

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 4101 of 2005 (O&M)

Date of Decision: 29.10.2019

Ranjit Kaur and others

---Appellants

versus

Rachhpal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajesh Bhatheja, Advocate
for the appellants**

**Mr. Pardeep Goyal, Advocate
for respondent No. 3**

**Mr. Aakash Sridhar, Advocate,
for Mr. Ashwani Talwar, Advocate
for respondent No. 5**

Rekha Mittal, J.

CM no. 17671-CII of 2005

Heard.

**Allowed as prayed for. Delay of 17 days in refiling the appeal
stands condoned.**

Disposed of accordingly.

CM No.17672-CII of 2005

**Prayer in this application is for condoning delay of 198 days
in filing the appeal.**

**In view of averments made in the application supported by
affidavit of Kashmir Singh, appellant No. 5 coupled with that provisions of
the Motor Vehicles Act for grant of compensation are benevolent social**

legislation to save the victim family from financial loss caused due to accident, the application is allowed, delay of 198 days in filing the appeal stands condoned subject, however, to the condition that in case the compensation is enhanced, the applicants-appellants shall not be entitle to interest for the period of delay.

Main case

The claimants are in appeal seeking enhancement of compensation on account of death of Paramjit Singh in a motor vehicular accident that took place on 22.7.2002.

The Motor Accidents Claims Tribunal, Faridkot (in short “the Tribunal”) awarded Rs.7,80,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 7000/-
Deduction for personal expenses	Rs. 2000/-
Multiplier	13
Loss of dependency	Rs. 7,80,000

Respondents No. 1 to 5 before the Tribunal were held jointly and severally liable to pay the aforesaid amount of Rs. 7,80,000/-.

Counsel representing respondent No. 5 -Oriental Insurance Company Limited would inform that award of the Tribunal was modified vide order dated 15.9.2010 passed in FAO No. 5444 of 2004 and in view thereof, appellants shall be entitle to only 40% of compensation from the owner and insurer of truck No. RJ-13 G- 1359.

The plea of claimants is that deceased was running the business of transport, doing agriculture work and dairy farming thereby earning Rs. 30,000/- per month. They examined Rakesh Thapa AW1 Officiating Officer of Punjab National Bank, Kotkapura to prove that Paramjit Singh had availed loan facilities to the tune of Rs. 6 lakh for purchase of truck and

had been regularly depositing installments and proved certificates of the loan statement Ex. A2.

Indisputably, except proving the factum of raising of loan and payment of installments, there is nothing on record with regard to income of the deceased. The claimants did not produce any documentary evidence with regard to ownership of any other truck by the deceased. In the given circumstances, I find it difficult to accept contention of the appellants that income of deceased is liable to be assessed on the basis of monthly installment paid to the bank in discharge of outstanding liability of loan. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time coupled with materials on record, there is no justification for assessing monthly income more than what has been allowed by the Tribunal. Claimants shall be entitle to addition in income for future prospects @ 40%. The application for compensation has been filed by the widow, two minor children and parents of the deceased. Admissible deduction for personal expenses is $1/4^{\text{th}}$. As deceased was less than 40 years of age, multiplier applied is modified and the same would be 16. In this manner, loss of dependency is calculated at Rs.14,11,200/- [7000 x 12 x 16 = 13,44,000 + 5,37,600 = 18,81,600 – 4,70,400 ($1/4^{\text{th}}$)].

Under conventional heads, claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total compensation is Rs. 14,81,200/-.	

This Court vide judgment dated 15.9.2010 has modified the award. A relevant extract from paras 4 and 5 thereof, reads thus:-

“4.The appellant-insurer cannot be burdened with any liability at all, having regard to the fact that the accident was due to contributory negligence of the driver of the deceased's vehicle and the award shall therefore suffer a partial abatement to the tune of 60% namely the proportion to which his driver's liability is apportioned.

5. The award of the Tribunal shall therefore stand modified to cast 40% liability on the second respondent before the Tribunal and its insurer, who was the third respondent before the Tribunal, who are respectively 7 and 9 respondents in appeal.”

In view of the above, the claimants are entitle to 40% of the assessed compensation, to be paid by the owner and insurer of truck No. RJ-13-G-1359. 40% of the amount comes to Rs. 5,92,480/- and compensation assessed by the Tribunal is reduced to the extent of Rs. 1,87,520/-.

The appeal stands disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

29.10.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No