

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

XOBJC No.22-CII-2004 O&M) in/and
FAO No.2394 of 2002 (O&M)
Date of Decision: January 25th 2019

Chief General Manager Rajasthan Roadways Ganga Nagar through its
Manager, Adm. Room No.332, 3rd Floor, ISBT Delhi

...Appellant

Versus

Smt. Bala and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Kumar Gehlawat, Advocate
for the appellant.

Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for cross-objectors/respondents No.1 to 3 and 5.

JAISHREE THAKUR, J.

1. This order shall dispose of the main appeal (FAO No.2394 of 2002) as well as cross-objections (XOBJC No.22-CII-2004) filed on behalf of respondents No.1 to 3 and 5.

FAO No.2394 of 2002

2. This is an appeal filed by the Chief General Manager Rajasthan Roadways against award dated 08.02.1999 passed by the Motor Accident Claims Tribunal, Rohtak (later referred to as 'the Tribunal') for death of Raj Singh (later referred to as 'the deceased') in a motor vehicle accident on 20.01.1997.

3. In brief, the facts of the case as stated are that, on 20.01.1997 a three wheeler No.HR46-2850 being driven by Satvir Singh @ Pappu started from village Balliana at 6.40 a.m. with passengers Balbir Singh, Shiv Parkash, Ranbir, Sunil, Raghu Nath, Bhisham and Sultan and at about 6.45 a.m. Raj Singh, Din Dyal, Ram Bhaj, Rajinder, Joginder and Dalbir also boarded in the said three wheeler from village Kheri Sadh. The tempo was being driven by Satvir Singh, driver on the left side of the road and when it reached 2-3 killas ahead of Hanuman Mandir towards village Kharawar, a bus of Rajasthan Roadways (RSRTC) bearing No.RJ13-P-0734 being driven rashly and negligently by Ram Sarup, respondent No.6 herein, came from Delhi side i.e. from opposite direction. The bus dashed into the tempo at about 7.00 a.m. This head-in-collision occurred due to rash and negligent driving of the bus by its driver, resulting into injuries to occupants of the tempo. Satvir, Sultan, Raj Singh, Din Dayal and Kishan Chand died as a result of the accident. Other occupants of the tempo also suffered injuries. The respondents No.1 to 5 herein filed a separate claim petition No.28 of 1997, which was allowed by the Tribunal.

4. The Tribunal assessed compensation of ₹ 1,92,000/- to the claimants, which was computed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of deceased	Raj Singh
(ii)	Date of accident	20.01.1997
(iii)	Age of deceased	24
(iv)	Monthly income of the deceased	₹ 1500/-
(v)	1/3 rd of (iv) above deducted towards personal expenses	₹ 1500-500= ₹1000/- per month

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(vi)	Compensation calculated after applying multiplier of 16	(₹ 1000X12X16)= ₹ 1,92,000/-

5. Learned counsel for the appellant has assailed the award on the ground that deceased Raj Singh and 12 other passengers were travelling in the tempo No.HR46-2850 when the appellant's Bus No.RJ13-P-0734 came from Delhi side i.e. opposite direction and a head-on-collision took place on the main road, as such, it clear that the accident took place due to rash and negligent driving of both the vehicles and compensation was to be apportioned as 50:50. It is also contended that finding of the Tribunal on issue No.1 is not sustainable, as the Tribunal did not consider the testimony of RW1 Ram Singh, driver of the appellant's bus.

6. On the other hand, learned counsel for respondents No.1 to 5 argues that finding of the Tribunal on issue No.1 are well reasoned and the same do not call for any interference.

7. I have heard learned counsel for both the sides, apart from perusing the record.

8. The Tribunal, while deciding issue No.1 against the appellant herein, relied upon the statement of PW2 Balbir Singh, who was an eye-witness and also lodged the FIR Ex.P1. Said Balbir Singh was not amongst the claimants, as such, he was an independent witness. He supported the version of the claimants that the bus in question was being driven rashly and negligently, whereas the tempo was being driven at moderate speed and was partly on *katcha* berm on left side. He stated that the bus dashed into the

