

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

Sr.No.221

FAO No.5582 of 2016

Date of Decision: 14.03.2022

Kanta Rani and others

...Appellants

Versus

Sahab Singh and others

...Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Suresh Kalia, Advocate,
for the appellants.

Ms. Swati Batra, Advocate
for respondent No.3-Insurance Company.

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MEENAKSHI I. MEHTA, J

Feeling dis-satisfied with the amount of compensation as awarded by learned MAC Tribunal, Kaithal (for short 'the Tribunal) to the appellants-claimants vide the Award dated 08.01.2016 passed in the claim petition preferred by them to seek compensation on account of the death of Vijay Kumar in a motor vehicular accident, they (appellants) have preferred the instant appeal for seeking enhancement of the same.

The appellants-claimants had preferred the claim petition against the respondents before the Tribunal while averring that appellant No.1 was the wife and appellants No.2 to 4 were the children whereas appellant No.5 was the mother of said Vijay Kumar, who had lost his

life in a motor vehicular accident caused by respondent No.1 by driving the motorcycle bearing registration No. HR-08P-9525 (for short 'the offending motorcycle') in a rash and negligent manner at a very fast speed and by hitting the same with the motorcycle, bearing registration No. HR-08D-9226, as being driven by the said victim. The deceased was 47 years old at the time of the said accident and had been earning Rs.20,000/- per month from agricultural and dairy farming pursuits.

Respondents No.1 and 2, in their joint written statement, contested the claim of the appellants by denying the factum of the alleged accident having ever taken place due to the rash and negligent driving on the part of respondent No.1 and they, rather, asserted that the motorcycle being driven by the deceased, slipped due to its rash and negligent driving on his own part and he fell on the road and sustained the injuries which proved fatal for him.

Respondent No.3-Insurance Company also, in its separately filed written statement, controverted the averments of the appellants by denying the factum of the alleged accident having ever taken place as well as of the involvement of the above-said offending motorcycle in the said accident and it also put-forth an alternative plea of the contributory negligence on the part of the deceased in causing the alleged accident.

The Tribunal put the parties to the trial by framing the issues on 16.12.2014. Both the parties led their evidence, oral as well as documentary, in support of their respective contentions and after hearing learned counsel for the parties, the Tribunal partly accepted the claim

petition and though, it calculated the amount of compensation to be Rs.10,31,160/- but fastened the liability, joint as well as several, upon the respondents to pay 50% share of the same, i.e Rs.5,15,580/- to the appellants while observing that the deceased and respondent No.1 were equally responsible for causing the accident in question.

Vide order dated 28.11.2016, the Co-ordinate Bench issued notice of motion to respondent No.3-Insurance Company only in this appeal.

I have heard learned counsel for the appellants as well as learned counsel for respondent No.3-Insurance Company in the instant appeal and have also perused the file thoroughly.

Learned counsel for the appellants contends that the accident in question had taken place solely due to the rash and negligent driving of the offending motorcycle by respondent No.1 and the deceased was not at fault for the same but the Tribunal has wrongly held that the deceased had equally contributed in causing the said accident.

However, this contention is devoid of any merit because a perusal of the site plan of the place of occurrence (annexed at page No.305 in the Lower Court Record), prepared by the Investigating Officer during the investigation of the criminal case registered in respect of the accident in question, reveals that the place of the said accident is shown therein at point "A" which, undisputedly, happens to be the middle of the road. Further, in the Out-Patient Card of the deceased (annexed at Page No.217 in the Lower Court Record) also, it has categorically been mentioned that

the victim was under the influence of Alcohol at that time. The above-said documents do suffice to negate the afore-raised contention and rather, the same unequivocally lead to the irresistible conclusion that the deceased as well as respondent No.1 were equally at fault in causing the said accident.

Learned counsel for the appellants has, further, contended that the deceased had been earning monthly income of Rs.20,000/- by doing agricultural work and the dairy farming as well but the Tribunal erroneously assessed his monthly income at the rate of the minimum wages as notified by the State Government to be payable to the un-skilled labourers and moreover, the future prospects have also not been added in his monthly income while calculating the amount of compensation.

Again, this contention is not tenable at all because the appellants have not led any cogent and trustworthy evidence on the record to show that the deceased was the owner of any agricultural land or had leased out the same and was earning any income on the said count and that he was earning any income by dairy farming. It being so, the Tribunal has rightly held that his monthly income was to be assessed at the rate of the minimum wages as notified by the State Government to be payable to the casual labourer. As regards the non-inclusion of any amount therein on the score of future prospects, it is worth-while to mention here that the said accident took place on 12.10.2013 and as per the copy of the letter circulated by the Labour Commissioner, Haryana on 13.08.2013, the rate of monthly minimum wages payable to an un-skilled labourer was fixed as Rs.5341.51/- w.e.f. 01.07.2013 and the Tribunal has assessed the monthly

income of the deceased as Rs.7150/-. It being so, it does not lie in the mouth of the appellants to contend that they are entitled to the enhancement of the amount of compensation on the ground of addition of the amount on the score of future prospects.

As a sequel to the fore-going discussion, it follows that the impugned Award does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the instant appeal, being *sans* any merit, stands dismissed.

14.03.2022
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes