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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 2858 OF 2020 (O&M)
DATE OF DECISION: 08.05.2023

Uttar Pradesh State Road Transport Corporation …Appellant

Versus

Jasmine Kaur and others …Respondents

AND

FAO NO.69 OF 2021 (O&M)

Jasmine Kaur and another …Appellants

Versus

Uttar Pradesh State Road Transport Corporation And others …Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present : Mr. Sandeep Kotla, Advocate,
For the appellant in FAO-2858-2020 and
For respondent No.1 in FAO-69-2021.

Mr. Prateek Gupta, Advocate,
For the appellants in FAO-69-2021 and
For respondents No.1 and 2 in FAO-2858-2020.

ARUN MONGA, J. (ORAL)

CM-968-CII-2021 IN FAO-69-2021

Despite ample opportunities, no reply has been filed. For the reasons mentioned in application and, same is allowed and delay of 384 days in filing the appeal is condoned, subject to all just exceptions.

MAIN CASES

On fateful day of 15.01.2002, unbeknown to the widow mother of Chander Mohan Singh, that morning was the last time she would see her son alive.

What appeared to be just another day out of the ordinary, took a tragic turn when she received the devastating news that her only son, all of 33-year-old, who was driving home with his wife, had been fatally crushed by a speeding bus belonging to the appellant-Corporation. The deceased's wife, who was also in the car at the time of the accident, sustained serious injuries, trapped inside the completely wrecked vehicle that had been reduced to a twisted mass of metal due to the force of the head-on collision caused by the bus driver's excessive speed. Despite the efforts to transport him to the hospital, the deceased did not survive, leaving behind his widow, who fought for her life for a considerable period and ultimately survived.

2. Before this court in appeal, vide FAO No.69 of 2021, are the widow and mother of the deceased-victim, aggrieved against inadequate compensation vide the impugned award and seek enhancement thereof. Insurance company is also in appeal, vide FAO No.2858 of 2020, seeking setting aside of the same very award in totality. Both the appeals are being disposed of through this common order/judgment since facts and issues involved therein are same. For brevity, recitals are taken from FAO-2858-2020, the earlier of the two appeals.

3. Succinct facts first.

3.1 On 15.01.2002 at about 5:30 p.m., Chander Mohan Singh (deceased) along with his wife was proceeding to his residence at Oberoi Apartments located at Fatehabad Road, Agra in his Maruti car bearing registration No. CH01-R-0524. When he reached in front of hotel which was under construction, one bus bearing registration No.UP-80-D-9918, being driven rashly and negligently and at a very high speed reached there. The driver of offending bus tried to overtake the car without observing traffic rules and in the process, it came on the wrong side of the road and hit the above said car. Due to the impact of accident, car of the deceased was completely smashed resulting into grievous injuries to the occupants of the car. FIR in this regard was registered and investigation was carried out. Chander

Mohan Singh succumbed to his injuries on his way to hospital whereas his wife was admitted in a private hospital for getting treatment.

4. Upon notice, appellant-Corporation (owner of the offending bus) appeared and contested the claim petition taking preliminary objections that claim petition is not maintainable. However, accident was admitted. It was further contended that car driver tried to overtake another vehicle due to which he lost his control and collided with the bus of appellant. The accident took place due to rash and negligent driving of the deceased. Further objection was taken that insurance company of the offending car was not made party and claim petition is liable to be dismissed.

5. Based on rival pleadings, learned Tribunal framed following issues:

> *1) Whether Chander Mohan died at 5:30 p.m. on 15.01.2002 in the area of Agra Road, Fatehabad on account of rash and negligent driving of bus No. UP80-D-9918 by its driver? OPP*
>
> *2) Whether the claimantsare entitled to compensation, being legal representatives of deceased, if so how much and from whom? OPP*
>
> *3) Relief.*

6. On appraisal of record/evidence, learned Tribunal decided Issues No.1 and 2 were decided in favour of claimants and against the respondents. Consequently, claim petition was partly allowed and compensation to the tune of Rs.41,10,064/- along with interest @ 7½% per annum from the date of filing the claim petition till its realization, minus the period during which matter remained stayed before High Court, was awarded. Counsel fee was assessed as Rs.3000/-.

7. I have heard competing contentions of both learned counsels and have gone through the case file with their assistance.

8. Both the appeals essentially spiral on following pivotal prepositions canvassed by learned counsel for Transport Corporation (owner of the offending bus):-

a). Accident resulted from the rash and negligent driving of his car by the deceased himself. And yet, Ld. Tribunal wrongly held the appellant liable to pay compensation for his death.

b). That income of deceased has been wrongly assessed by learnedTribunal.

c). Learned Tribunal could not have burdened the Corporation with interest component for the entire period of pendency of claim petition (17 years) in the first round and thereafter the matter being remanded back by this Court for fresh adjudication which eventually happened in the year 2019, since the accident took place way back in the year 2002.

