

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

FAO 3188 of 2003 (O&M)

Date of Decision: April 19, 2022

Shimla Devi and others ...Appellants
Versus
Sandeep Yadav and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. G.S. Manipur, Advocate
for the appellants.

Mr. Harsh Aggarwal, Advocate
for the respondent No. 3-Insurance Company.

FATEH DEEP SINGH, J. (Oral)

Claimants Shimla Devi and her minor sons Pankaj and Abhishek then aged around 3 years and 1 year respectively had initially invoked the jurisdiction of the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari seeking compensation on account of death of their sole bread earner Ashwani Kumar husband and father, respectively, who died in a motor vehicular accident that took place on 20.01.2001.

The deceased at the time of his death was aged

around 33 years and employed on contractual basis as a driver with the Haryana Roadways getting Rs.2500/- per month as salary. It is contended that while he was going on the bus which he was driving a stray animal suddenly came on the road and when he tried to save from the opposite side, a vehicle make Tata 407 bearing registration No. DL-11-B-7126 hit the bus of the deceased bearing registration No. HR-3-9242 resulting in his death. The claimants being widow and the minor children and, thus, dependents have sought the compensation under Section 163-A of Motor Vehicle Act on structured formula basis.

The respondents No. 1 and 2 appeared and duly admitted the factum of the accident but denied any role in the same and took plea that when bus swerved and hit on vehicle of the answering respondents upon losing control of the bus and the deceased had jumped out of it resulting into the accident and so the death.

The Tribunal framed the following issues:-

1. Whether the accident resulting into death of

Ashwani Kumar took place due to the rash and negligent driving of Vehicle No. DL-1LB-7126 by respondent No.1? OPP.

2. Whether the claimants are only legal heirs of deceased, if so, they are entitled to compensation, how much and from whom? OPP.

3. Whether the respondent No.1 was not holding any valid driving licence at the time of accident? OPR.

4. Whether the claim petition is not maintainable? OPR

5. Relief”.

On behalf of the claimants eye witnesses Jagdish Raj testified and detailing the manner in which the accident has taken place and how he came to the aid of the insured while rushing him to the hospital and there is nothing tangible in his testimony by way of examination which could put any doubt on

his credentials. Even otherwise, the respondents have admitted the accident and therefore in terms of Sections 101 to 106 of the Indian Evidence Act onus shifts on the respondents to prove their stand but they have not led any evidence to the contrary and rather were proceeded against *ex parte* thereafter. Thus, the manner of the accident as given by the eye witness resulting into the death of the deceased remains unrebutted and well established.

The testimony of claimant Shila Devi PW1 detailed as to the factum of the dependency of the claimants on the earnings of the deceased and nothing tangible could be brought to the notice of this Court by the counsel for the respondents as to the very truthfulness of her testimony. Even otherwise the copy of appointment letter Ex.P7 and certificate issued by the Haryana Roadways Ex.P9 are illustrative of his avocation being a driver with the Haryana Roadways and his death is well elaborated by post mortem report and medical legal examination Ex.P5 and Ex.P6, respectively.

Though the claimants have invoked the jurisdiction of the Tribunal under Section 163-A of the Motor Vehicle Act, however, the investigations into this episode clearly illustrative based on the testimony of PW2-Jagdish Raj that the accident was an outcome of rash and negligent driving by driver of Tata 407. The only resistance has sought to be offered by the respondents is over very quantum of compensation which Mr. Harsh Aggarwal has tried to put-forth is the dependency so claimed and allowed by the Court below. The Tribunal had awarded compensation to the tune of Rs.57,000/- to the widow and Rs. 90,000/- each to the children besides interest @ 9% per annum from the date of filing of the appeal till the realization.

It needs to be kept in mind as is sought to be argued on behalf of appellant by Mr. J.S. Manipur that the Tribunal had held that it was full proof case that the deceased was getting Rs.2500/- per month as salary while being employee of the Haryana Roadways and besides this was earning Rs.3000/- from milk dairy by selling milk but how it slashed down the same

to Rs.2500/- per month certainly is highly perverse. Mere denoting a provision of law would not ensure that the Courts are to blatantly follow and has to look into the very evidence to adjudicate the claim of the claimants. It is there on the records that the accident was due to rash and negligent driving of driver Tata 407 and which was insured with National Insurance Company Limited at the time of its accident and which has been arraigned as respondent No.3 in the present appeal. The eye witness account which is by an independent witness remains unrebutted and therefore to the mind of this Court the present claim petition ought to have fall within the ambit of Section 166 of the Motor Vehicle Act and not Section 163-A.

In the light of what has come on the records though the original records stood destroyed in the fire that engulfed in the record room, however, by the efforts of the Courts and with the assistance of the counsel for the two sides it can safely be considered and adjudicated that the deceased was getting Rs.8000/- per month which is rightly so keeping in view the

usual sum of rupees drawn by the driver in the State Roadways and which is also proved by the salary certificate proved on the record and how the Court had considered it to be Rs.2500/- is anybody's guess.

Keeping in view the salary prevalent at that time as has been argued by the counsel for the appellant Mr. J.S. Manipur even if the deceased is a contractual driver his salary by all means cannot be considered less than Rs.3500/- per month.

Keeping in view the age of the deceased 33 years, it will be proper to allow the increase towards future prospects by 40% and same comes to Rs.38,400/- and therefore the income of the deceased for the purpose of assessing the compensation comes to Rs.1,34,400/-. ($96000 + 38400 = 1,34,400$)

Further, considering that the deceased would be spending $\frac{1}{4}^{\text{th}}$ of his earnings towards the living and his personal expenses (of the deceased) and dependency of the claimants, i.e. Rs.33,600/-, the annual income comes to

Rs.1,00,800/- (1,34,400-33,600=1,00,800)

The multiplier of 16 appears to be most appropriate and the Tribunal has wrongly taken the case to be one based on structured formula and therefore the compensation comes to Rs. 16,12,800/- (1,00,800 x 16). Besides this, the deceased being young would have worked for a number of years and therefore, for loss of love and affection towards widow and minor kids who must have gone through some psychological crisis besides economic and had to spend money on the last rites and ceremonies of the deceased and under all these heads, loss of estate etc., this Court assesses the loss to be Rs. 2,50,000/-, thus, total comes to Rs.18,62,800/-. Since the vehicle Tata 407 was insured with the Insurance Company and there is nothing to show that the said vehicle was not ensured or the vehicle was being driven without legally valid and effective licence or valid documents and therefore the driver, the owner and the insurer are jointly and severally held liable to pay compensation which shall be equally distributed amongst the

claimants in equal shares. Besides this, they shall be entitled to interest @ 9% which is reasonable at the time of the award and does not needs to be disturbed. Compensation if any paid shall be adjusted against this amount. By now the minors must have attained majority and therefore there is no need to order their shares to be put by way of FDR.

Disposed off accordingly.

April 19, 2022

(FATEH DEEP SINGH)

amit rana

JUDGE

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