

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 699 of 2010 (O&M)

Date of decision:-03.12.2019

Dinkar

.....Appellant

vs.

Rakhu Ram and another

....Respondents

AND

FAO No. 2148 of 2010 (O&M)

Rakhu Ram

.....Appellant

vs.

Dinkar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arundeeep, Advocate for
Mr. R.S. Pandher, Advocate
for the appellant in
FAO No. 699 of 2010 and
for respondent No. 1 in
FAO No. 2148 of 2010.

Mr. Ramanjeet Singh, Advocate
for respondent No. 1 in
FAO No. 699 of 2010 and
for the appellant in
FAO No. 2148 of 2010.

RITU BAHRI, J.(Oral)

This order shall dispose of two appeals bearing FAO No. 699 of 2010 filed by the owner and the another bearing FAO No. 2148 of 2010 filed by the claimant. However, for the sake of convenience, the facts are being extracted from FAO No. 699 of 2010.

Brief facts of the case are that on 04.07.2005, the deceased

Deepa Ram who was employed in Patiala Furness Ambe Majra, GT Road,

Mandi Gobindgarh was going on the scooter of Gulzar Mohammad as a pillion rider. When they reached near Patiala Furness, respondent No.1 came there while driving Maruti car bearing registration No. PB-08-T-9697 (hereinafter referred to as offending vehicle) in a rash and negligent manner and hit the scooter from back side at a very high speed. Deepa Ram suffered various grievous as well as multiple injuries on his body and was admitted in DMC Ludhiana. On 15.07.2005, he died due to these injuries. Consequently, the claimants filed a claim petition before the Tribunal.

The appellant/owner is not challenging the finding on issue No. 1. This finding has been rightly given in favour of the claimant keeping in view FIR No. 133 dated 15.07.2005 under Sections 279 and 337 IPC was registered by the police and the appellant had faced trial. However he was acquitted vide criminal trial judgment dated 23.09.2005 (Ex.R1).

The Tribunal had observed in para 9 of the award that in the criminal trial, all the prosecution witnesses namely Mustak Ahlmad, Rakhu Ram and Gulzar Mohammad had resiled from their statements. Certified copies of their statements are Ex.R10 to Ex.R12. The appellant/owner in his cross-examination stated that accident took place with the scooter and at that time his father was with him. He had taken the injured to Government Hospital, Mandi Gobindgarh from where he was referred to DMC Ludhiana, He accompanied him to DMC Ludhiana. RW3 Pargat Singh was a witness of compromise between the parties and compensation of Rs. 2 lakhs had been paid by appellant/owner and his father to all the legal representatives of deceased Deepa Ram despite the fact that there was no negligence of appellant/owner/Dinkar and another sum of Rs.75,000/- was also paid for the treatment of Deepa Ram. The affidavit of Rakhu Ram to this effect is Ex.R2 The receipt of payment of Rs.2,75,000/- executed by Sukhwinder

Kaur, the widow of Deepa Ram and Rakhu Ram in the shape of affidavits are Ex.R8 and Ex. R9.

Keeping in view the above evidence, the Tribunal observed that compromise was effected between the parties since the respondent/owner/Dinkar admitted his negligence and in this backdrop, finding given on issue No. 1 requires no interference.

Another ground taken by the appellant/owner is that widow of the deceased Sukhwinder Kaur got remarried and has no right to claim compensation.

This argument is liable to be rejected. After the death of her husband Deepa Ram, his wife had acquired right to claim compensation and will not get diluted even if she re-marries.

Learned counsel for the appellant/owner further argues that the compensation is on higher side.

The deceased Deepa Ram was 23 years of age as per post mortem report. The Tribunal had assessed his income as Rs.3,000/-p.m. considering him to be a labourer and assessed the following compensation:-

Sr. No.	Heads	Calculations
1.	Income	Rs.3,000/-p.m.
2.	1/3 rd is deducted as personal expenses of the deceased	3,000-1,000=2,000/-
3.	Annual dependency after multiplier of 18 is applied	2,000X12X18=Rs.4,32,000/-
4.	Funeral expenses, loss of consortium and love and affection	Rs.10,000/-
	Total	Rs.4,42,000/-
	Minus Rs.2,00,000/- already paid by appellant/owner/Dinkar	-Rs.2,00,000/-
	Total compensation	Rs.2,42,000/-

Hence, the claimants were found entitled to total compensation of Rs.2,42,000/- along with interest @ 6% per annum from the date of filing of the petition till realization.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The accident took place in the year 2005 and the income of Rs.3,000/- p.m. is not on higher side keeping in view the minimum wages. Hence, the appeal filed by the appellant/owner is dismissed.

Learned counsel for the claimant has filed the appeal for the enhancement of compensation.

The income of the deceased has been rightly assessed by the Tribunal as Rs.3,000/- p.m. keeping in view the minimum wages of a labourer in the year 2005. Hence to meet the ends of justice, the compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others*, Civil Appeal No. 9581 of 2018 and *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	Heads	Calculations
1.	Income	Rs.3,000/-p.m.
2.	40% future prospects	3,000+1,200=4,200/-
3.	1/3 rd is deducted as personal expenses of the deceased	4,200-1,400=2,800/-
4.	Annual dependency after multiplier of 18 is applied	2,800X12X18=Rs.6,04,800/-
5.	Funeral expenses	Rs.15,000/-
6.	Loss of estate	Rs.15,000/-

7.	Loss of <i>filial</i> consortium	Rs.40,000/- to the claimant- Rakhu Ram
	Total	Rs.6,74,800/-
	Enhanced compensation	Rs.6,74,800- 4,42,000=Rs.2,32,800/-

The enhanced amount of compensation of **Rs.2,32,800/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others***, Civil Appeal No. 4528 of 2019. The total amount of enhanced compensation will be paid to the claimant-Rakhu Ram.

Accordingly, the award stands modified to the above extent and the appeal filed by the claimant is allowed.

Pending application, if any, also stands disposed of.

03.12.2019
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No