

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

FAO-4261-2005(O&M)

Date of decision:-10.1.2019

Manjit Kaur and another

...Appellants

Versus

Punjab State through Collector, Amritsar and others

...Respondents

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

Present: Mr.Pardeep Rajput, Advocate
for the appellants.

Mr.N.K.Bawa, DAG, Punjab.

H.S. MADAAN, J.

Petitioners – Manjit Kaur – mother, Ajmer Singh – father of Daljit Kaur, an unfortunate victim of a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Punjab State through Collector, Amritsar, General Manager, Punjab Roadways Patti, District Amritsar – owners and Kewal Singh – driver of bus bearing registration No.PB-12-C-9563 (hereinafter referred to as the offending bus) claiming compensation to the tune of Rs.30 lacs on account of death of Daljit Kaur in a mishap.

According to the claimants, their daughter Daljit Kaur was a diploma holder in fashion designing and she was running a boutique drawing monthly income of Rs.9,000/-; that at the time of her death, she was aged 21 years; that on 4.8.2001 while Daljit Kaur was going to her

boutique at about 11:00 a.m. and when she had reached Atam Park Chowk, Ludhiana, respondent No.3 – Kewal Singh driving the offending bus in a rash and negligent manner without blowing any horn hit the deceased, as a result of which, she fell down and suffered multiple injuries; that she was taken to Guru Teg Bahadur Hospital, Ludhiana, where she was got admitted; that the matter was reported to the police; that Daljit Kaur succumbed to the injuries on 9.8.2001 at about 11:30 a.m.; that the post-mortem examination was carried out on her dead body; that a sum of Rs.80,000/- were spent on her medical treatment. According to the claimants, the deceased was spending her income for their welfare; that she was contributing that income for providing best amenities of life to them and on account of her death, claimants had suffered huge financial loss around 50 lacs including that for mental agony, love and affection.

On notice, the respondents appeared. Respondents No.1 and 2 have filed a joint written statement, whereas the respondent No.3 came up with a separate written statement

In the joint written statement filed on behalf of respondents No.1 and 2, they contended that the accident had taken place on account of negligence of the deceased, who did not care for the traffic on the road while crossing the road and struck on the rear portion of the bus; that the claimants themselves had admitted the negligence of the deceased and accepted Rs.27,000/- as no fault liability from respondent No.3; that it was claimant No.2, his village Sarpanch and other respectable persons, who got lodged DDR on 5.8.2001 after completion of all the formalities; that as a matter of fact the deceased was neither self-employed nor

employed anywhere and was not having any source of income.

The written statement filed by respondent No.3 was also on the similar lines.

Such respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether Daljit Kaur has died on account of rash and negligent driving of Bus No.PB-12-C-9563 by respondent No.3 Kewal Singh on 4.8.2001 at 11 a.m. in the area of Ludhiana? OPA
2. If issue No.1 is proved, whether the claimants are entitled to receive compensation, if so, how much and from whom? OPA.
3. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimants had examined Niramal Singh as AW2, Kamalpreet Singh as AW3 and Manjit Kaur, claimant No.1 herself appeared as AW1.

On the other hand, respondents examined Prem Pal as RW2 and Kewal Singh – respondent No.3 himself appeared as RW1.

After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants against respondents, whereas issue No.2 was decided holding that claimants were entitled to compensation of Rs.2,40,000 – 77,000=1,63,000/- with all the respondents being jointly and severally liable. Accordingly the claim petition was accepted and compensation of Rs.1,63,000/- with interest at the rate of 6% per annum

from the date of institution of the petition till its realization was granted to them. Both the claimants were found entitled to get the compensation to the extent of 50% each and counsel fee was assessed to be Rs.1,000/-.

This award left the claimants aggrieved and they have approached this Court by filing the present appeal seeking enhancement of the compensation awarded to the claimants.

Notice of the appeal was given to respondents, who put in appearance through counsel.

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

The main contention of learned counsel for the claimants was that the compensation awarded by the Tribunal is on lower side and compensation under all the conventional heads has not been awarded and further the future prospects has also not been taken into consideration. He pressed into service authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009.**

In this case, the Tribunal has taken the monthly income of the deceased as Rs.6,000/- per month making deduction to the extent of 1/3rd towards her personal expenses taking her age as 21 years applying the multiplier of 5. The compensation so worked out to be Rs.2,40,000/-. As far as age and income of the deceased are concerned, those are taken to be as such. However, in **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), it has been observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% towards future prospect is to be made when the deceased was below the

age of 40 years.

Thus making such addition of 40%, monthly income of deceased comes out to Rs.8,400/-.

The Apex Court in *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77* has clearly observed in para No.15 where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle and normally 50% is deducted as personal and living expenses.

Doing that the dependency of the claimants comes out to be Rs.4,200/- and annual dependency comes out to be Rs.50,400/-(4200 x 12).

The Tribunal has used multiplier of 5. However in view of authority *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.*(supra), multiplier of 18 should be applied.

Doing that the compensation is worked out to Rs.9,07,200 (50,400 x 18). An amount of Rs.77,000/- is to be deducted to this amount having been already received by the claimants as mentioned in the Award. In this way, the compensation comes out to Rs.8,30,200/-(9,07,200 - 77,000).

The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.6,67,200/-(8,30,200 - 1,63000). The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award. The other terms and conditions given in the relief clause regarding disbursement of the compensation

amount shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

10.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No