

2023:PHHC:080359

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4008 of 2011 (O&M)

Date of decision : 1.6.2023

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Amarjit Kaur and others

.....Appellants

vs.

Gurbachan Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Deepak Arora, Advocate for the appellants.

Mr. Radhe Shyam Sharma, Advocate for respondent No.6 -
Insurance company.

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H. S. Madaan, J. (Oral)

Remaining arguments heard.

CM 6175-CII-2023

The main appeal is pre-poned and is taken up today for
hearing.

The application stands disposed of accordingly.

Main case.

1. Briefly stated, facts of the case are that, one Dharam Pal, aged 57 years, working as a Conductor with Punjab Roadways Jalandhar-I, had died in a motor vehicular accident, which took place on 29.8.2009, in the area of bus stand, Jalandhar. That Dharam Pal deceased, was helping Gurbachan Singh driver of bus No. PB-12-C-

1990 in parking bus at counter of bus-stand Jalandhar. At that time, Bhulla Singh @ Bhola Singh driver of bus No. PB-08-BH-3451 of M/s Kartar Bus Service, Jalandhar, was also parking his bus at the counter. Both the buses were being driven in the reverse gear in a very rash and negligent manner. Due to that Dharam Pal got sandwiched between the sides of the two buses and got squeezed. Resultantly, he received serious injuries. Though he was hospitalized, but he succumbed to those injuries.

2. Legal Representatives of such deceased, namely, his wife Amarjit Kaur, aged 52 years and sons Jaspreet Singh and Sunpreet Singh aged 22 years and 18 years respectively, residents of Village Khun Khun Kalan, Tehsil Dasuya, District Hoshiarpur, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Gurbachan Singh, - driver, General Manager, Punjab Roadways, Jalandhar-I and State of Punjab through its Secretary, Transport, Secretariat, Chandigarh, Punjab – owners and Bhulla Singh @ Bhola Singh – driver, M/s Kartar Bus Service, Old Railway Road, Jalandhar – owner and the Oriental Insurance Company Limited, Jalandhar – Insurer of bus No. PB-08-BH-3451, claiming compensation.

3. After contest, the claim petition was accepted by the Motor Accidents Claims Tribunal, (Adhoc), Fast Track Court, Hoshiarpur, vide award dated 23.2.2011 and compensation of Rs.3,50,000/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition, till actual realization, was passed in favour of the claimants against respondents. The liability to pay this

amount was apportioned equally amongst the driver, owners of bus No. PB-12-C-1990 and driver, owner and Insurance company of bus No. PB-08-BH-3451.

4. Finding the compensation so awarded to be on lower side, the claimants have approached this Court by way of filing the present appeal, notice of which was given to the respondents. However, only respondent No.6 – Oriental Insurance company has put in appearance through counsel to contest the appeal.

5. I have heard learned counsel for the parties, besides going through the record.

6. The Tribunal, considering the facts and circumstances of the case, as well as the evidence brought on record by the parties, had come to the conclusion that Dharampal deceased died in the mishap since he was squeezed in between the two buses i.e. bus No. PB-12-C-1990 being driven by respondent Gurbachan Singh, such bus belonging to Punjab Roadways, Jalandhar -I and bus No. PB-08-BH-3451 being driven by respondent Bhulla Singh @ Bhola Singh, such bus belonging to M/s Kartar Bus Service, Jalandhar and that drivers of both the buses were negligent and rash and accident was result of rashness and negligence on the part of drivers of both the buses. In that way the drivers of both the buses alongwith owners of the buses, as well as Insurance company of bus No. PB-08-BH-3451 were found liable to pay the compensation to the claimants, who were found to be legal representatives of the deceased.

7. While assessing the compensation payable, the Tribunal had worked out the same as under :-

1. Income of the deceased Rs.20,320/- p.m., as per salary certificate,
dependency Rs.13,547 X 8 = Rs.1,08,000/-

2. Loss of pension Rs.6,000, dependency = Rs.4,000/- p.m.
annually Rs.48,000/- using the multiplier = Rs.2,40,000/-

of 5.

3. Last rites = Rs.2,000/-

Total = Rs.3,50,000/-

8. However, I find that the Tribunal clearly fell in error in calculating the compensation payable. It was proved on record from the testimony of AW-3 Kuldeep Singh Banwait, Assistant Controller, Finance and Accounts, Office of General Manager, Punjab Roadways, Jalandhar-1, that Dharam Pal deceased was drawing a sum of Rs.20,320/- as total emoluments on 29.8.2009 in terms of salary certificate Exhibit A-3, in pre-revised scales. AW-3 Kuldeep Singh Banwait proved copy of pre-revised scales as Exhibit A-4, stating that as per record the date of birth of deceased was 8.4.1952 and his date of retirement was 30.4.2010.

9. Therefore, his annual income comes to Rs.2,43,840/-. Deducting the income tax @ 10% of the amount above Rs.1,60,000/-, as per Income Tax Slab for financial year 2009-2010, to the tune of Rs.8,384/-, the balance income comes to Rs.2,35,456/-.

10. In terms of judgment, **National Insurance Company Limited vs. Pranay Sethi, 2017 (4) RCR (Civil) 1009**, when the deceased was having a permanent job and was between the age of 50 to 60 years then an addition of 15% should be made towards future prospects. Doing that, an amount of Rs.35,318/- is to be added on

that count, making the total annual income of the deceased as
 $\text{Rs.}2,35,456 + 35,318 = \text{Rs.}2,70,774/-$.

11. Keeping in view the number of claimants- dependents, deduction of $1/3^{\text{th}}$ of the amount is to be made towards personal and living expenses of the deceased, which comes to Rs.90,258/- . The annual dependency of the claimants is thus worked out to
 $\text{Rs. } 2,70,774 - 90,258 = \text{Rs.}1,80,516/-$.

12. In view of the judgment *Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,* when the deceased was in the age group of 56-60 years the multiplier of 9 should be applied. By doing that, the total dependency is worked out to
 $\text{Rs.}1,80,516 \times 9 = \text{Rs.}16,24,644/-$.

13. The claimants are entitled to get Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium. The total compensation amount is thus worked out to
 $\text{Rs. } 16,24,644 + \text{Rs.}15,000 + \text{Rs.}15,000 + \text{Rs.}40,000 = \text{Rs.}16,94,644/-$.

14. The Tribunal has awarded compensation of Rs.3,50,000/-. Therefore, the compensation is enhanced by
 $\text{Rs.}16,94,644 - 3,50,000 = \text{Rs. } 13,44,644/-$

15. The enhanced amount of compensation of Rs. 13,44,644/- alongwith interest @ 7.5% per annum with costs, is to be paid by respondents No.1 to 3 to the extent of 50% and respondents No. 4 to 6 to the extent of remaining 50%.

16. The Tribunal has not clarified with regard to the apportionment of compensation amongst the claimants. The enhanced

compensation amount alongwith interest and costs be apportioned among the appellants-claimants as under -

1. Amarjit Kaur - 60%
2. Jaspreet Singh - 20%
3. Sunpreet Singh - 20%

17. In that way, the appeal is allowed, with costs.

1.6.2023

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Whether speaking / reasoned

Whether reportable

(H.S. Madaan)

Judge

Yes / No

Yes / No