IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

221

FAO-9358-2014 (O&M)
Decided on : 10.05.2022

Jagroop Singh

. . . Appellant(s)

Versus

Rajinder Kaur and others

. . . Respondent(s)

FAO-9888-2014 (O&M)

Rajinder Kaur and others

. . . Appellant(s)

Versus

Tripatinder Singh and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. S.S. Swaich, Advocate for
for the appellant (in FAO-9358-2014)
for respondent No.2 (in FAO-9888-2014).

Mr. D.S. Randhawa, Advocate
for the appellants-claimants (in FAO-9888-2014)
for respondents No.1 to 4 (claimants) (in FAO-9358-2014).

Service of driver dispensed with
vide order dated 16.10.2015.

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MANJARI NEHRU KAUL, J. (Oral)

This order shall dispose of FAO-9358-2014 and FAO-9888-2014, as they arise from the same award. However, the facts are being extracted from FAO-9358-2014.

FAO-9358-2014 has been preferred by the owner of the offending Bus against the award dated 28.04.2014, passed by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal') in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, whereby, compensation in the sum of Rs.14,00,000/-, was awarded to the claimants/respondents No.1 to 4 i.e. widow, two minor children and parents of the deceased Chatinder Singh alias Rana, who was 38 years of age at the time of accident in question.

The claimants have also preferred FAO-9888-2014 for enhancing the compensation awarded by the Tribunal in the sum of Rs.14,00,000/-, by urging that it is meagre and against the settled law.

A few facts as pleaded in the claim petition by the claimants/respondents No.1 to 4 may be noticed. Chatinder Singh alias Rana (hereinafter referred to as 'the deceased') 38 years of age, was stated to be a businessman and was in the business of sale and purchase of buses. His monthly income, as claimed by the claimants was Rs. 40,000/- p.m. On 15.08.2011 deceased was driving bus bearing registration No.PB-13M-8711, and going towards his village. He was accompanied by one Kamaljit Singh @ Billu. At about 05:15 P.M., when they reached near Bhaura Sahib Gurudwara, Nanaksar, a mini bus bearing registration No. PB-29E-9725 (hereinafter referred to as to the 'offending bus'), being driven by respondent No.5 (in FAO-9358-2014) came in a rash and negligent manner from the opposite direction and collided with the bus of the deceased. As a result of which, both the deceased and the said Kamaljit Singh @ Billu suffered multiple injuries in the accident. The deceased, however, succumbed to his injuries in the Civil Hospital, Jagraon, where he was admitted soon after the accident in question. An FIR bearing No. 136, dated 16.08.2011, was registered against the driver of the offending bus (respondent No.5 in FAO-9358-2014). The offending bus was owned by the Jagroop Singh (i.e. appellant No.1 in FAO-9358-2014).

On the basis of the pleadings of the parties and evidence led, the Tribunal awarded the following compensation in the sum of

Rs.14,00,000/- to the claimants-respondents No.1 to 4 :-

Sr. No.	***Head***	***Amount***
1.	Monthly Income	Rs.10,000/-
2.	Monthly Dependency	Rs.7500/-
3.	Annual Dependency	Rs.90,000/-
4.	Multiplier	15
5.	Loss of Total Dependency	Rs.90,000 x 15=Rs.13,50,000/-
6.	Funeral Expenses	Rs.6,000/-
7.	Loss of Consortium to R No.1	Rs.44,000/-
8.	Total Compensation	Rs.14,00,000/-

The driver and owner of the offending bus were directed to jointly as well as severally to pay the amount of compensation to the claimants-respondents No.1 to 4 (i.e. widow, two minor children and parents parents of the deceased), along with interest @ 6% per annum, on the awarded amount from the date of filing of petition till its realization.

Learned counsel for the appellant – Jagroop Singh (owners of the offending bus) *inter alia* has challenged the award passed by the Tribunal on the ground that it was a head on collusion between the offending vehicle and the bus, which was being driven by the deceased and thus, it was a case of contributory negligence. The reliance placed by the Tribunal on the testimony of PW-2/Kamaljit Singh @ Billu, was erroneous, as he evidently was a planted witness. Learned counsel further submits that though it was stated that the police had recorded the statement of injured Kamaljit Singh @ Billu in the hospital, after his admission there, however, there was no proof regarding his hospitalization. He further submits that Kamaljit Singh @ Billu had been named as a prosecution witness only on account of his friendship with the deceased and he in fact, was neither travelling with the deceased at the time of accident in question nor was he present at the spot when the accident in question took place, as he showed complete ignorance as to how many persons gathered at the spot, after the accident in question. Still further, learned counsel submits that even PW-1/Rajinder Kaur i.e. widow of the deceased admitted in her cross-examination that she had no personal knowledge as to how the accident had taken place and whatever she had stated, was at the behest of PW-2/Kamaljit Singh @ Billu.

