

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

F.A.O. No. 3041 of 2016

DATE OF DECISION :- October 04, 2019

Gurmail Kaur

...Appellant

Versus

Nirmal Singh and others

...Respondents

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

Present:- Mr. Deepak Gupta, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent No. 6.

Briefly stated facts of the case are that on account of death of Harbans Singh, in a motor vehicular accident which took place on 19.8.2013 at about 3.00 P.M., statedly on account of rash and negligent driving of Bus bearing registration No. PB-04-R-9853 by respondent No. 1 Nirmal Singh, Smt. Gurmail Kaur, widow of such deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Nirmal Singh-driver, New Hargobind Transport Company (Regd.)-owner and The Oriental Insurance Co. Ltd, Kotkapura-insurer of Bus bearing registration No. PB-04-R-9853 (hereinafter referred to as the offending Bus).

Notice of the claim petition was given to the respondents. Respondent No. 6 had put in appearance and contested the claim petition, whereas respondents No. 1 to 5 were proceeded against ex-parte.

Vide Award dated 7.8.2015, the claim petition was accepted by

the Tribunal and compensation of Rs.4,48,800/- + Rs.75,000/- was awarded to the claimant. A total sum of Rs.5,23,800/- was awarded payable by respondent Nos. 1 to 3 jointly and severally to the claimant.

The claimant was not satisfied with the amount of compensation awarded to her by the Tribunal and has approached this Court by way of filing an appeal, notice of which was given to the respondent-Insurance Company. Such Insurance Company has put in appearance through counsel.

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

The Tribunal on analysis of the evidence produced before it has come to the conclusion that the accident in which Harbans Singh had lost his life, had taken place on account of rash and negligent driving of offending bus by respondent No. 1 Nirmal Singh and this inference drawn does not call for any interference. In that way, the driver, owner and the Insurance Company are liable to pay the compensation. While assessing the amount of compensation, the Tribunal had taken the age of the deceased to be 50 years considering the age entered in the post mortem report and evidence adduced by the claimant. Though according to the claimant, the deceased used to earn Rs.10,000/- per month by selling milk but considering the fact that no cogent and convincing evidence could be brought on file by the claimant in that regard his income was taken as that of a casual labourer in view of notification dated 15.11.2012 issued by Government of Punjab and minimum charges for unskilled labourer as Rs.5200/- were assessed to be his monthly income. However, the Tribunal has not made any addition on account of future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where age of the deceased is between 50-

60 years an addition of 10% of the established income is to be made. Doing that the monthly income of the deceased is worked out to be Rs.5720/- (5200 + 520). The Tribunal has rightly deducted 1/3rd of the amount towards personal and living expenses of the deceased. Doing that the dependency of the claimant is calculated as Rs.3813/-. The annual dependency comes out to Rs.45756/- (3813 x 12). The Tribunal has used multiplier of 11. However, in view of judgment "*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*" when the deceased was in the age group of 46-50 yearears then multiplier of 13 is to be used. Doing that the total compensation is worked out to Rs.5,94,828/-. The claimant is entitled to get Rs.70,000/- under conventional Heads. Making addition of that amount the total compensation amount comes out to Rs.6,64,828/- (5,94,828 + 70,000). The Tribunal has awarded compensation of Rs.5,23,800/-. In that way, the enhanced amount of compensation comes out to Rs.1,41,028/-.

Accordingly, the appeal is allowed partly. The impugned award is modified and a sum of Rs.1,41,028/- as enhanced compensation is awarded to the claimant payable by the respondents jointly and severally with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 04, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No