

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

FAO No.2217 of 2002 (O&M)

Date of decision: 25th April, 2022

Kamlesh Kumari & others

... Appellants

Versus

Gian Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashit Malik, Advocate for the appellants.

None for respondents No.1 and 2.

Mr. R.C. Kapoor, Advocate for respondent No.3.

FATEH DEEP SINGH, J.

This appeal has come about by the claimants against an Award dated 05.12.2001 in MACT Case No.36/2001 whereby the Court of learned Motor Accident Claims Tribunal, Karnal while jointly deciding this claim petition with another matter had allowed the claim awarding total compensation of ₹ 8,70,000/- with interest @ 9% p.a. from the date of filing of the petition till realization of the amount. It was the claim of the claimants that deceased Rajbir Singh husband of claimant Santosh Kumari appellant was working with the Food Corporation of India (FCI) and on the fateful day i.e. 01.06.1999 while going on a scooter bearing registration No.HR05B-9815 was hit by the offending tractor bearing No.HR05B-1045 which was being driven

rashly and negligently at a high speed by respondent Gian Singh and which vehicle was owned by then respondent Kanwar and insured with United India Insurance Co. Ltd. as a result of which both the occupants had died.

The respondent owner of the driver denied the accident being an outcome of rash and negligent driving while the insurer denied for want of knowledge. The Tribunal framed the following issues:-

1. Whether the accident in question resulting into the death of Satish Kumar deceased caused due to rash and negligent driving of vehicle No.HR-05-B-1045 by respondent No.1? OPP
2. To what amount of compensation, the claimants are entitled and from whom? OPP
3. Whether the present petition is not maintainable? OPR
4. Relief.

The claimants examined PW1 Kishan Lal, PW2 claimant Santosh Kumari, PW3 Kamlesh, PW4 Ved Parkash, PW5 Krishan Kumar and tendered documents while respondents examined one Kanwar Singh as PW1 leading to passing of the impugned Award.

It would not be out of place to refer here that the records of this case stood destroyed in a fire that engulfed the record room of this

Court and that is how the Court with limited recreated documents has to decide the present matter.

Learned counsel for the two sides at the very onset have made statement that they do not want to contest on the question of findings on issue No.1 as nothing has come on the records by way of evidence to deny the factum of accident resulting in the death of deceased. The only rallying point that was hotly debated by the two sides is over the very quantum of compensation to which the claimants are entitled to. It is not displaced that Santosh Kumari appellant is the widow of the deceased while others namely Meenakshi, Parveen Kumar and Amit Kumar are minor children of the deceased while Kesho Devi is mother of the deceased.

The contentions on behalf of the appellants by Mr. Ashit Malik, Advocate that the deceased was employed with FCI is not at all displaced by any means. PW5 Krishan Kumar an official of the FCI had proved the employment of the deceased and the certificate of his salary Ex.P1 issued by the FCI office at Karnal. The salary certificate shows his earnings to be ₹ 9840/- per month and which is not at all displaced. The deceased at the time of his death was aged around 40 years. Had the deceased been alive, he would have been spending money on his own upkeep and maintenance and therefore, deduction of 1/3rd by the Tribunal is slightly on the higher side keeping in view that there are five dependents left behind by the deceased, and therefore, to

the mind of this Court the deduction ought to have been around 1/5th. Keeping in view the age of the deceased, the Tribunal had wrongly applied multiplier of 11 which ought to be 15 and therefore, per month contribution by the deceased and the dependency of the claimants comes to ₹ 7,872/- and the annual dependency is ₹ 94,464/- and applying the multiplier of 15 the compensation amount comes to ₹14,16,960/-. Besides this, the wife has lost her husband, the minor children their father, a source of love, affection and protection, and a source of inspiration for all times to come and which death has caused an irreparable and irrevocable loss and for which the learned Tribunal has failed to award anything. Thus, keeping in view the stark realities of life, this Court deems it appropriate to award ₹ 40,000/- for loss of consortium, love and affection and ₹ 1.00 lakh for loss of dependency. Besides this, the family is entitled to ₹ 50,000/- towards last rites and ceremonies and hence the total amount of compensation comes to ₹16,06,960/-. The rate of interest so awarded being 9% p.a. from the date of accident till the date of realization is certainly rationale and justified and need not be changed. The interim compensation already paid, if any, shall be deducted from this amount accordingly. The minor children by now must have attained majority and thus the entire amount shall go to the claimants in equal share, otherwise the share of minors shall be kept in FDRs fetching maximum rate of interest. The owner,

driver and the insurance company shall be jointly and severally liable to pay the total amount of compensation.

The appeal stands disposed off and the award modified in those terms.

(FATEH DEEP SINGH)
JUDGE

April 25, 2022
rps

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