

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

Date of decision: 22.1.2020

1.

FAO No. 3985 of 2005(O&M)

State of Punjab and another

.....Appellants

VERSUS

Paramjit Kaur and others

.....Respondents

Present: Mr. Ambika Luthra, Sr. DAG, Punjab
for the appellants.

Mr. R.S. Manhas, Advocate for respondent No.5.

2.

FAO No. 4404 of 2005(O&M)

Paramjit Kaur and others

.....Appellants

VERSUS

Punjab State and others

.....Respondents

Present: None for the appellants.

Ms. Ambika Luthra, Sr. DAG, Punjab for respondents No.1
and 2.

Mr. R.S. Manhas, Advocate for respondent No.3.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3985 and 4404 of 2005 as these have emerged out of the same award dated 02.03.2005 passed by the Motor Accidents Claims Tribunal, Amritsar (in short 'the Tribunal') whereby compensation has been assessed on account of death of

Dhalwinder Singh in a motor vehicular accident that took place on 17.03.2003.

FAO No.3985 of 2005 has been filed by State of Punjab - respondents No.1 and 2 before the Tribunal whereas other appeal has been filed by the claimants seeking additional compensation.

Counsel for the appellants/State would argue that findings of the Tribunal on issue No.1 attributing negligence to Charan Dass, driver of Mahindra Jeep No.PCW-4034 are the result of failure to appreciate testimony of Charan Dass and other witnesses in right perspective. It is further argued that findings of the Tribunal on issue No.1 may be set aside or at least modified to attribute contributory negligence to the deceased.

To assail quantum of compensation, it is argued that family of the deceased is receiving family pension and the same is liable to be deducted out of compensation assessed by the Tribunal or additional compensation, if any, allowed by this Court.

There is no representation on behalf of the claimants, earlier represented by a counsel.

I have heard counsel for the parties, perused the paper-book, particularly the award and copies of testimonies of witnesses made available during the course of hearing as records have burnt in a fire incident.

The claimants examined Jaspal Singh son of Jagdish Singh, an alleged eye witness to the occurrence and Jagir Kaur, sister of the deceased, who also sustained injuries in the accident as she was pillion rider on motorcycle driven by deceased Dhalwinder Singh.

Counsel for the appellants has failed to point out any materials brought-forth in cross examination of the aforesaid witnesses to discard or disbelieve their testimony or to prove that negligence to any extent can be attributed to deceased Dhalwinder Singh.

The Tribunal noticed that as per statement of Charan Dass, driver of offending vehicle and witnesses examined by him, the deceased had wrapped a woolen shawl (Loi) around his body and head and since the Loi became loose and deceased was unable to see the road properly, he started adjusting his Loi with hand and struck against jeep driven by Charan Dass, on correct side of the road and at a moderate speed.

However, the Tribunal held that accident took place on 17.03.2003 at about 11 AM and it is difficult to believe that deceased had wrapped a Loi in middle of March 2003. The Tribunal further disbelieved testimony of Charan Dass who even failed to state that there was a pillion rider on motorcycle driven by Dhalwinder who also sustained injuries in the occurrence. FIR was registered against driver of offending vehicle. On due investigation of FIR, Charan Dass faced criminal proceedings for causing the accident. There is nothing on record suggestive of the fact that Charan Dass ever lodged any protest against his indictment in the criminal proceedings. In this view of the matter, I do not find any reason to interfere in well considered findings recorded by the Tribunal determining issue No.1 in favour of the claimants and against the respondents therein.

This brings the Court to quantum of compensation assessed.

The Tribunal awarded Rs.6,39,600/-, detailed hereunder:-

Monthly income of the deceased	Rs.7122/-
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Deduction for personal expenses	1/3 rd
Multiplier	11
Loss of dependency	Rs.6,32,600/-
Loss of consortium to claimant No.1	Rs.5000/-
Last rites expenses	Rs.2000/-

The deceased was Constable in Police Department. He was born on 02.02.1964, therefore, less than 40 years of age. The Tribunal, in para 25 of the award, has noticed that as per salary certificate Ex.A1, total salary of deceased was Rs.9728/- and carry home salary Rs.7122/-, thus, annual salary comes to Rs.1,16,736/-. The entire salary of the deceased shall be taken into consideration for computing loss of dependency. After deducting income tax, net annual income is Rs.1,04,390/-. Claimants shall be entitle to addition in income @ 50%. The claim has been filed by the widow, two minor children and parents of the deceased. Even if father of the deceased was not dependent upon him, admissible deduction would be 1/4th. As the deceased was less than 40 years of age, admissible multiplier is 15. Family pension paid to widow is not amenable to deduction. In this manner, loss of dependency is calculated at Rs.17,61,581/- [Rs.15,65,850/- (Rs.104390- x 15) + Rs.7,82,925/- (50% addition for future prospects) - Rs. 5,87,194/- (1/4th deduction towards personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.70,000/- detailed hereunder:-

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

In view of the above, total compensation is Rs.18,31,581/- and additional amount is Rs.11,91,981/- (Rs.18,31,581/- - Rs.6,39,600/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to claimants No.1 to 3 in the ratio 40:30:30.

In view of what has been discussed hereinbefore, FAO No.3985 of 2005 is dismissed whereas FAO No.4404 of 2005 is partly allowed in the aforesaid terms.

JANUARY 22, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no