

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

FAO-8214-2015(O&M)
Date of decision: 04.03.2020

PUSHPA AND ORS

.. Appellants

Versus

JASBIR SINGH AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rahul Makkar, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking additional compensation on account of death of Sharvan Kumar in a motor vehicular accident that took place on 10.12.2013.

The Tribunal awarded Rs.10,97,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Multiplier	18
Deduction for personal expenses	1/4 th
Loss of dependency	Rs.9,72,000/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-

However, the claimants were paid Rs.4,38,800/- i.e. 40% of compensation assessed as 60% negligence has been attributed to the deceased.

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

appreciation of materials on record, as such, liable to be set aside. To bring home his contention, it is argued that as the offending vehicle was parked on the road without any indicator in the month of December, 2013 at 5.30 am, entire negligence for the occurrence is liable to be attributed to driver of offending truck bearing No.HR-69A-6484.

With regard to compensation, it is argued that claimants may be extended benefit of addition in income for future prospects.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal attributing contributory negligence to the deceased by relying upon judgment of Hon'ble the Supreme Court **Raj Rani and others Vs Oriental Insurance Co. Limited and others, 2009 ACJ 2003**. It is further argued that Rajbir PW6 has stated in cross examination that offending truck was not parked in middle of the road but the same was parked on left side of the road on katcha portion. He would inform that except Rajbir PW6, no other witness was examined by the claimants to discharge onus of issue No.1.

To refute contention of the appellants for addition in compensation, it is argued that compensation allowed under conventional heads may be restricted to Rs.70,000/-. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

To appreciate the controversy with regard to contributory negligence of the deceased and that too to the extent of 60%, it is necessary

to take note of allegations raised in the claim application and testimony of Rajbir PW6 examined to discharge onus of issue No.1 with regard to rash and negligent driving of offending vehicle.

The claimants have averred that on 10.12.2013, the deceased along with Ashish was travelling in car bearing No.HR-99-ME(T)-1195 for going to village Pipali from village Dighal. When he reached near outer bye-pass at village Bohar, his car rammed from behind in stationary truck aforesaid, parked in middle of the road without any indicator. The deceased and Ashish sustained multiple serious injuries and proved fatal for Sharvan Kumar.

The claimants did not examine Ashish, one of the occupants of the car, admittedly driven by deceased Sharvan Kumar. Further, they examined Rajbir PW6, an alleged eye-witness to the occurrence. Rajbir tendered into evidence his affidavit PW6/A, by way of examination in chief and deposed in complete consonance with the allegations raised in the claim application. He stated that offending vehicle was standing in middle of the road without any indication or reflector. In cross examination, a relevant extract from his testimony, reads as follows:-

I reached the spot at about 5.00/5.15 am but I was not having any watch. It was a winter season. There was no fog. It was clear day and objects were visible in its normal safe. When I reached the spot the car has already been collided with the parked truck from the back side.

He further deposed to the following effect:-

I had only seen the vehicles after the accident took place and the car was collided from behind in the truck which was parked in left side Kacha portion adjacent to the road.

A plain but careful reading of the aforesaid extract makes it evident that day was not foggy rather it was clear and visibility was normal. The offending truck was parked on left side katcha portion adjacent to the road. The deceased hit the offending vehicle from behind. The claimants did not examine another occupant of the car to prove as to what reasonable care was taken by the deceased to avoid collision. Keeping in view the above, it is difficult to accept that findings of the Tribunal attributing contributory negligence to the deceased to the extent of 60% can be faulted with. In this view of the matter, findings of the Tribunal on issue No.1 are affirmed.

This brings the Court to quantum of compensation assessed. Claimants shall be entitle to addition in income for future prospects @ 40%. Other criteria adopted by the Tribunal for computing loss of dependency is correct and affirmed. In this manner, loss of dependency is calculated at Rs.13,60,800/- [(6000 x 12 x 18) + (40% future prospects) – (1/4th deduction for personal expenses)].

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/-
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2. Loss of estateRs.15,000/-
3. Funeral expensesRs.15,000/-

Total compensation is Rs.14,30,800/- and 40% thereof is Rs.5,72,320/-. The additional amount is Rs.1,33,520/- (5,72,320 - 4,38,800), payable with interest @ 7.5% per annum from the date of petition till realization to Sara minor, daughter of the deceased, 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.

04.03.2020

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:Yes / No

Whether reportable:Yes / No