

In the High Court of Punjab and Haryana at Chandigarh

FAO-1556 of 2015 (O&M)
Date of Decision: 4.7.2019

Smt. Dharshana Devi

---Appellant

versus

Sh. Darshan Chand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashwani Arora, Advocate
for the appellant

Mr. M.B.Jain, Advocate,
for the insurance company/respondent No. 3

Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation on account of death of Sushil Kumar in a motor vehicular accident that took place on 19.4.2011.

The Motor Accidents Claims Tribunal, Chandigarh (in short “the Tribunal”) awarded Rs.13,00,200/-, detailed hereunder:-

Monthly income of the deceased	Rs. 8400/-
Deduction for personal expenses	1/4 th
Multiplier	17
Loss of dependency	Rs. 12,85,000/-
Funeral expenses	Rs. 15,000/-

Only 50% of compensation has been paid to the claimants as 50% negligence has been attributed to deceased Sushil Kumar.

Counsel for the appellant would argue that findings of the Tribunal attributing 50% negligence to deceased are not based upon

materials on record. It is submitted that Sandeep Kumar, an eye witness to the occurrence and brother of the deceased who was also travelling in ill fated Indica car bearing No. CH-03-Z-3448 was examined and he had categorically deposed that Sushil Kumar was driving at slow speed on left side of road and accident took place because of tractor trolley No. HR- 02-D-7066 lying on the road without any indication or light to pre-warn on going traffic. It is further argued that testimony of Sandeep Kumar to the aforesaid effect has not been controverted/rebutted by the respondents because driver of the offending vehicle did not appear in the witness box.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue no. 1 attributing 50% negligence to deceased who did not bother to ensure that there is no obstacle/hindrance on the road while driving the aforesaid Indica car after midnight. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Raj Rani vs. Oriental Insurance company Limited 2009(13) SCC 654.**

Indisputably, Indica car driven by Sushil Kumar struck against tractor trolley lying on the road. There is no rebuttal to testimony of Sandeep Kumar that tractor trolley was lying on the road without any signal, indication etc. At the same time, statement made by Sandeep Kumar is conspicuously silent as to from how much distance the tractor trolley lying on the road could be noticed in the lights of Indica car or what reasonable care was taken by the deceased to avoid collision with the tractor trolley. In the given circumstances, it is difficult to accept contention of the appellant that findings of the Tribunal holding the present case to be a case of contributory negligence are faulty much less perverse. As such, findings of

the Tribunal attributing negligence to the deceased cannot be faulted with. However, keeping in view the facts and circumstances discussed above, negligence attributed to the deceased is reduced to 30% as against 50%.

This brings the court to quantum of compensation assessed by the Tribunal. The deceased was employed as Home Guard. The claimants examined an official from the office of Commandant Home Guards, UT, Chandigarh to prove employment and income of the deceased. Perusal of testimony of Beena Devi PW1 and salary certificate Ex. P1 makes it evident that the deceased was being paid emoluments on the basis of number of days he performed his duty. In the month of March 2012, the deceased was paid Rs. 8480/- for 28 days. There is no evidence as to how much amount was paid to the deceased in the months prior to March 2012. Taking into consideration the evidence on record, monthly income of the deceased is taken as Rs. 8480/-. The claimants shall be entitle to increase in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 18,16,416/- $[8480 \times 12 \times 17 = 17,29,920 + 6,91,968 (40\%) = 24,21,888 - 6,05,472 (1/4^{\text{th}})]$.

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/- detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 18,86,416/-. The claimants shall be entitle to 70% of the amount i.e. 13,20,491/- $(18,86,416 \times 70\%)$. The

additional amount is Rs. 6,70,391/- (13,20,491-6,50,100), payable with interest @ 7.5% per annum from the date of petition till realization in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

4.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No