

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIAGRH

E.F.A.No.4 of 2023(O&M).

Reserved On: 25.07.2023

Decided on:09.08.2023

Ajaypal Singh and another

...Appellants

Versus

Karamjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kiranjit Singh Bassi, Advocate,
for the appellant.

Mr. Nirmaljit Singh Sidhu, Advocate
for respondent no.1.

ANIL KSHETARPAL, J.

1. The claimants' struggle to recover the compensation awarded by the court for the death of their predecessor in an automobile accident continues.

2. The appellants before this court are Judgment Debtors. The Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') vide award passed on 09.04.2010, awarded a sum of Rs.5,60,000/- to the claimants and against the Judgment Debtors. The amount awarded was recoverable jointly and severally. The Tribunal ordered that if the payment is not deposited within three months, then as a result the interest @ 7% per annum from the date of award till realization shall be payable on the amount awarded.

3. In first appeal, the amount of compensation was enhanced to Rs.14,57,500/- vide judgment dated 04.07.2014. The First Appellate Court ordered the payment of the enhanced amount to be made within a period of 16 days from the date of receipt of certified copy of the award failing which the amount shall be recoverable with interest @ 7.5% from the date of filing of the appeal till its realization. Now, the aforesaid award has attained finality.

4. In the execution petition, filed on 14.09.2015, after the amount was enhanced by the High Court, the impugned orders were passed. In EFA No.8 of 2019 filed by the petitioners (Judgment Debtors), the High Court vide order dated 25.07.2022 directed to the Executing Court to verify about the status of recovery of the amount of Rs.92,189/- which was ordered to be recovered as the arrears of land revenue and to thereafter determine the liability of the judgment Debtors, afresh.

5. Pursuant thereto, the Executing Court has passed various orders. Through this appeal the Judgment Debtors have assailed the correctness of the orders passed on 05.04.2023 by which the Executing Court after making a comprehensive calculation has assessed the balance amount payable. The appellants have also challenged the correctness of the order passed by the Executing Court on 19.04.2023 by which the schedule of sale of the property of the Judgment Debtors has been issued to recover the amount. The order passed by the Executing Court to bring on record the legal representatives and the order passed on 01.03.2023 dismissing the application for dropping the execution proceedings being time barred have also been challenged by the judgment debtors.

6. This Bench has heard the learned counsel representing the appellants and with his able assistance perused the paper book.

7. The learned counsel representing the appellants submitted that first appeal was preferred by the five claimants whereas Sh. Darbara Singh and Smt. Amarjit Kaur, the parents of the deceased late Sh. Kulbir Singh did not file appeal. Similarly, the execution petition was also filed by the five claimants and it was never filed by their parents. Hence, the court has no authority to order recovery with respect to their share of compensation. It is further contended that the appellants have already paid their share and therefore, no further amount from them can be recovered by the Court. He further contended that the order passed by the Executing Court to bring on record the legal representatives of Sh. Darbara Singh Smt. Amarjit Kaur is illegal, null and void.

8. This court has considered the submissions of the learned counsel representing the appellants.

9. The Executing Court while taking note of the calculation has drawn a tabulated compilation, the correctness where is not disputed by the learned counsel representing the appellants which is extracted as under:-

(A)	(B)	(C)	(D)	(E)
Originally award was passed by MACT, Ludhiana, on 9.4.2010	Share of the claimants as per award dated 9.4.2010	%age share of	Enhanced compensation by Hon'ble High Court vide order dated 4.7.2014	Enhanced share of the claimants as per the percentage of share mentioned in column no.C.
Rs.5,60,000/- with interest	1. Karamjit Kaur,	36%	Rs.8,97,500/- with interest	1. Karamjit Kaur,

@ 7% per annum from 9.4.2010 till realization	claimant no.1- Rs.2,00,000/- 2. Lovepreet Singh & Parneet Kaur claimants no.2 & 3- Rs.1,00,000/- each 3. Amarjit Kaur, claimant no.4- Rs.80,000/- 4. Dalbara Singh, claimant no.5, Rs.80,000/-	18% each 14% 14%	@ 7.5% per annum from the date of filing of appeal till realization	claimant no.1- Rs.3,23,100/- 2. Lovepreet Singh & Parneet Kaur claimants no.2 & 3- Rs.1,61,550/- each 3. Amarjit Kaur, claimant no.4- Rs.1,25,650/- 4. Dalbara Singh, claimant no.5, Rs.1,25,650/-
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Claim awarded by MACT, Ludhiana
Vide award dated 09.04.2010 Rs.5,60,000/-

