

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

-.-

FAO 145 of 2015 (O&M)

Date of decision: 27.08.2019

Raja Devi and another

.....Appellants

Versus

Manoj Kumar and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. B K Bagri, Advocate
for the appellants

Ms Mehak Sawhney, Advocate
for respondent No. 1

-.-

Rekha Mittal, J. (Oral)

CM 491 CII of 2015

Prayer in this application is for condoning delay of 40 days in
filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit and arguments advanced, the application is allowed and delay of
40 days in filing the appeal stands condoned.

Main case

The claimants are in appeal seeking enhancement of
compensation on account of death of Kalyan Singh in a motor vehicular
accident that took place on 17.10.2011.

The Tribunal awarded Rs.3,93,800/-, detailed hereunder:-

-Monthly income of the deceased	Rs.4,800/-
-Deduction for personal expenses	1/3 rd
-Multiplier	7
-Loss of dependency	Rs.2,68,800/-
-Loss of consortium	Rs.1,00,000/-
-Funeral expenses	Rs.25,000/-

However, as 50% negligence has been attributed to the deceased, only 50% of the amount *i.e.* Rs.1,96,900/- has been paid to claimants along with interest.

Counsel for the appellants would argue that findings of the Tribunal on issue No. 1 attributing 50% negligence to the deceased are not based upon materials on record. It is argued that respondents before the Tribunal did not adduce any oral evidence much less examine driver of offending vehicle to prove that the deceased himself had been lacking in taking reasonable care or negligence can be attributed to him.

With regard to quantum of compensation, counsel would argue that deceased was 53 years old and as such, claimants are entitle to addition in income for future prospects and appropriate multiplier in the light of judgment of Hon'ble the Supreme Court *Sarla Verma & Ors vs Delhi Transport Corp. & Anr, 2009 (3) RCR (Civil) 77*.

Counsel representing respondent No. 1, on the contrary, has supported findings of the Tribunal both in respect of issue No. 1 as well as quantum of compensation.

There is no representation on behalf of respondent No. 2, earlier being represented by a counsel.

Naresh Singh son of the deceased, author of FIR and an alleged eye witness to the occurrence appeared in the dock and tendered into evidence his duly sworn affidavit Ex.PW1/A. In para 1 of the affidavit, he had reiterated version of the claimants that accident took place due to sole negligence of Manoj Kumar, driver of motorcycle bearing registration No. HR 36Q 3891. In the opening lines of his cross examination, the witness has deposed to the following effect:-

“It is correct that in respect of the same accident, a criminal case is also pending in which my statement was recorded in the Court on 07.11.2012. I have gone through the certified copy of the statement recorded on 07.11.2012 which is correct one and which is Ex.R1. When I reached on the spot the other villagers and Parkash son of Girdhari was standing on the site of accident.”

Perusal of findings of the Tribunal would reveal that the Court while relying upon testimony of Naresh Singh recorded in the criminal proceedings Ex.R1 and contents of the first version recorded by him in the FIR has arrived at conclusion that the present is a case of contributory negligence of the deceased as well as driver of offending vehicle.

Perusal of testimony of Naresh Singh recorded in the criminal proceedings, correctness whereof has been vouched as noticed herein before, it becomes undisputed position of the case that as one Buffalo of the deceased came on the metaled road, the deceased followed the Buffalo and came on the metaled road and accident in question took place. Indisputably, the deceased was on foot whereas Manoj Kumar was driving the motorcycle. The driver should have taken care and precaution to avoid

collision with the deceased. Keeping in view the above, interest of justice commands that extent of negligence attributed to the deceased needs reduction. Accordingly, findings of Tribunal on issue No. 1 are modified to the effect that 30% negligence is attributed to the deceased whereas remaining 70% is attributed to driver of offending vehicle.

This brings the Court to quantum of compensation assessed by the Tribunal. The plea of claimants is that the deceased was an agriculturist and running milk dairy. The deceased was keeping buffaloes. There is no clear evidence with regard to income of the deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with that the deceased had been keeping buffaloes, income of the deceased is assessed at Rs.5,200/- per month. Since one of the claimants is married daughter of the deceased, the Tribunal has rightly applied deduction of 1/3rd for personal and living expenses.

The Tribunal has assessed age of the deceased to be 61 years, on the basis of age mentioned in the post mortem report. The claimants did not produce any documentary evidence with regard to date of birth or age of the deceased except post mortem report. In the given circumstances, age of the deceased assessed by the Tribunal cannot be faulted with. The Tribunal has rightly applied multiplier of 7 as the deceased was in the age bracket of 61-65 years. The claimants shall not be entitle to addition in income for future prospects in view of the fact that deceased was more than 60 years of age. In this view of the matter, loss of dependency is calculated at Rs.2,91,200/- (Rs.4,36,800/- *i.e.* 5,200 x 12 x 7 – Rs.1,45,600/- (1/3rd deduction)).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court *National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270* and *Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034*.

In view of the above, total compensation is Rs.3,61,200/-, 70% thereof is Rs.2,52,840/- and additional amount is Rs.55,940/- (2,52,840-1,96,900) payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

27.08.2019
Mohan Bimbra

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