

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

217

FAO-311-2015 (O&M)

Date of decision: 27.01.2020

KAMLESH & ORS

... Appellants

Versus

KARTAR CHAND & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikrant Hooda, Advocate for the appellants.
Mr. Vinod Gupta, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking additional compensation on account of death of Paramjit Kumar in a motor vehicular accident that took place on 11.09.2011.

The Tribunal assessed Rs.51,12,326/-, detailed hereunder:-

Monthly income of the deceased	Rs.25,285/-
Annual income after deduction of income tax	Rs.2,93,078/-
Addition in income for future prospects	50%
Multiplier	17
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.49,82,326/-
Expenses on funeral	Rs.25,000/-
Loss of estate	Rs.5000/-
Loss of consortium	Rs.1,00,000/-

However, claimants have been paid Rs.24,91,163/- towards loss of dependency as 50% negligence has been attributed to the deceased.

Counsel for the appellants would argue that findings of the Tribunal attributing 50% of negligence to the deceased are based upon copy of site plan mark A but the said document has neither been proved in accordance with law nor a witness has been examined to produce and prove that document who could be cross examined by the claimants. In addition, it is argued that Sandeep PW3 author of FIR No.315 dated 12.09.2011 and an eye-witness to the occurrence appeared in the witness box. He supported cause of the claimants to establish their plea that accident is the result of rash and negligent driving of offending vehicle. However, respondents before the Tribunal failed to adduce any evidence to counter testimony of Sandeep PW3. It is argued with vehemence that keeping in view the unchallenged and unrebutted testimony of Sandeep, there is no escape from

conclusion that entire negligence for the occurrence is liable to be attributed to driver of the offending vehicle.

Counsel representing the insurance company, on the contrary, would argue that besides the document mark A produced by the insurance company, testimony of Sandeep is not sufficient to prove that accident is the result of rash and negligent driving of offending vehicle. It is further argued that it is not plea of Sandeep that driver of offending vehicle brought it on wrong side of the road and struck against motorcycle driven by the deceased.

With regard to compensation, it is argued that compensation allowed under conventional heads may be modified. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Sandeep, one of the relatives of deceased and an alleged eye-witness to the occurrence tendered into evidence his affidavit Ex.PW3/A. A relevant extract from para 1 of the affidavit, reads as follows:-

xx xx he died in a motor vehicle accident in the evening of 11.09.2011 near Jhajjar turning Bahadurgarh while riding on his motorcycle bearing No.MP-09LL-8307 and the deponent was riding on his motorcycle No.DL-4SBP-7460 and we were coming to meet Pardeep R/o H. No.1648-A, Sector-6, Bahadurgarh, Distt. Jhajjar for our personal work. When we reached near the turning of Jhajjar Road, the one way of road was blocked due to repairs, the driver of Truck No.HR-63-A-4895 driving rashly and negligently came from the side of Delhi and struck against the motorcycle of Paramjit due to which he fell down. The deponent enquired about the name of driver who disclosed his name as Kartar Chand S/o Prem Nath R/o Village Sankhol. The accident has been caused by the respondent No.1 by driving the Truck rashly and negligently at a very high speed. The deponent took his brother to the General Hospital, Bahadurgarh for treatment where he was declared brought dead.

Perusal of the aforesaid extract leaves no manner of doubt that Sandeep has not made a factual foundation to explain as to how the driver of offending vehicle was rash or negligent in driving. Even he has not stated about speed of the vehicle. These facts lead to a conclusion that Sandeep has expressed his opinion without detailing the facts constituting rash and negligent driving. At the same time, driver of offending vehicle did not

appear in the witness box to counter testimony of Sandeep, therefore, an adverse inference is liable to be drawn against respondents before the Tribunal. On due investigation of FIR registered at the behest of Sandeep, driver of offending vehicle was put to trial. The vehicle driven by deceased was motorcycle whereas offending vehicle is a truck. In the given circumstances, it can safely be held that accident is the result of contributory negligence of the deceased. However, in view of the above, deceased is attributed negligence to the extent of 20% by modification of negligence attributed to the extent of 50% by the Tribunal.

Income of the deceased @ Rs.25,285/- per month assessed by the Tribunal is affirmed. The annual income comes to Rs.3,03,420/-. After deducting income tax (Rs.12,712/-), net annual income is Rs.2,90,708/-. The Tribunal has rightly allowed addition in income for future prospects @ 50%, deduction for personal expenses of 1/3rd and multiplier of 17. In this manner, loss of dependency is calculated at Rs.49,42,036/- [(2,90,708 x 17) + (50% future prospects) – (1/3rd deduction for personal expenses)] and 80% thereof is Rs.39,53,628/-.

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.40,23,628/-. The additional amount is Rs.14,02,465/- (40,23,628 - 26,21,163), payable with interest @ 7.5% per annum from the date of petition till realization to minor Aarti, to be invested in fixed deposit till she attains majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

27.01.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No