

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

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FAO-4737-2002

Date of Decision: 13.09.2022

Sardari Devi and others

---Appellants

versus

The Rishi Co-operative Transport Society Ltd. and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ajay Pal Singh, Advocate
for the appellants.

Mr. V.Ramswaroop, Advocate
for respondent No.5- Insurance Company.

JAGMOHAN BANSAL, J. (ORAL)

1. The appellants through instant appeal are seeking enhancement of compensation awarded vide award dated 29.04.2002 passed by Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (for short 'Tribunal') whereby learned Tribunal has awarded a sum of Rs.50,000/- along with interest @ 9% per annum from the date of filing of the claim petition.

2. The facts emerging from record and necessary for the adjudication of present appeal are that on 15.12.1999, Kesh Ram (deceased) along with Ashok Kumar and Parveen Kumar were standing on road at village Palewala. At about 9.00 p.m., the bus bearing registration No.HR-37-2003 came and hit the deceased, who

was taken away to civil Hospital, Jagadhri where doctors declared him dead. The appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Kesh Ram. The eye witnesses namely Ashok Kumar (PW1) and Parveen Kumar (PW2) deposed before the learned Tribunal that they were standing on the road and a bus bearing registration No.HR-37-2003 came on that road and hit the deceased.

3. Learned Tribunal concluded that bus bearing registration No.HR-37-2003 was involved in the accident and it is irrelevant that whether bus was being driven by respondent No.2 or respondent No.4. However, learned Tribunal concluded that deceased and eye witnesses were standing on metalled road and talking with each other thus driver of the bus was not rash and negligent.

4. Learned counsel for the appellants contended that learned Tribunal has wrongly held that appellants have failed to prove that bus in question was being driven in rash and negligent manner. The deceased along with two witnesses was standing at berm of the road, thus, driver is responsible for accident. Learned Tribunal has wrongly held that deceased and his friends must have stood at kacha berm and not on metalled road. During the period in question, the minimum wages of an unskilled worker was Rs.1850/- per month which may be considered for the determination of compensation. He further submitted that under conventional head 'loss of consortium', he would be satisfied if a lump sum amount of Rs.1 lakh is awarded. He further claimed that appellants are entitled

under heading 'loss of estate' and 'funeral expenses'.

5. Learned counsel for the respondent-Insurance Company does not dispute the minimum wages prescribed under notification issued by State Government during the relevant period. He further does not dispute multiplier, compensation under conventional heads, however, he contended that insurer cannot be held liable because there are categoric findings qua conduct of the driver and deceased. The accident took place due to mistake of the deceased.

6. I have perused the record and heard arguments of both sides.

7. Learned Tribunal has awarded a sum of Rs.50,000/- as no fault liability. Learned Tribunal has further concluded that driver of the bus was not rash or negligent and it was duty of deceased and his friends to stand on kacha berm of the road and not on metalled road, thus driver is not responsible.

I do not find substance in the findings of the learned Tribunal which without any substantial evidence has held that driver was not rash and negligent and deceased as well his friends were bound to stand at kacha berm of road instead of at metalled road. The eye witnesses categorically deposed that they were standing on the edge of road. It was 9.00 p.m. and deceased was 35 years old, thus, it is difficult to believe that he was standing on metalled road. Learned Tribunal wrongly and without any evidence on record has held that they were standing on metalled road whereas eye witnesses had deposed the different story. The insurer or other

respondents have not led any evidence to prove that deceased was standing at metalled road and driver was not responsible. Even otherwise, if somebody is standing at metalled road, the driver of the vehicle is bound to blow horn and thereafter slow down the vehicle. The driver of the vehicle has no right to kill a man who is standing on road or at the berm of the road. The opinion formed by learned Tribunal seems to be harsh and needs to be overturned. Accordingly, I am of the considered opinion that appellants are entitled to compensation as permissible under Motor Vehicles Act, 1988.

8. There is no dispute qua income of deceased because appellants have prayed for consideration of minimum wages permissible to unskilled labourer. On the date of accident, Rs.1850/- was minimum monthly wage of unskilled labourer, thus, Rs.1850/- is considered as monthly income of the deceased. There is no dispute qua multiplier, future prospects and compensation under conventional heads i.e. 'loss of consortium', 'loss of estate' and 'funeral expenses'. Both the counsels have also conceded to determine compensation along with interest @ 7.5% per annum.

9. In view of above findings, the appellants are entitled to compensation on account of death of head of the family i.e. Kesh Ram on 15.12.1999 and findings of learned Tribunal qua rash and negligent driving are hereby set aside.

10. In view of considered position and law laid down by a five Judge Bench of **Hon'ble Supreme Court in National Insurance**

Company vs. Pranay Sethi and others 2017 (16) SCC 680 and a three-Judge Bench of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121**, the amount of compensation is re-determined as below :-

Particulars	Income (in Rs.)
Annual income of the deceased	22200
Future prospects	40.00%
Income after addition of future prospects	31080
Deduction on account of personal expenses	1/5 th
Assessed income	24864
Multiplier (13)	3,23,232
Loss of estate	16500
Loss of consortium	1,00,000
Funeral expenses	16500
Total	4,56,232

11. The appellants are entitled to interest @ 7.5% from the date of filing of claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.
12. The respondent is directed to make payment within a period of eight weeks from today.
13. The appeal is disposed of in the abovesaid terms.

(JAGMOHAN BANSAL)
JUDGE

13.09.2022
anju

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No