

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

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FAO-2554-2017 (O&M)

Date of decision: 12.03.2019

RADHA RANI & ANR

... Appellants

Versus

SARVJEET SINGH & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Anil K. Spehia, Advocate for the appellants.
Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate for respondent No.3.
Ms. Monika Jangra, Advocate for respondent No.5.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Kapil Dev @ Kapil Sharma in a motor vehicular accident that took place on 23.12.2014.

The Tribunal has awarded lumpsum amount of Rs.5,00,000/- for the reasons assigned in paras 13 and 14 of the award.

The plea of claimants is that deceased was a student of BA-Ist year, taking tuitions and earning Rs.15,000/- per month. The claimants did not place on record any documents with regard to educational qualification of the deceased. They did not examine any witness to prove that the deceased had been doing tuition work much less earning Rs.15,000/- per month. However, during the course of hearing, counsel for the appellants has produced copies of Matriculation Examination Certificate issued by Punjab School Education Board in the year 2012, Senior Secondary (12th class) Examination Certificate dated 18.05.2013 issued by the same board and perusal thereof makes it evident that deceased passed 12th class examination in March, 2013. He has also sought to rely upon photocopy of one certificate purported to be issued on the letter head of Babbar Akali Memorial Khalsa College, Garhshankar, Distt. Hoshiarpur but the same cannot be taken into consideration.

Taking a clue from minimum wage available at the relevant time coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.7000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. The claim has been

preferred by parents of an unmarried person and admissible deduction for personal and living expenses would be 50% and multiplier of 18 is to be applied in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. In this manner, loss of dependency is calculated at Rs.10,58,400/- $[(7000 \times 12 \times 18) + (40\% \text{ future prospects}) - (50\% \text{ deduction for personal expenses})]$.

Under conventional heads, 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.10,88,400/- and the additional amount is Rs.5,88,400/- $(10,88,400 - 5,00,000)$, 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 Tribunal while answering issue No.1 with regard to rash and negligent driving has held that the accident occurred as a result of contributory negligence of respondents No.1 and 4 in the ratio 75:25. In the relief clause, it has been held that award of Rs.5 lakh is passed against respondents No.1 and 4 in the ratio 75:25. It is surprising rather shocking that the Tribunal headed by a District Judge has made the case of composite negligence to that of contributory negligence and liability has been fastened only against drivers of two vehicles involved in the occurrence without assigning any reason as to why the owner and insurer of those vehicles are not held liable to pay compensation despite both the vehicles being duly insured with the New India Assurance Company Ltd. and Bajaj Allianz General Insurance Company Ltd., respectively. The owner and insurance companies of both the vehicles would also be jointly and severally liable to pay compensation in the ratio 75:25, ascertained by the Tribunal.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

12.03.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No