

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

FAO-2478-2017(O&M)

Date of decision:-23.7.2019

Bimla and others

...Appellants

Versus

Jaswant Singh and others

...Respondents

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

Present: Mr.Amit Sharma, Advocate
for the appellants.

Mr.Lalit Garg, Advocate
for respondent No.3.

H.S. MADAAN, J.

Petitioners/claimants Smt.Bimla, aged about 37 years – wife,
Master Gulshan, aged about 12 years – minor son, Baby Monika, aged
about 8 years – minor daughter, Master Mohit aged about 5 years – minor
son, Baby Muskan, aged about 3 years – minor daughter and Smt.Hardei,
aged about 60 years – mother of Rajender Kumar, an unfortunate victim
of a road side accident had brought a claim petition under Section 166 of
the Motor Vehicles Act, 1988 against respondents i.e. Jaswant Singh –
driver, Haryana Roadways Rohtak Depot, Rohtak through its General
Manager – owner and New India Assurance Company Ltd. - insurer of
bus bearing registration No.HR-46-D/2681 (hereinafter referred to as the
offending bus), claiming compensation to the tune of Rs.30,00,000/- along
with interest before Motor Accidents Claims Tribunal, Kaithal

(hereinafter referred to as the Tribunal).

According to the version of the petitioners/claimants, on 1.6.2015, Rajender Kumar was driving motorcycle bearing registration No.HR-08M-6898 going to bus stand Dirba to bring milk; that at about 8:00 a.m. when he was crossing road then the offending bus being driven by respondent No.1 – Jaswant Singh in a rash and negligent manner came and crushed him; that after the mishap the driver and conductor of the bus ran away leaving the bus behind.

The claimants contended that the deceased Rajender Kumar was employed as Supervisor with Ritesh son of Jai Parkash, a Civil Contractor and was earning Rs.15,000/- per month and they were fully dependent upon the deceased for meeting their financial needs.

On getting notice, all the three respondents appeared and filed separate written statements contesting the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petition was allowed partly by the Tribunal vide award dated 30.8.2016 and compensation of Rs.7,90,000/- along with interest at the rate of 7% per annum from the date of filing of the petition till the date of award was awarded to the claimants, payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

However, the claimants were dissatisfied with the compensation awarded to them and they had filed appeal before this Court

seeking enhancement of compensation.

Notice of the appeal was issued to the respondent No.3 – insurance company, which appeared through counsel.

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

The Tribunal considering the facts and circumstances of the case in light of the evidence available on record had arrived at a finding on issue No.1 that respondent No.1 – Jaswant Singh was author of the accident by his rash and negligent driving of the offending bus, resulting in the death of Rajender Kumar. Furthermore, the Tribunal took the age of deceased as 40 years in view of the affidavit of petitioner/claimant No.1 – Smt.Bimla. The case of the claimants that the deceased was working as Supervisor with a Civil Contractor not believed on account of absence of sufficient cogent and convincing evidence on the file. The Tribunal took the monthly income of the deceased to be Rs.6,000/-. No amount has been awarded towards future prospects. The denial is without any sufficient reason.

In view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, in such an eventuality 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6,000 + 1500 = Rs.7,500/-.

In terms of the ratio of authority *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77* where the number of dependent family members are more

than four, deduction towards self-expenses is to be taken as 1/4th. In this case the Tribunal has deducted 1/3rd of the amount towards self expenses instead of 1/4th. Doing that the dependency of claimants comes out to Rs.5,625/- per month, annual dependency comes out to Rs.5,625 x 12 = Rs.67,500/-.

The Tribunal has used multiplier of 15, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.67,500 x 15 = 10,12,500/-.

The Tribunal has awarded a sum of Rs.50,000 to petitioner No.1 on account of loss of consortium and Rs.20,000/- towards funeral expenses. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 10,12,500 + 70,000 = 10,82,500/-.

The Tribunal has awarded compensation of Rs.7,90,000/- along with 7% interest as mentioned in the relief clause payable by all the respondents jointly and severally. The same is enhanced to Rs.10,82,500/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.10,82,500/-, payable by all the respondents jointly and severally. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants and with regard to deposit in the form of FDR shall stand

modified proportionately.

With such modifications, the appeal is allowed partly with costs.

23.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No