9. Learned counsel for Corporation/owner of the offending bus strenuously argues that accident took place due to negligent driving of deceased. He submits that the deceased tried to over-take another vehicle, but road was since wet, which resulted in his losing control over his car and it collided with the offending bus.

10. Impugned award as also the memo of appeal show that the Ld. Tribunal had earlier decided the claim application and rendered an award dated 04.05.2004 against the appellant, allowing compensation of Rs.13,50,000/- in favour of the respondent-claimants.

10.1. Obviously, while passing the earlier award dated 04.05.2004 against the appellant and allowing compensation in favour of the respondent-claimants, the learned Tribunal had held that the accident had resulted from the rash and negligent driver of the bus owned by the Corporation, the appellant in the instant appeal.

10.2. FAO No. 4486 of 2006 filed by the respondent-claimants against the award dated 04.05.2004 (obviously, for enhancement of compensation) was disposed of by a co-ordinate bench of this court vide order dated 28.03.2018 in following terms:

"Without expressing any opinion on the merits of the case, the matter only with regard to quantum of compensation is remitted

> *back to the Tribunal to decide the same afresh after affording opportunity to the parties to adduce fresh evidence in support of their claims. Needless to add that the claimants shall be at liberty to produce any other evidence to substantiate the salary claimed by them in the pleadings."*

10.3. It is also obvious from the order *ibid* dated 28.03.2018 that the appellant herein had not filed any appeal against the earlier award dated 04.05.2004 or cross-objection in FAO No. 4486 of 2006 filed by the respondent-claimants. The said order dated 28.03.2018 further shows that this Court, while remanding the case back, had upheld the learned Tribunal's finding recorded in the earlier award dated 04.05.2004 that the accident had resulted from the rash and negligent driver of the bus owned by the appellant herein. The said finding and the orders have since attained finality.

10.4. In the instant appeal, there is no challenge to the earlier award dated 04.05.2004. Even otherwise, now the appellant cannot challenge the finding recorded against it in the earlier award dated 04.05.2004, as already upheld by co-ordinate bench of this Court vide order dated 28.03.2018 to the effect that the accident had resulted from the rash and negligent driver of the bus owned by the appellant. In this view of the matter, I am unable to re-open a closed chapter, reverse the clock and consider, much less accept the appellant's contention that the accident had resulted from the rash and negligent driving of his car by deceased himself, which even otherwise is not supported by any record. The same is, therefore, rejected.

11. Coming to second argument with regard to assessment of income, there is nothing on record to suggest that Income Certificate (Exhibit PW-3/5) produced by widow of deceased was not genuine and/or did not match with Form-16 (Exhibit PW-3/2) which is proof of tax deducted at source while disbursing the emolument by the employer to an employee under the Income Tax Act.

11.1. That apart, testimony of widow *qua* income of the deceased, as well as his salary certificate have remained unimpeached in cross-examination. The

Transport Corporation (owner of the offending bus) has not been able to establish that Salary Certificate was not genuine and/or the same was wrongly obtained after the death of deceased with a mere intent to obtain higher compensation arising out of his accidental death.

11.2. Besides, it was open to Transport Corporation-owner to adduce rebuttal evidence by either making the employer to produce its records to show as to what was the actual income remitted to deceased. It is not even case of Corporation that income of deceased was paid cash and therefore, there was no proof thereof. On the contrary, salary was being remitted through bank channel and it was open to the Corporation to seek relevant bank entries either in cross-examination or by way of summoning bank records at the time of producing its own evidence. On either count, it has failed to establish that Salary Certificate was not genuine.

11.3. That aside, I am also not able to persuade myself to accept the argument that income tax return filed for the two assessment years immediately preceding the death reflected much lessor income and, therefore, average of the last three income tax returns ought to have been taken as per established salary. The mean of income tax returns, is taken in those cases where the income is variable. In the present case, income being based on salary certificate, was clearly not variable and deceased was to get the same month after month and year after year. It is not the case of the appellant that future income of deceased/employee would have varied to his detrimental. In fact, in the present case, on the contrary, given his education and management position, salary in future would have rather been incremental based on his career progression. Therefore, said principles of income tax return as the sole basis are not applicable. Especially, when there is unimpeachable proof of income, the salary was since being paid through Bank. It is thus not a case of income earned through means other than salary.

12. The uncertainties and vagaries of litigation are not in the hands and control of the litigants. What would be the eventual outcome of a pending *lis*, cannot be a ground for denial of legitimate claim on the ground of delay in disposal of case,if eventually the same is found admissible by a Court. Not to say that the same are to be treated as any fortuitous benefit. On the contrary, I am of the view thatit is alegitimate expectation of an aggrieved party, who on one hand had suffered delayin mitigation of grievance and, on the other hand he should be made to suffer for the delay which is completely beyond his controldue to heavy pendency of litigation in the Courts.

