

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

FAO No.5388 of 2012 (O&M)

Date of decision: 04.02.2020

Smt. Meenakshi and ors.

... Appellants

Versus

Balraj Singh and ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Abhay Chauhan, Advocate for respondents No.1 and 2.

Ms. Anamika Mehra, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

CM No.24251-CII of 2012

Heard.

Allowed as prayed for. Delay of 13 days in filing the appeal stands condoned.

Main Case

The claimants are in appeal seeking additional compensation on account of death of Sohan Lal in a motor vehicular accident that took place on 27.08.2009.

The Tribunal assessed compensation of Rs.6,72,600/-, detailed hereunder:-

Monthly income of the deceased	Rs.4200/-
Multiplier	17
Deduction for personal expenses	1/4 th

Loss of dependency	Rs.6,42,600/-
Expenses on funeral	Rs.10,000/-
Loss of estate	Rs.10,000/-
Loss of consortium	Rs.10,000/-

However, as 40% negligence has been attributed to the deceased, claimants have been paid Rs.4,03,560/- with interest @ 6% per annum.

Counsel for the appellants would argue that findings of the Tribunal attributing 40% negligence to the deceased are faulty and entire negligence for the occurrence is liable to be attributed to driver of tanker No.HP-20-A-2455 which was parked in middle of the road without any indicators/reflectors etc.

With regard to compensation, it is argued that claimants may be allowed addition in income for future prospects and adequate compensation under conventional heads.

Counsel for the insurance company, on the other hand, has supported findings of the Tribunal attributing 40% negligence to the deceased who had struck on right side of parked tanker and the driver had put tree branches on side of the truck captured in the photographs clicked during investigation of criminal case, noticed by the Tribunal.

Be that as it may, it is undisputed position of the case that accident took place on 27.08.2009 at 5.00 am. The claimants examined Parvesh Kumar PW2 to substantiate their plea that accident is the result of rash and negligent parking of offending vehicle in middle of the road without any indication. Perusal of testimony of Parvesh Kumar indicates

that accident took place while the deceased was in the process of overtaking the truck and there was flash of light of the vehicle coming from the opposite side. The deceased struck towards right side of the vehicle parked on the road. The Tribunal has examined the site plan prepared by the police wherein the truck is shown to be parked on extreme left side but on the metaled road. The motorcycle was shown lying near the right rear wheel. The driver put tree branches on side of the truck shown in the photographs. Nothing has been deposed by Parvesh Kumar as to from what distance the deceased had noticed the truck parked on the road though he had stated that deceased applied brake to avoid collision. Taking into consideration the above, it is difficult to accept contention of the appellants that contributory negligence has wrongly been attributed to the deceased. Since driver of offending vehicle, under compelled circumstances, because of mechanical defect had to leave the vehicle on the road and he had put tree branches on side of the truck, negligence to the extent of 40% attributed to the deceased cannot be faulted with. Accordingly, findings of the Tribunal on the question of negligence are affirmed.

The plea of claimants is that deceased was a Carpenter working with M/s Karta Ram. However, they did not adduce any tangible evidence to prove avocation and income of the deceased. The Tribunal has assessed monthly income at Rs.4200/-. When the case is examined in the light of notification issued by the State of Haryana fixing minimum wage at the relevant time, there is no scope for enhancement of monthly income of

the deceased. However, claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.8,99,640/- [(4200 x 12 x 17) + (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/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.9,69,640/- and 60% thereof is Rs.5,81,784. The claimants shall be entitle to additional amount of Rs.1,78,224/- (5,81,784 - 4,03,560), payable to Yash Vardhan minor son of the deceased, to be invested in fixed deposit till he attains majority or for a period of three years, whichever is later. Compensation allowed by the Tribunal and additional compensation allowed in the appeal shall carry interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

04.02.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No