

SMT. CHAMELI DEVI AND ANOTHER

...Appellants

Versus

KIRPAL SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. R.S. Mamli, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.2-The Oriental Insurance Company Ltd.

HARSH BUNGER, J.

The present appeal arises out of the impugned award dated 08.11.2004 passed by the Motor Accident Claims Tribunal, Kurukshetra (here-in-after referred to as 'the Tribunal').

Learned counsel for the appellant-claimants has submitted that in connected ***FAO No.3087 of 2005***, this Court vide order dated 19.02.2014 has already enhanced the amount and in view of the same, no further enhancement is possible in the present appeal.

A perusal of the file shows that before the Tribunal, two separate claim petitions were filed i.e. one on behalf of wife and minor children and another by parents of deceased-Jagir Singh. Both the aforesaid claim petitions came to be decided vide common award dated 08.11.2004, against which, two FAOs were filed i.e. one ***FAO No.3087 of 2005*** titled as ***Smt. Roshani Devi and others vs Kirpal Singh and another***, which was filed on behalf of wife and children of deceased-Jagir Singh and the instant ***FAO No.2239 of 2005*** titled as ***Smt Chameli Devi and another vs Kirpal***

Singh and another, which was filed on behalf of parents of deceased-
Jagir Singh.

I have gone through the judgment dated 19.02.2014 passed by
this Court, whereby **FAO No.3087 of 2005** came to be partly allowed by
holding as under ;

*“ Taking the income as Rs.5,018/- and after making an addition of 30%, the income would come to Rs.6,523/- per month. After making a deduction of 1/4th for personal expenses, the amount available to the family would be Rs.4,893/-. The annual contribution would come to Rs.58,716/-. As per **Sarla Verma’s** case (supra), a multiplier of 14 would be applicable and the compensation would come to Rs.8,22,024/-. In addition a sum of Rs.20,000/- is added as funeral expenses, Rs.50,000/- is added as loss of consortium and Rs.50,000/- is added on account of loss of love and affection, considering the fact that the accident had taken place in the year 2003. The total compensation payable would be Rs.9,42,024/-.*

7. *The Tribunal had found that the deceased himself had contributed to the negligence. The accident had occurred when the truck driver had suddenly applied the brakes. Jagir Singh, who was coming on his motorcycle had struck the truck from behind and had sustained injuries. Had the motorcyclist maintained a safe distance and had he been careful, the accident could have been avoided. It appears that the motorcyclist was also driving at a high speed and was unable to control the speed, therefore, he could not stop his motorcycle on time. The finding regarding contributory negligence recorded by the Tribunal is affirmed.*

8. *The Tribunal had awarded a sum of Rs.3,65,120/-. This amount would be deducted from the compensation assessed above, which comes to Rs.5,76,904/-. The appellants would only be entitled to 70% of the amount which comes to Rs.4,03,833/-. It is held that the appellants would be entitled to*

a sum of Rs.4,03,833/- with interest at the same rate as awarded by the Tribunal, from the date of filing of appeal i.e. 02.03.2005 till realization. The share of minors shall be deposited in a nationalized bank till they attain majority. However, amount of interest can be released for welfare of minors”

Perusal of the above extracted order would indicate that although, the compensation amount has been enhanced, however, the said amount has been given only to the appellants in the said case i.e. wife and children of deceased-Jagir Singh. It has been noticed that the parents of deceased-Jagir Singh were not a party to the said ***FAO No.3087 of 2005***. Since the Tribunal has already allowed the claim petition filed by the parents as well as wife and children of deceased-Jagir Singh, vide common award and the claimants in both the petitions were held to be entitled to compensation, I am of the considered view that out of the enhanced amount awarded by this Court in ***FAO No.3087 of 2005***, even the parents of deceased-Jagir Singh would be entitled to their share of compensation in the same proportion as has been granted by the tribunal out of the amount granted in ***FAO No.3087 of 2005***. Accordingly, the appellant/claimants in the instant appeal (***FAO-2239-2005***) are held entitled to their share of compensation out of the enhanced compensation granted by this Court in ***FAO-3087 of 2005*** in the same proportion as was granted by the tribunal below, to be recovered from the appellant-claimants in ***FAO-3087 of 2005***.

Apart from the above, I grant an additional amount of Rs.40,000/- on account of filial consortium to the parents of deceased-Jagir Singh. The aforesaid amount of Rs.40,000/- shall carry interest @ 9% from the date of filing of the appeal till the date of actual payment, to be paid

by the Insurance Company. The said amount shall be deposited by the Insurance Company with the Motor Accident Claims Tribunal, Kurukshetra within a period of one month from the date of receipt of certified copy of this order.

The appellant-claimants in this appeal shall approach the concerned Motor Accident Claims Tribunal, Kurukshetra, who shall do the needful within a period of three months thereafter.

Disposed of accordingly.

Copy of this order be also sent to the parties concerned.

September 23, 2022

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No