Learned counsel further submits that PW-1/Rajinder Kaur admitted that her husband i.e. the deceased, was not an income tax payee. Hence in the circumstances, in the absence of any proof of income of the deceased, the Tribunal erred in assessing the income of the deceased @ Rs.10,000/- p.m. A prayer was, therefore, made that the impugned award deserved to be set aside or in the alternative be modified on the grounds of contributory negligence.

On the other hand, learned counsel for the claimants, while disputing and opposing the submissions made by the counsel opposite, submits that the compensation awarded is on the lower side and not in consonance with the law laid down by the Hon'ble Apex Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR (Civil) 333***.

Learned counsel further contends that a perusal of the testimony of PW-2/Kamaljit Singh @ Billu, who was accompanying the deceased at the time of the accident in question, clearly reveals that it was the driver of the offending vehicle, who came in a rash and negligent manner from the opposite side and collided with the bus of the deceased, which was being driven on the correct side of the road. He further submits that since PW-2/Kamaljit Singh @ Billu also sustained injuries at the time of the accident in question, his presence stood proved and could not be doubted.

Learned counsel further contends that while awarding the compensation, the Tribunal erred in not awarding any compensation *qua* loss of future prospectus. Besides this, the widow, two minor sons and the parents of the deceased, were also entitled to loss of spousal, parental and filial consortium, respectively, which had not been awarded to them.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court does not find any merit in the submissions made by learned counsel for the appellant – Jagroop Singh (in FAO-9358-2014, i.e. owner of the offending bus) that it was a case of contributory negligence. As per the deposition of PW-2/Kamaljit Singh @ Billu, who too received injuries at the time of accident in question, it was the offending vehicle, which came in a rash & negligent manner from the opposite direction and collided with the bus of the deceased. On account of the injuries suffered by PW-2/Kamaljit Singh @ Billu, his presence at the time of the accident stands proved and his evidence *qua* the manner in which the accident took place can be relied upon.

Coming to the next submission of the claimants, this Court is of the opinion that no interference is warranted with respect to the monthly income of the deceased, which was assessed at Rs.10,000/- p.m. The Tribunal, however, erred in not assessing the future prospects, because, as per settled law, laid down by the Hon'ble Supreme Court, the future prospects in the case in hand would have to be assessed @ 40%.

Still further, the compensation awarded under loss of estate and funeral expenses, is admittedly on the higher side and not in consonance with the judgment rendered by the Constitution Bench of Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121***, and hence it needs to be reassessed and modified in the following terms:-

The Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs.15,000/- each, to be awarded for loss of estate & funeral expenses and Rs.40,000/- each, for loss of consortium. Still further, it has been held that the aforesaid amount would be further subject to 10% enhancement after every three years. Therefore, the appellants would be entitled to 10% enhancement *qua* the compensation under conventional heads, as has also been held and reassessed by Hon'ble Supreme Court in ***Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344*** as per the ratio laid down in ***Pranay Sethi's case(supra)***. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each, for loss of estate & funeral expenses and Rs.44,000/- each for loss of consortium (spousal, parental and filial), for each of the claimants, who are the widow, two minor sons and parents of the deceased Chatinder Singh @ Rana.

Resultantly, the compensation payable to the claimants would be as follows:-

Sr. No.	***Head***	***Amount***
1.	Monthly Income	Rs.10,000/-
2.	Annual Income	12 x 10000=Rs.1,20,000/-

3.	Future Prospects (40%)	1,20,000 x 40/100 = Rs.48,000/-
4.	Total Annual Income	1,20,000 + 48,000 = Rs.1,68,000/-
5.	Deduction towards personal expenses (1/4th)	Rs.42,000/-
6.	Loss of Annual future earnings	Rs.1,26,000/-
7.	Multiplier	15
8.	Loss of Future earnings	Rs.1,26,000 x 15 = Rs. 18,90,000/-
9.	Loss of spousal, parental and filial consortium (widow, two minor children & parents)	Rs.44,000/- x 5 = Rs.2,20,000/-
10.	Funeral Expenses	Rs.16,500/-
11.	Loss of Estate	Rs.16,500/-
12.	Total Compensation	Rs.21,43,000/-

The claimants are, therefore, held entitled to a total sum of Rs.21,43,000/- as compensation along with interest @ 8% per annum from the date of filing of claim petition till its actual realization.

With these modifications, the appeal of the owner (FAO-9358-2014) stands dismissed and the appeal filed by the claimants (FAO-9888-2014) stands disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

May 10, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*