

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

FAO-3289-2015 (O&M)
Date of decision: 28.05.2019

KEWAL KRISHAN & ANR

... Appellants

Versus

RESHAM SINGH & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Arun Takhi, Advocate for the appellants.

Mr. Ramandeep Singh, Advocate
for respondents No.1 and 2.

Mr. Varun Sharma, Advocate for
Mr. Satpal Dhamija, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Gaurav in a motor vehicular accident that took place on 31.07.2013.

The Tribunal has assessed compensation of Rs.3,76,000/-,
detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	13
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.3,51,000/-
5. Expenses on funeral	Rs.25,000/-

However, the claimants have been paid 50% of the amount as
50% negligence has been attributed to the deceased.

Counsel for the appellants would argue that findings of the

Tribunal on issue No.1 attributing negligence to the deceased and that too to the extent of 50% are incorrect and liable to be set aside. It is argued that driver of offending vehicle did not appear in the witness box to explain the circumstances under which the occurrence in question took place or he had taken reasonable care to avoid the accident, therefore, an adverse inference is liable to be drawn against the driver and owner of the offending vehicle. In addition, it is argued that as the deceased was travelling on a motorcycle and the offending vehicle is school bus bearing No.PB-07-R-6380, the driver of bigger vehicle is required to be more careful in order to ensure that smaller vehicles on the road are safe.

With regard to quantum of compensation, it is argued that appellants may be allowed addition in income for future prospects and appropriate multiplier on the basis of age of the deceased.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 attributing contributory negligence to the extent of 50% to the deceased as accident was head on collision in middle of the road.

The claimants examined Jagjit Singh, an eye-witness to the occurrence and author of FIR No.137 dated 01.08.2013 registered at Police Station Dasuya. Jagjit Singh tendered into evidence his duly sworn affidavit Ex.A6. A relevant extract from his testimony narrating the occurrence, reads as follows:-

On 31.07.2013 the deponent was coming to his village from Mukerian on his motorcycle and one young man was

going ahead of him on his own motorcycle bearing registration No.PB-07-AE-7642 when the deponent was just a little away from his village turn at about 3 pm, a bus owned by DAV Public School and bearing registration No.PB-07-R-6380 coming from the front side and being driven on a high speed and in a rash and negligent manner hit the motorcycle of that young man and in a result of accident that young man fell down in the canal flowing along side road and his motorcycle entangled in the bus. xx xx xx The deponent started searching the young man from the canal alongwith the help of people gathered there and the bus driver fled from the seen. On discovering the young man from the canal he was found dead on searching his purse, from his driving licence he was identified as Gaurav S/o Kewal Krishan R/o Village Jamsher Chatyal.

The witness was cross examined separately by both the sets of respondents. In his cross examination by counsel for the insurance company, he has stated, reads thus:-

Bus was to cross the bridge of the canal. Motorcyclist also did not cross the bridge before accident. Accident took place ahead of the bridge. Accident took place in the middle of the bridge. Again said accident took place where the bridge starts towards Hajipur side. The metaled portion of the road is about 11 feet at the place of accident.

On careful reading of the aforesaid extracts from examination in chief and cross examination of the witness makes it evident that though Jagjit Singh had stated that the offending vehicle was driven at a high speed and in a rash and negligent manner but he had not made the factual foundation as to how the driver of offending vehicle was rash or negligent

in his driving. Meaning thereby that testimony of the witness is only an opinion expressed by him. As per the facts elicited in cross examination of Jagjit Singh, accident took place in middle of the bridge or where the bridge starts towards Hajipur side. Nothing has been stated by the witness that motorcyclist was driving on correct side of the road and the offending vehicle had gone on wrong side and hit the motorcyclist. In the given scenario, it is difficult to find fault in findings of the Tribunal that the present is a case of contributory negligence of drivers of both the vehicles involved in the occurrence. However, keeping in view that the offending vehicle is a bigger vehicle and driver thereof has a greater responsibility to ensure safety of smaller vehicles coupled with that driver of offending vehicle did not appear in the witness box to explain as to how the occurrence took place, interest of justice would be served, if negligence attributed to the deceased is reduced to the extent of 30% in place of 50%, assessed by the Tribunal. Accordingly, findings of the Tribunal on issue No.1 are modified in the aforesaid terms.

The Tribunal has assessed income of the deceased at Rs.4500/- in absence of any evidence with regard to his earning. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Appellants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses applied by the Tribunal is correct and affirmed. As the deceased was 19 years old, admissible multiplier is 18. In this manner, loss of dependency is calculated at Rs.9,07,200/- [(6000 x

12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.9,37,200/- and compensation payable to the appellants to the extent of 70% is Rs.6,56,040/-. The additional amount is Rs.4,68,040/- (6,56,040 - 1,88,000) payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

28.05.2019

ashok

(REKHA MITTAL)
JUDGE

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