tempo, resulting into death of the deceased persons and injuries to the other passengers. Moreover, injured Shiv Parkash PW6, Joginder PW13 and Rajinder Singh PW14 have also made the similar statements that the bus was being driven rashly and negligently and dashed into the bus. The accident occurred due to fault of bus driver Ram Sarup, respondent No.1. The Tribunal also took note of the fact that RW1 Ram Sarup (driver of the offending bus) admitted that criminal case regarding the accident in question was pending against him. The Tribunal came to hold that solitary statement of RW1 Ram Sarup is not sufficient to rebut the cogent evidence available on record against him. The Tribunal further observed that RW1 Ram Sarup even did not state that the tempo was being driven rashly and negligently. The Tribunal has also considered the arguments raised by learned counsel for the appellant regarding foggy morning and overloading of the tempo, however, did not find any force behind the same.

9. In view of the above, the findings recorded by the Tribunal on issue No.1, does not call for any interference by this court.

XOBJC No.22-CII-2004

10. In this case, cross-objections have been filed by the claimants to enhance the compensation.

11. There is an application filed along with the cross-objections to implead the legal representatives of respondent No.4-Shri Devia, who was father of deceased Raj Singh. For the reasons mentioned in the application, the same is allowed. However, share of respondent No.4-Shri Devia, if not already disbursed, the same shall be apportioned equally amongst other surviving claimants.

12. Learned counsel for cross-objectors/respondents No.1 to 5 submits that the Tribunal has erred in assessing the earning of the deceased at ₹ 1500/- per month whereas, he was employed as Sweeper in Municipal Corporation Delhi on daily wages and getting ₹ 2000/- per month. It is also argued that the deceased was also rearing pigs and his total income was ₹ 5000/- per month, out of which he was giving ₹ 4000/- to his wife. Learned counsel also contended that multiplier of 20 should have been applied. It is also argued that though the claimants are children, wife and parents of the deceased, but the Tribunal has failed to grant any compensation on account of loss of love and affection, loss of consortium, loss of estate and funeral expenses. It is also contended that the Tribunal has not awarded any interest on the amount of compensation.

13. On the other hand, learned counsel for the respondent/Insurance Company argues that no ground is made out to enhance the compensation.

14. While assessing the income of the deceased, the Tribunal observed that no salary certificate from the Municipal Corporation of Delhi had been produced regarding employment and wages of the deceased. The wife of the deceased had applied to the Municipal Corporation, Delhi, on which a report was made that deceased Raj Singh could not be given employment for want of vacancy. As such, the Tribunal came to hold that Raj Singh was not actually employed in the Municipal Corporation Delhi, apart from holding that there is no evidence regarding rearing of pigs by the deceased. The Tribunal assessed the income of the deceased as ₹ 1500/- per month, equal to that of a labourer. Under these circumstances, this court is

of the considered view that in the absence of any cogent and convincing evidence to the contrary, the income of the deceased, as assessed by the Tribunal does not call for any interference.

15. In case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, Hon'ble Apex Court has held that in case of self employed persons below the age of 40 years, addition of 40% is to be made in his income towards future prospects. The deceased was 24 years of age and addition is to be made in his income as per dictum of Hon'ble Apex Court in above referred case. Compensation of ₹ 70,000/- on conventional heads is also to be allowed to claimants as per observations of Hon'ble Apex Court in case of ***Pranay Sethi (supra)***.

16. In view of my above discussion, compensation to which claimants are entitled is reassessed as follow:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Raj Singh
(ii)	Date of accident	20.01.1997
(iii)	Age of the deceased	24 years
(iv)	Monthly income of the deceased	₹ 1500/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 1500+₹600)= ₹ 2100/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 2100-₹525) = ₹ 1575/- per month
(vii)	Compensation calculated after applying the multiplier of 18	(₹1575X12X18) = ₹ 3,40,200/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
<i>Total</i>		₹ 4,10,200/-

17. As a sequel of my discussion above, the main appeal (FAO No.2394 of 2002) is dismissed. However, the cross-objections have merit and the same are partly accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Raj Singh is increased from ₹ 1,92,000/- to ₹ 4,10,200/-. The increased amount of compensation will carry interest @ 7.5% per annum from the date of filing of the cross-objections till actual realization. Appellant-Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the amount of compensation as per the award of the Tribunal. The parties shall bear their own costs.

January 25 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No