

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

**F.A.O. No. 2769 of 2001 (O&M)
DATE OF DECISION :- July 05, 2023**

Mrs. Sabina Nagpal

...Appellant

Versus

Union of India and others

...Respondent

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

Present:- Mr. Jai Bhagwan, Advocate for the appellant.

Mr. Arun Gosain, Senior Government Counsel
for respondent No. 1-Union of India.

1. Briefly stated the facts of the case are that one Ashwani Nagpal died in a road side accident, which took place on 1.11.1997 at about 4.30 P.M inside Chandimandir, Panchkula statedly on account of rash and negligent driving of a Military truck bearing registration No. 84-C-37516A by respondent No. 2 Gorkha Mahinder Singh, such truck being owned by respondent No. 1 Union of India.

2. Widow of the deceased namely Mrs. Sabina Nagpal had brought a claim petition under Section 166 of the Motor Vehicles Act claiming compensation against Union of India owner, Gorkha Mahinder Singh, driver of the Military truck in question. She had also impleaded the insurance company of the truck as respondent No. 3 without disclosing its particulars mentioning that those were to be disclosed by respondents No. 1 and 2 as it transpired that the truck in question was not insured and particulars of the insurance company could not be entered. She had further impleaded parents of the deceased namely his father Shri B.D. Nagpal and

mother Smt. Krishna Nagpal, both residents of House No. 2082/2, Sector 45-C, Chandigarh as proforma respondents. Since it transpires that respondents No. 4 and 5 are proforma respondents issuance of notice to them is dispensed with.

3. On being given notice, respondents No.1 and 2 had put in appearance. Contest was offered by respondents No. 1 and 2 whereas respondents No. 4 and 5 in the joint written statement filed by them simply pleaded that they were dependent upon the deceased and are entitled to have share in the compensation.

4. On pleading of the parties following issues were framed :-

1. Whether Sh. Ashwani Nagpal died to a road side accident which took place on 1.11.1997 at about 4.30 P.M. inside Chandimandir, Panchkula on account of rash or negligent driving of Military Truck bearing No. 84-C-37516A by respondent No. 2 which is owned by respondent No. 1 as alleged?OPP
2. If issue no. 1 is proved, whether the petitioner and respondents no. 4 and 5 are entitled to any amount as compensation, if so to what amount and from whom?OPP
3. Relief.

5. The parties lead evidence in support of their respective claims.

6. After hearing arguments the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to 'The Tribunal') vide Award dated 19.5.2001 gave issue wise findings giving issue No. 1 in favour of claimant and against respondents No. 1 and 2 holding that respondent No. 2 Gorkha

Mahinder Singh was the author of the accident by his rash and negligent driving of the Military truck resulting in death of Sh. Ashwani Nagpal. It being so respondent No. 1 being owner and respondent No. 2 being driver of the offending truck were liable to pay compensation to petitioners claimants Mrs. Sabina Nagpal and proforma respondents Sh. B.D. Nagpal and Sh. Krishan Nagpal.

7. With regard to quantum of compensation the Tribunal took the age of deceased as 28 years. His occupation as Senior Engineer U.P Steels, Village Nara. PO Mansurpur District Muzaffarnagar (U.P) and assessed his monthly income as Rs.15030.30/-. An amount of Rs.2000/- per month was deducted towards income tax on earning. Thereafter salary was worked out to be Rs.13000/- per month. However, the Tribunal has not made any addition towards the future prospects.

8. In terms of judgement by a Constitutional Bench of the Supreme Court in '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009***' when the deceased had a permanent job and was below the age of 40 years addition of 50% of the actual salary is to be made towards future prospects. Doing that the monthly income of the deceased comes out to be Rs.19,500/-. Considering the number of dependent family members to be three i.e petitioner claimant Mrs. Sabina Nagpal being wife and proforma respondents Sh. B.D. Nagpal and Smt. Krishna Nagpal, parents of the deceased deduction towards personal and living expenses of the deceased to the extent of 1/3rd was rightly made. Therefore, the dependency of claimant and proforma respondents No. 4 and 5 comes out to be Rs.13,000/- per month. In that way,

the annual dependency of claimants is worked out to 13,000 x 12 =Rs.1,56,000/-.Considering the age of deceased multiplier of 18 should have been applied as has been held in judgement “*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*” by the Apex Court. The Tribunal clearly fell in error in using multiplier of 5 considering the ages of parents of deceased. That error is required to be set right. Therefore, using multiplier of 18 the total dependency is worked out to Rs.1,56,000 x 18 =Rs.28,08,000/-. The petitioner claimant is entitled to get Rs.70,000/- under the conventional Heads i.e. Rs.40,000/- on account of loss of consortium, Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of Estate. The total amount thus comes out to be Rs.28,78,000/-. The Tribunal has award a sum of Rs.5,20,000/- only which is enhanced to Rs.23,58,000/- (28,78,000 - 5,20,000). Respondents No. 1 and 2 would be liable to pay this amount jointly and severally. The Tribunal has granted interest at the rate of 11% per month on the compensation amount which I find to be on higher side. Therefore, the interest at the rate of 7.5% is granted on this amount from the date of filing of claim petition till actual realization. As regards apportionment 50% of the amount would go to petitioner claimant and remaining to proforma respondents No. 4 and 5.

9. The appeal is allowed partly.

(H.S. MADAAN)
JUDGE

July 05, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No