

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

FAO-3141-2010(O&M)

Date of decision:-7.1.2022

Bimla Devi(since deceased) through her LRs and another

...Appellants

Versus

Baj Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.Raj Kumar, Advocate
for respondent No.3 – Insurance Company.

H.S. MADAAN, J.

Case taken up through video conferencing.

CM-9894-CII-2021

Learned counsel for the appellants states that as per his instructions, the appellants are not ready for amicable settlement and the appeal be decided on merits.

On the oral request of learned counsel for the parties, the main appeal is taken up on Board today itself for final disposal.

FAO-3141-2010(O&M)

Finding the compensation awarded to them by Motor
Accident Claims Tribunal, Sri Muktsar Sahib vide award dated 22.8.2009

being inadequate, claimants Smt.Bimla Devi (since deceased) and another had knocked at the door of this Court by way of filing an appeal.

Briefly stated, facts of the case, as can be gathered from the record, are that on 27.11.2005, petitioner/claimant Bimla Devi along with her husband Dharampal, besides other persons were travelling in a bus bearing registration No.PB-305-C-8499 (hereinafter referred to as the offending bus) belonging to Satnam Bus Service, opposite Pappi Market, Malout hired by them and other persons, for visiting holy places at Amritsar; the bus was being driven by respondent No.1 – Baj Singh in a rash and negligent manner; he was asked by the passengers to drive the bus in a proper manner but in vain; at about 5:00 a.m.; when the bus reached at Tarn Taran by-pass, on account of its rash and negligent driving by respondent No.1 – Baj Singh, it overturned; the passengers received injuries; Dharampal, husband of petitioner/claimant - Bimla Devi besides one Baby Rani succumbed to the injuries at the spot; FIR No.293 dated 27.11.2005 for the offences under Sections 304-A, 279, 337, 338 IPC with regard to the accident was registered at Police Station City, Tarn Taran against respondent No.1 – Baj Singh. Thereafter, Bimla Devi – widow and Sunil Kumar son of Dharampal deceased had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Baj Singh – driver, Iqbal Singh – owner and United India Insurance Company Ltd., Divisional Office at Ahohar – insurer of the offending vehicle.

On notice, respondents No.1 and 3 had put in appearance and offered a contest, whereas respondent No.2 did not appear despite service and was proceeded against ex-parte. Issues on merits were framed. The

parties were afforded adequate opportunities to lead evidence.

On analysis and evaluation of evidence Motor Accident Claims Tribunal, Sri Muktsar Sahib (hereinafter referred to as the Tribunal) came to the conclusion that respondent No.1 was author of the accident by rash and negligent driving of the offending bus, whereas while calculating the compensation, the Tribunal took into consideration the affidavit Ex.PW1/A filed by claimant Bimla Devi contending therein that her deceased husband Dharampal was permanent employee of Municipal Council, Malout getting salary of Rs.8,650/- per month and he used to pay tax. PW3 Mann Singh, Sanitary Inspector, Nagar Council, Malout had also stated as such adding that gross salary of Dharampal deceased was Rs.9,223/- per month. He had produced salary certificate of deceased Dharampal as Ex.PW3/A. The Tribunal took the age of deceased Dharampal as 45 years and monthly income of the deceased to be Rs.9,200/-; deduction to the extent of 1/3rd was made towards personal expenses of the deceased; taking the dependency of claimants to be Rs.6,134 per month, annual dependency to be $6134 \times 12 = 73,608/-$, using the multiplier of 8, the total compensation was worked out to be Rs.5,88,864/-. Under general damages, Rs.5,000/- on account of loss of consortium, Rs.2,500/- as funeral expenses and Rs.2,500/- as loss of estate were also given. The total compensation came out to be Rs.5,98,864/-. That amount was directed to be payable to the claimants by all the three respondents jointly and severally along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

Finding the awarded compensation to be inadequate, the

claimants had come in appeal before this Court.

Notice of the appeal was given to the respondents. Sh.Raj Kumar, Advocate had put in appearance on behalf of the respondent No.3 – insurance company.

I have heard learned counsel for the parties besides going through the record.

It is pertinent to mention here that claimant/appellant No.1 – Bimla Devi has died during the pendency of the appeal, survived by her son Sunil Kumar already on record as co-claimant and daughter – Neetu Rani.

The Tribunal on analysis of the evidence available on the record had taken the age of deceased Dharampal to be 45 years, his occupation as Sweeper with Nagar Council, Malout and his monthly salary/income as Rs.9,200/- and further deduction to the extent of 1/3rd had been made from the earning of the deceased towards his personal and living expenses, calculating the dependency of the claimants to be Rs.6,134 per month, annual dependency to be $6134 \times 12 = 73,608/-$. I do not see any reason to disagree with the Tribunal in that regard. However, no amount has been added towards the future prospects.

In terms of judgment **Smt.Sarla Verma and others**
Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77,
30% of the amount deserves to be added as future prospects i.e. Rs.2760/-.
Doing that the monthly income of the deceased is taken as Rs.11,960/-
(9200 + 2760).

Considering the number of dependent family members, 1/3th

of the amount is to be deducted towards personal and living expenses of the deceased. Doing that the dependency of claimants comes out to Rs.7,970/-(11,960 - 3,990) per month, annual dependency comes out to Rs. 7,970 x 12 = Rs.95,640/-.

Multiplier of 8 was used by the Tribunal. In this case no document showing the date of birth of the deceased has been relied upon by the Tribunal, rather his age has been taken by way of approximation keeping in view the age of wife of deceased Bimla Devi to be 42 years. I find it proper and appropriate to use multiplier of 13 for age group of 46 to 50 years as suggested by learned counsel for the appellant himself, which could not be controverted by learned counsel for the respondent No.3 – insurance company. Thus, the compensation payable comes out to Rs. 95,640 x 13 = 12,43,320/-.

In view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-.

Thus, the total compensation comes out to Rs. 12,43,320 + 70,000 = 13,13,320/-.

The Tribunal has awarded compensation of Rs.5,98,864/-.

In this way, the enhanced amount comes out to Rs.7,14,456/- (13,13,320 - 5,98,864). The appellants/claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual

realization on the enhanced amount of Rs.7,14,456/-.

Of the additional compensation awarded, the liability shall be joint and several of all the respondents. The amount shall be apportioned as follows:

1. Appellant Sunil Kumar (son) - 75%
2. Appellant – Neetu Rani(daughter) - 25%

With such modification, the appeal is allowed partly with costs.

7.1.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No