

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

**FAO No.6295 of 2016 (O&M)
Date of decision:-October 24, 2019**

Jeet Singh and others

..... Appellants

Versus

Sukhdev Singh alias Mannu and others Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. P.K.S. Phoolka, Advocate for the appellants.

Mr. Nikunj Dhawan, Advocate for
Mr. Harsh Aggarwal, Advocate for respondent No.3.

REKHA MITTAL J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Kirandeep Singh in a motor vehicular accident that took place on 03.05.2013.

The Motor Accidents Claims Tribunal, Bathinda (for short ' the Tribunal') assessed Rs.6,63,000/- detailed hereunder:

Monthly income of the deceased	Rs.4,500/-
Deduction of personal expenses	1/3 rd
Multiplier	18
Loss of dependency	Rs.6,48,000/-
Loss of love and affection	Rs.10,000/-
Funeral expenses	Rs.5,000/-

However, the claimants were paid Rs.3,39,000/- as 50% negligence has been attributed to the deceased.

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

correct appreciation of materials on record. He has prayed for grant of adequate compensation by extending benefit of addition in income for future prospects and compensation under conventional heads.

Counsel representing the Insurance Company, on the other hand, would argue that as the deceased was bachelor and claim has been filed by the parents and unmarried sister, admissible deduction should be 50%. He has supported findings on issue No.1 attributing 50% negligence to the deceased, in view of the facts elicited in cross-examination of Harpinder Singh @ Romi CW1, examined by the claimants to discharge onus of issue No.1.

I have heard counsel for the parties, perused the paper book, particularly the award.

The Tribunal, in para 11 of the award, has noticed the facts extracted from cross-examination of Harpinder Singh @ Romi. A relevant extract therefrom, reads as follows:

“Harpinder Singh stated that on 2.5.2013, the offending truck was parked in the middle of the road wrongly and negligently. Kirandeep Singh, deceased was driving the motorcycle No.PB-03-J-2010. In his cross-examination, he stated that Kirandeep Singh came at the village Raipur at about 9.00 p.m. They Kept on talking for entire night. They left for Kot Fatta at about 3.30 a.m. They four persons were on the motorcycle. They were without helmet. CW-1 Harpinder Singh further stated that the truck was parked without giving the reflectors

and indicators was not switched on. He also stated that they could see the truck from the distance. From the statement of CW-1 it is clear that the truck was wrongly parked without giving the relector and without switching on the indicator. Moreover the deceased alongwith three other persons was riding on the motorcycle. Both the parties were negligent. Hence the principle of contributory negligence is applicable. Both the parties are negligent in the ration of 50:50.”

Admittedly, the driver of offending vehicle did not appear in the witness box to counter case of the claimants and testimony of Harpinder Singh @ Romi, CW1 meaning thereby that it has been proved that offending vehicle was parked in middle of the road without any indicator/reflector to pre warn the drivers of vehicles frequenting the road. At the same time, there is nothing on record suggestive of the fact as to what reasonable care was taken by the deceased to spot any obstacle on the road and what steps were taken by him to avoid collision with wrongly parked vehicle after the same was noticed by riders of the motorcycle. In the given scenario, conclusion drawn by the Tribunal attributing contributory negligence to the deceased cannot be faulted with. The vehicle which was wrongly parked was truck bearing registration No.RJ-14-2G-6388. The vehicle driven by the deceased was a two wheeler i.e. motorcycle. In the given circumstances, interest of justice would be served, if the ratio of negligence attributed to drivers of both the vehicles is modified. The negligence attributed to the deceased to the extent of 50% is reduced to

35%. The appellants shall not be entitle to compensation to the extent of 35% negligence.

This brings the Court to quantum of compensation assessed by the Tribunal. There is no clear evidence on record with regard to avocation and income of the deceased, aged about 23 years. The claimants/appellants have not produced any document(s) with regard to educational qualification of the deceased. Taking a clue from notification issued by the State of Punjab fixing minimum wage of an unskilled worker at the relevant time, income of the deceased is assessed at Rs.6,000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied by the Tribunal is correct and affirmed.

The application for compensation has been filed by unfortunate parents and unmarried sister of the deceased. When the case is examined in the light of judgment of Hon'ble the Supreme Court "***Smt. Sarla Verma and others versus Delhi Transport Corporation and others, 2009(3) RCR (Civil) 77***", there is no justifiable reason to deviate from deduction to the extent of 50%. As such, admissible deduction for personal expenses would be 50%. In this manner, loss of dependency is calculated at Rs.9,07,200/- [(6,000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the extent that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

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

Total compensation is Rs.9,37,200/- and 65% thereof is Rs.6,09,180/-. The additional amount is Rs.2,70,180/- (6,09,180 – 3,39,000) 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 two years.

The appeal is partly allowed in the aforesaid terms.

October 24, 2019

sarita

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(REKHA MITTAL)
JUDGE