

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

Date of decision: 19.12.2019

FAO No.4902 of 2016 (O&M)

New India Assurance Co. Ltd.

... Appellant

Versus

Darshan Singh and others

... Respondents

FAO No.6972 of 2017 (O&M)

Darshan Singh and others

... Appellants

Versus

Hardeep Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RC Gupta, Advocate for the insurance company.

Mr. SS Grewal, Advocate for the claimants.

Mr. Rajesh Bansal, Advocate/amicus curiae
for respondent-Abhijot Singh.

Mr. BS Aulakh, Advocate for driver and owner of trollea.

Mr. Nikhil Chopra, Addl. AG, Punjab.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.4902 of 2016 and 6972 of 2017 as these have emerged out of the same award dated 04.05.2016 passed by the Motor Accidents Claims Tribunal, Sri Muktsar Sahib whereby compensation has been assessed on account of death of Gurtej Singh @ Tej Singh in a motor vehicular accident that took place on 13.01.2014.

FAO No.4902 of 2016 has been filed by New India Assurance Company Limited (hereinafter referred to as 'the insurance company') whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal attributing exclusive negligence to driver of alleged offending vehicle i.e. Trola No.RJ-13-B-2190 driven by Hardeep Singh and quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.19,40,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.15,000/-
Multiplier	16
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.19,20,000/-
Expenses on funeral	Rs.5000/-
Loss to estate	Rs.5000/-
Loss of consortium	Rs.10,000/-

Counsel for the insurance company would argue that though FIR in respect of the occurrence has been registered against Hardeep Singh driver of aforesaid trola but accident is the result of composite negligence of the aforesaid vehicle and bus of Punjab Roadways, Moga Depot, therefore, driver, owner and insurer of aforesaid trola have wrongly been saddled with liability to pay entire compensation. In addition, it is argued that though the Tribunal has noticed that driver of both vehicles aforesaid had not appeared in the witness box but still adverse inference has been drawn only against driver, owner and insurer of aforesaid trola.

With regard to quantum of compensation, counsel would argue

that income of the deceased assessed by the Tribunal is on higher side and merits reduction. There is no evidence adduced by the claimants that deceased was owner of harvester combine or had income to the effect of Rs.15,000/- per month.

Counsel for the claimants/respondents would pray for grant of additional compensation by extending benefit of addition in income for future prospects and adequate compensation under conventional heads.

The plea of claimants is that on 13th January 2014, the deceased alongwith his maternal nephew Navdeep Singh was travelling on tractor bearing No.PB-30L-0428 driven by him. At about 1:30 pm, they reached opposite to Reliance Petrol Pump, GT Road Malout-Abohar one trollea bearing No. RJ-13B-2190 came from behind, driven by respondent No.1 at a high speed in a rash and negligent manner and without blowing any horn struck against trolley of the tractor driven by Gurtej Singh @ Tej Singh and due to this reason, hook of the trolley was broken and tractor turned down and moved down towards right side. Gurtej Singh fell down and in the meantime, Punjab Roadways Bus bearing No.PB-29H-9879 came from Abohar side. The driver of bus tried his level best to stop the bus but the bus ran over the deceased and struck against one kikkar tree.

The Tribunal framed issue No.1, reads thus:-

“1.Whether Gurtej Singh @ Tej Singh died in motor vehicle accident which took place on 13.01.2014 on GT Road (Malout to Abohar) in the area of P.S. Kabarwala on account of rash and negligent driving of respondent No.1 Hardeep Singh driver of Trollea bearing No.RJ-30GB-2190?OPP”

To discharge onus of this issue, Navdeep Singh, one of the eyewitnesses to the occurrence and injured in the case appeared in the witness box. He reiterated the version brought-forth by claimants in the application for compensation. Counsel for the appellant-insurance company has failed to point out any materials brought-forth in cross-examination of Navdeep Singh that either his testimony is not worthy of credence and reliance or composite negligence can be attributed to driver of Punjab Roadways Bus that hit the deceased. He has also failed to point out any other materials on record to establish that the present is a case of composite negligence of drivers of both the vehicles namely aforesaid trolly and bus of Punjab Roadways. That being so, I do not find any reason to intervene in findings of the Tribunal determining issue No.1 against driver, owner and insurer of trolly bearing No.RJ-13B-2190 and their liability to pay the compensation to the claimants.

This brings the Court to quantum of compensation assessed by the Tribunal. The plea of claimants is that deceased was earning handsome income by doing agriculture, car business and from harvester combine. Darshan Singh, father of the deceased appeared in the witness box and stated that Gurtej Singh was owner of 10 acres of land situated in the area of Malout and doing agriculture. He was also doing business of car bazar and well-versed in car driving. He had a harvester combine fitted with tractor. The Tribunal has rejected plea of the claimants that deceased was doing business of sale and purchase of cars and had earning from harvester combine, in view of findings recorded in para 19 of the award. I have gone through records of the Tribunal but unable to find sufficient evidence to

establish that deceased was involved in the business of sale and purchase in the car bazar at Malout. They have also failed to produce registration certificate of the tractor to prove that deceased had been harvesting crops of other people. In this view of the matter, findings of the Tribunal rejecting contention of the claimants with regard to income of deceased from the aforesaid two activities cannot be faulted with.

Perusal of jamabandi Ex.C5 reveals that deceased was co-owner of different parcels of land comprised in different khewats/khatonis and the total area is approximately 10 acres. The claimants have also produced J form with regard to sale of produce by the deceased. The Tribunal has assessed his income @ Rs.15,000/- per month. The claim has been filed by the father, widow and minor son of the deceased. The father of the deceased is also owner of land recorded in the jambandi Ex.C6. He may not be able to cultivate and look-after the entire land owned by the deceased and himself. In view of the above, value of services of the deceased to manage his land @ Rs.15,000/- cannot be said to be on higher side, warranting reduction. As such, findings of the Tribunal assessing income of the deceased are affirmed. Claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed and so also the multiplier applied. In this manner, loss of dependency is calculated at Rs.26,88,000/- $[(15,000 \times 12 \times 16) + (40\% \text{ future prospects}) - (1/3^{\text{rd}} \text{ deduction for personal expenses})]$.

Under conventional heads, compensation allowed is modified to

the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.27,58,000/- and additional amount is Rs.8,18,000/- (27,58,000 – 19,40,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 367 days in filing the appeal (FAO No.6972 of 2017).

Disposed of accordingly.

19.12.2019

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(REKHA MITTAL)
JUDGE

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