

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1615 of 2002 (O&M)

Date of decision : January 06, 2021

Anu Suia and another

....Appellants

versus

Pepsu Road Transport Corporation and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Deepak Goyal, Advocate, for the appellants

Mr. Aman Sharma, Advocate for the respondents

Fateh Deep Singh, J. (Oral)

The Court of learned Motor Accident Claims Tribunal, Patiala through award dated 2.5.2001 allowed the claim of claimants Anu Suia and her husband Mohan Lal, present appellants whereby they have been awarded compensation of Rs 50,000/- on account of death of their son Rajinder Kumar, aged 12 years student of 7th class. Aggrieved over the meagerness of the compensation they have come up in this appeal.

I have heard Mr. Deepak Goyal, Advocate, for the appellants; Mr. Aman Sharma, Advocate for the respondents and

perused the records.

The averments of the claimants that the deceased along with his elder brother Sushil Kumar were going on a cycle rickshaw in the area of Patiala city when they were on the flyover near Gurudwara Dukh Niwaran Sahib, the offending bus bearing No. PB-11E-9651 owned by respondent nos. 1 and 2 being driven rashly and negligently by respondents no. 3 hit rickshaw resulting in the death of the deceased. Though the original records of the case stands destroyed on account of fire in the record room. What is reflective from the remnants of reconstructed file is that the driver of the offending bus admitted the accident but has claimed that it was on account of the fault of the rickshaw driver who came on the wrong side of the road and struck against the bus. To substantiate this stand, AW2 Sushil Kumar brother of the deceased and AW4 Bhupinder Singh another occupant of the rickshaw had given eye witness account of this accident. The testimony of Sushil Kumar cannot be lightly brushed aside as he too received injuries. However, the driver has not stepped into witness box to state his side of the story and what is reflected from the cross-examination of the injured eye witness and who accepts that the rickshaw puller had come on the wrong side of the road. Thus, the conclusion drawn on issue no. 1 needs to be upheld.

In the second leg of submissions, the inter-se relationship

of the claimants and the deceased is not denied and so the accidental death. However, the only rallying point over which, the two sides have argued aggressively is the very quantum of compensation. It is not that it was the deceased who was at fault leading to this accident. The deceased happens to be young lad and did not have much to say to the rickshaw puller for keeping the rickshaw off the track. Even the driver of the offending vehicle, respondent no. 3 has not bothered to step into the witness box to state his side of the story and rebut the claimants evidence. Merely because on account of fault of another, the appellants cannot be denied their legitimate right to compensation. Though while awarding it such a fact needs to be kept in mind and would have its impact on the quantum of compensation by the impugned award. As has been canvassed by the appellants compensation has been awarded on the basis of the principle of no fault liability, in terms of Section 140 of the Motor Vehicles Act, 1988 (in short, the Act). When the very provisions itself shows that it is in case of the fact that the death/permanent disablement had arisen from an accident of motor vehicle due to fault of the claimants' side. Since the rickshaw puller has not been arraigned as a party and this could in no manner has its total adverse impact on the claim petition of the present appellants. Thus, to the mind of this Court, the learned Claims Tribunal has fell into an error by applying the principle of no

fault when it ought to have calculated the compensation on the principle of Section 166 of the Act. It is by no means differed by the counsel on the two sides that the parents are the legal representatives of their deceased young son who happens to be a student of 7th class and therefore, they are entitled to maintain application for compensation. As has sought to be forcefully submitted by the respondents side that the driver is not at fault. Assuming that the rickshaw puller was at fault, onerous duty is cast upon the driver of the bus to ensure that in case any one is coming from the opposite side, may be in violation of the traffic rules does not impromptu gives him licence to over-run the wrong doer and ought to have used his senses and ensuring that because of his act no injury results to the wrong doer. It is conceded that a criminal case has been registered against the driver arising out of this accident is an element which needs to be kept in mind and what one can perceive from the testimony of eye witness Sushil Kumar AW2 that the bus was coming downwards from the bridge obviously must be at a great speed and that too in the midst of heavy populated area near Gurudwara Dukh Niwaran Sahib and therefore, are indicators that all is not well even with the driver of the bus. Keeping in view that the deceased is a young lad of 12 years, a student of 7th class and drawing analogy from **Sarla Verma and others vs Delhi Transport Corporation and another, 2009(3) RCR**

(Civil) 77 and therefore, was not earning anything but at the same time this Court cannot lose sight of the fact that the middle aged parents have lost their son, a source of love, affection and protection during their old age. Since there is no earnings in the present case, the loss has to be ascertained on the basis of hypothetical calculations and there is nothing to guide this Court to calculate such a compensation in the present case by mathematical precision. Being a student must with the passage of time grown up and taken job and thus from his earnings ought to support his family. As is in Indian household and assuming that he would have grown, got married and would be maintaining his own family and therefore, dependency of the parents would also tend to diminish and drawing help from 2nd Schedule of Section 163 of the Act, this Court applies multiplier of 15. By some amount of approximation, this Court holds that the dependency of the parents upon the deceased per month needs to be around Rs 2000/- in this era of high cost of living and therefore, annual dependency comes to Rs 24,000/- applying the multiplier of 15, the total compensation comes to Rs 3,60,000/-. Besides this, the claimants are also entitled to interest on this amount at the rate of 9% per annum from the date of filing of the petition till realization and Rs 20,000/- lumpsum for loss of love, affection etc. and funeral expenses. Therefore, total compensation comes to Rs 3,80,000/-. The interim

compensation paid, if any, would be adjusted. Keeping in view that it is the own case of the respondents that the bus is owned by respondents no. 1 and 2 at the relevant time was being driven by respondent no. 3 and therefore, all the respondents are jointly and severally liable to pay the compensation amount.

The appeal stands disposed off in the aforesaid terms.

January 06, 2021

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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>