Less amount paid by JD No.1 Ajay
Pal Singh and Manpal Singh on
02.06.2010. Rs.2,24,000/-

Rs.3,36,000/-

Interest on Rs.3,36,000/- w.e.f.
03.06.2010 to 31.03.2023 @ 7% p.a.
i.e. For 12 years 10 months Rs.3,01,840/-

Rs.6,37,840/-

Claim enhanced by Hon'ble High
Court vide order dated 04.07.2014 Rs.8,97,500/-

Less compensation
awarded by High Court under
Specific heads such as Consortium,
Love care and guidance. Rs.3,00,000/-
**(Shall be dealt with in subsequent
calculations separately)** Rs.5,97,500/-

Interest @ 7.5% from filing of the
appeal i.e. from June, 2010 to
31.03.2023 (12 Yrs 10 months) Rs.5,75,087/-

Rs.11,72,587/-

Total claim upto 31.03.2023 (except compensation awarded by High Court under specific heads such as Consortium, Love, care and guidance).

Rs.18,10,427/-

10. From above mentioned calculations, following are the shares of the decree holders/claimants:-

1. **Karamjit Kaur** Rs.6,51,753/-

Plus Loss of consortium payable to widow as per order dated 04.07.2014

Rs.1,00,000/-

Interest on consortium from June 2010 to 31.03.2023 @ 7.5% as per High Court order

Rs.96,250/-

Total amount of share payable to Karamjit Kaur

Rs.8,48,003/-

2. **Lovepreet Singh** Rs.3,25,877/-

Plus Loss of love, care and guidance to minor children as per High Court order dated 04.07.2014

Rs.50,000/-

Interest on loss of love, care and guidance from June 2010 to 31.03.2023 @ 7.5% as per High Court order

Rs.48,125/-

Total amount of share payable to Lovepreet Singh

Rs.4,24,002/-

3. **Parneet Kaur** Rs.3,25,877/-

Plus Loss of love, care and guidance to minor children as per High Court order dated 04.07.2014

Rs.50,000/-

Interest on loss of love, care and guidance from June 2010 to 31.03.2023 @ 7.5% as per High Court order

Rs.48,125/-

Total amount of share payable

to Parneet Kaur

Rs.4,24,002/-

4. **Amarjit Kaur**
(now deceased) Rs.2,53,460/-

Plus loss of love and affection
to Mother as per High Court
order dated 04.07.2014

Rs.1,00,000/-

Interest on love and affection
from June, 2010 to 31.03.2023 @
7.5% as per High Court order

Rs.96,250/-

Total amount of share payable
to Amarjit Kaur

Rs.4,49,710/-

5. **Dalbara Singh**
(now deceased) Rs.2,53,460/-"

10. It may be noticed here that the first argument of the learned counsel representing the appellants is liable to be rejected in view of the provisions of Order 41 Rule 4 CPC which permit one of the several plaintiffs to pray for varying the decree in favour of all the plaintiffs. Order 41 Rule 4 is extracted as under:-

“Order 41 Rule 4.-One of several plaintiff or defendants may obtain reversal of whole decree where it proceed on ground common to all.

Where there are more plaintiff or more defendants then one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.”

11. The claim petition was filed by the widow, two children of late Sh. Kuldip Singh and the parents. Sh. Darbara Singh, the father of the deceased died on 09.06.2014 i.e. after the decision of the High Court in the first appeal, whereas Smt. Amarjit Kaur died on 17.9.1999. Moreover, on a perusal of order Annexure P-14, dated 31.08.2010, passed by the Executing Court in the execution petition it is evident that Smt. Amarjit Kaur and Sh. Darbara Singh filed the execution petition.

12. There is a specific order passed by the Court to bring on record the legal representatives of Smt. Amarjit Kaur and Sh. Darbar Singh.

13. With regard to the next argument of the learned counsel that the execution petition shall be dismissed on account of lapse of limitation period, it may be noticed that the first execution petition was filed in the year 2010 whereas after the enhancement of award by the High Court on 04.07.2014, the execution petition was filed on 14.9.2015. Hence, the same was filed within the limitation period.

14. The argument of the learned counsel that the legal representatives have been permitted to be brought on record is also without substance because in order to execute the decree the legal representatives of the decree holder are required to be brought on record. The High Court while deciding the appeal filed by the claimants vide judgment dated 04.07.2014, has taken note of the fact that the apportionment of the total amount of compensation shall be made in the manner indicated by the Tribunal. However, the amount awarded under the non-conventional head (loss of consortium) was paid to the widow, children and mother separately.

The execution petition was filed in accordance therewith.

15. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

16. Dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

09th August, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO