If issue No. 01 is proved whether claimants Khazani and others are entitled for compensation, if so, to what amount and from whom? OPP.
3. If issue No. 01 is proved, whether claimants Poonam etc., are entitled for compensation, if so, to what amount and from whom? OPP.
4. Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR
5. Whether petition is not filed in accordance with the rules? OPR.
6. Whether the respondent No. 1 was not having any valid driving license and the Tata 407 in question was being driven in violation of terms and conditions of insurance policy at the time of accident as alleged? OPR-4
7. Relief.

Regarding the death of Jaibir, the Tribunal took the income of the deceased to be Rs. 5447/- and after deducting 1/3 as personal expenses, dependency of the claimants was calculated at Rs. 3300/- i.e. Rs. 39600/- per annum. After applying the multiplier of 16, the total compensation was calculated at Rs. 6,33,600/- (39600X16). Rs. 5,000/- were awarded on account of last rites and consortium. Hence, the total amount of compensation was awarded to the tune of Rs. 6,38,000/-. The said compensation was allowed only to claimants No. 1 to 3 i.e., the wife, minor son and mother of the deceased.

Regarding the death of Yashbir, his earning capacity was calculated to be Rs. 4,000/-. The dependency of the claimants was assessed at Rs. 2500/- i.e. Rs. 30,000/- per annum. Considering the age of the mother of the deceased-Khazani i.e. 55 years, multiplier of 10 was applied and compensation of Rs. 3.00 lacs was awarded. Rs. 5,000/- was allowed on account of last rites. Hence, total compensation to the tune of Rs. 3,05,000/- was allowed, out of which Rs. 2,00,000/- were to go to Khazani and Rs. 1,50,000/- were given to Sunita sister of the deceased. Both the claimants being dissatisfied, filed the aforesaid appeals.

Lawyers are abstaining from work and did not appear. However, Poonam-appellant in FAO-3726-2004 had appeared for herself and Khazani-appellant in FAO-3727-2004 and argued the case in person. She prays for increase in the compensation under various heads.

Heard, the appellant-Poonam in person in both the claim petitions and also considered the case of respondents and have also carefully gone through the case files.

Taking up the case of death of Jaivir (FAO-3726-2004), it is not disputed that the deceased was working in Haryana Armed Police and was getting the salary of Rs. 5447/-. Considering the age of the deceased and permanent job, 50% is added on account of future prospects which comes to Rs. 8170/-. 1/3rd i.e. Rs. 2723/- are deducted as personal expenses. The dependency of the claimants comes Rs. 5447/-. After adding the multiplier of 18, the total compensation comes to Rs. 11,76,552/- i.e. $5447 \times 12 \times 18$. Rs. 70,000/- are allowed on account of conventional heads

i.e., loss of estate, loss of consortium and last rites. Rs. 50,000/- are awarded on account of love and affection to the minor son. Hence, the total amount of compensation comes to Rs. 12,96,552/-. The enhanced amount of compensation shall be payable with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization. The liability shall be joint and several. Out of the total amount of enhanced compensation, 50% shall go to Poonam, wife of the deceased-Jaivir and the remaining 50% shall go to Aakash- minor son of the deceased.

Now taking up the case regarding the death of Yashbir (FAO-3727-2004), it is not denied that he was selected in Commando Force in Haryana Police. He was to join his duties on or before 31.5.2003 but he met with an accident on 4.5.2003 and expired on 9.5.2003. Present claim petition was filed on 14.6.2003. Had Yashbir not expired in the accident, he would have joined the Haryana Commando Force which is a permanent job and earned the salary as payable to him. Though there is no evidence as to what is the exact salary but it has to be equal to the constable in Haryana Police. Since his co-passenger Jaibir was getting the salary of Rs. 5447/- and had joined earlier. Therefore, it must be presumed that deceased Yashbir at the initial stage must get Rs. 5,000/- per month salary. Since it was a permanent job and deceased was 20 years of age, 50% is added on account of future prospectus i.e. 2500/-. The total income comes to Rs. 7500/-. Since the deceased was unmarried, one half ($\frac{1}{2}$) i.e. Rs. 3750/- are deduced on account of personal expenses. The deceased being 20 years of age, multiplier of 18 is applied. The total amount of compensation comes to Rs. 8,10,000/- i.e., $3750 \times 12 \times 18$. Rs. 70,000/- under the conventional

heads are allowed. The total amount of compensation comes to Rs. 8,80,000/-. The enhanced amount of compensation shall be payable with interest @ 7.5 % per annum from the date of filing of the claim petition till realization. The liability to pay shall be joint and several Out of the total amount of enhanced compensation, 2/3rd shall go to Khazani-mother of the deceased. 1/3rd shall go to Sunita- minor sister of the deceased.

In view of above, FAO-3726-2004 is allowed and total amount of compensation is enhanced from 6,38,000/- to Rs. 12,96,552/-. The enhanced amount of compensation shall be payable with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization. Out of the total amount of enhanced compensation, 50% shall go to Poonam wife of the deceased-Jaivir and the remaining 50% shall go to Aakash-minor son of the deceased.

FAO-3727-2004 is allowed and the total amount of compensation is enhanced from 3,05,000/- to Rs. 8,80,000/-. The enhanced amount of compensation shall be payable with interest @ 7.5 % per annum from the date of filing of the claim petition till realization. Out of the total amount of enhanced compensation, 2/3rd shall go to Khazani-mother of the deceased. 1/3rd shall go to Sunita- minor sister of the deceased.

Appeals stand allowed accordingly.

(KULDIP SINGH)
JUDGE

5.8.2019
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Whether speaking / reasoned
Whether Reportable:

Yes
Yes