13. In this context, reference may be had to judgment titled ***Union of India v. Rina Devi***[1], relevant extract whereof is reproduced herein below:

> "*xxxxxxxx*
> *17.xxxxx xxxxx Subsequently in ThazhathePurayil it has been held by this Court, after referring to Rathi Menon, that right to claim compensation accrued on the date of the incident though compensation is computed on the date of the award of the Tribunal. To compensate for loss of money value on account of lapse of time and for the denial of right to utilize the money value on account of lapse of time and for the denial of right to utilize the money when due, interest was required to be paid.*
> *xxxx*
> *18.xxxx xxxx We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment as such rate as may be considered just and fair from time to time.xxxxxxxx*
> *30.xxxx xxxx We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises up to the date of payment, without any difference in the stages. Legal position in this regard is on a par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.*
> *xxxxxxxx*"

13.1. Applying the principles as enunciated in the judgment herein above, no fault, therefore, can be found in the impugned award vide which interest component has been provided to claimantwith effect from the date of accident, as the same has been rightly granted.

[1](2019) 3 SCC 572

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2023.06.07 10:41
I attest to the accuracy and integrity of this judgment/order

FAO-69-2021

14. Learned counsel for appellant/claimants would contend that findings of learned Tribunal were based on Form 16 for assessment year 2002-03 (Ex.PW3/3) in which net annual salary was reflected as Rs.2,52,496/-. Learned Tribunal while calculating monthly salary of deceased had divided net annual salary of Rs.2,52,496/- by 12 which comes to Rs.21,042/- per month but the deceased had worked for 9.5 months only and he died on 15.01.2002, therefore, denominator has to be 9.5 instead of 12 and as such, monthly salary should have been determined as Rs.26,579/-.

15. I find substance and merit in the said contention of the learned counsel for claimants (appellants in FAO No. 69-2021). There is an apparent mathematical mistake in calculation of monthly income of the deceased by the learned Tribunal. It assessed the monthly income of the deceased as Rs. 21,042/- relying upon his income tax return assessment years 2002-03 corresponding to accounting financial year 2001-02. The assessee (Chander Mohan Singh) had died on 15.01.2002. Naturally, his net income of Rs. 2,52,496/- after deduction of income tax shown in the said return was for the period from 01.04.2001 to 15.01.2002 i.e. 9 and half months. The learned Tribunal seems to have erred in treating the said figure of Rs. 2,52,496/- as the income for 12 months on that basis assessed the monthly income of the deceased as Rs. 21,042/-. As stated, net income of Rs. 2,52,496/- after deduction of income tax shown in the said return was for the period from 01.04.2001 to 15.01.2002 i.e. 9 and half months. On that basis, the correct calculation of the monthly income of the deceased would come to Rs.26,579/-. It is assessed accordingly. He was regular employee of the company Hotel Trident, Agra with stable income.

16. Having heard learned counsels for parties and applying the principles in cases of Smt. Sarla Verma and others Vs. Delhi Transport

Corporation and another[2], National Insurance Co. Ltd. v. Pranay Sethi[3], read with Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others[4], I am of the view that amount of compensation deserves to be modified.

17. In view of the above discussion, various computations of compensation *qua* each head are modified as below:

Deceased	Chander Mohan Singh
Dae of accident/death	15.01.2002
Age	33 years
Marital status	Married
Claimants	Wife and mother of the deceased
Monthly income	Rs.26,579/ -
Increase for future prospects @ 50% per Pranay Sethi	Rs. 13289/-
Total monthly income including increase for future prospects	Rs. 39,868/-
Deduction of 1/3rd income for personal expenses of the deceased	Rs. 13289/ -
monthly loss of dependency	Rs.26,579/ -
Multiplier per SarlaVerma	16
Total loss of dependency Rs.26,579x12x16=51,03,168	Rs. 51,03,168/-
Loss of filial and conjugal consortium (44,000x2)	Rs. 88,000/-
Funeral expenses and loss of estate (16,500x2)	Rs. 33,000/-
Total payable compensation (51,03,168 +88,000+33,000)	Rs.52,24,168/-
Compensation awarded by Tribunal	Rs. 38,91,880/-
Enhancement	**Rs. 13,32,288/-**

18. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimant along with interest as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order along with same interest as awarded by the MACT, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the

[2]**2009 (3) The Punjab Law Reporter 22**
[3]**(2017) 16 SCC 680**
[4]**2019 (3) SCC (Cri) 153**

compensation, if any, already paid, be disbursed to claimants, by apportionment, as under by learned Tribunal.

a) Smt. Jasmine Kaur, widow of the deceased - 60%
b) Mrs. Opinder Surinder Singh, mother of the deceased - 40%

19. In the premise, **FAO-2858-2020** filed by Corporation-owner stands dismissed and **FAO-69-2021** filed by claimants stands allowed in above terms.

20. Pending application(s), if any, shall also stand disposed of.

21. A photocopy of this order be placed on the connected case file.

MAY 08, 2023 **(ARUN MONGA)**
Shalini **JUDGE**

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