

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 229 (2 cases)

Case No. : FAO No. 5656 of 2016

Date of Decision : July 24, 2023

Bitamee Devi @ Bidamee Devi
and another
vs.
Babita Devi and others

.... Appellants
.... Respondents

Case No. : FAO No. 2183 of 2017

Date of Decision : July 24, 2023

Babita Devi and another
vs.
Parminder Singh and others

.... Appellants
.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Amit Jaswal, Advocate
for the appellants in FAO-5656-2016 and
for respondents no.4 and 5 in FAO-2183-2017.

Mr. Balbir Singh Jaswal, Advocate
for the appellants in FAO-2183-2017 and
for respondents no.1 and 2 in FAO-5656-2016.

Mr. Rohit Ahuja, DAG, Punjab
for respondents no.4 and 5 in FAO-5656-2016 and
for respondents no.2 and 6 in FAO-2183-2017.

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GURBIR SINGH, J. :

1. By this common order, two appeals bearing **FAO No. 5656 of 2016** and **FAO No. 2183 of 2017** are being disposed as both these appeals have arisen from the same impugned Award dated 20.07.2016, passed by learned Motor Accident Claims Tribunal, Chandigarh (for brevity – the

Tribunal).

2. **CM-19527-C-II-2016** : This is application under Order 41 Rule 27 CPC, filed by the appellants (parents of the deceased) in **FAO No.5656 of 2016**, for placing on record site plan, which was filed by the police along with challan, as additional evidence. For the reasons mentioned in the application and ‘no objection’ regarding considering the same without tendering the same and no rebuttal is to be led for the same by the other side, the said site plan is ordered to be taken on record, subject to all just exceptions. The application stands disposed of.

3. The facts, in brief, necessary for the disposal of these appeals, are that on 06.12.2013, Mukesh Kumawat, aged 28 years, was going from the entry gate of Bus Stand, Sector 43, Chandigarh, when he was crushed under a bus bearing registration No.PB-07-S-4303 (hereinafter referred to as – the offending vehicle), due to rash and negligent driving of the concerned driver. Though he was taken to GMCH, Sector 32, Chandigarh, but he was declared “brought dead” by the doctors.

4. The deceased left behind widow Babita Devi, minor son Navneet Kumar, mother Bitamee Devi and father Naraian Kumawat. The claim petition under Section 166 of the Motor Vehicles Act was filed by his widow and minor son, claiming therein amount of Rs.60 lacs as compensation on account of untimely death of Mukesh Kumawat. A perusal of Award shows that parents of the deceased filed claim petition seeking compensation before the learned Tribunal at Rajasthan wherein they also arrayed widow and minor son of the deceased as respondents. Before the learned Tribunal, Chandigarh, respondents no.4 and 5 failed to appear

despite service through registered post and hence, were proceeded against ex-parte. The Award was passed only in favour of widow and minor son of the deceased and nothing was granted to the parents of the deceased as compensation.

5. After appreciating the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.35,13,000/- in favour of widow and minor son of the deceased, in the ratio of 70% and 30% respectively, with further direction that half amount of 70% and full amount of 30% would be deposited in the form of FDRs in nationalized bank of claimants' choice. Though the half amount of widow was directed to be deposited for a period of one year but the amount of minor son was ordered to be released after his attaining the age of majority.

6. Aggrieved by the said Award, two separate appeals were preferred. The first appeal being **FAO No. 5656 of 2016** was filed by parents of the deceased as no compensation has been awarded to them and second appeal being **FAO No. 2183 of 2017** was filed by widow and minor son of the deceased that there was no negligence on the part of deceased and for enhancement of compensation.

7. Perusal of record also reveals that during pendency of both the appeals, vide interim order dated 24.09.2016, passed by a Co-ordinate bench of this Court, it was directed that out of the amount of compensation, if already not disbursed, one-third amount be retained by the Executing Court and deposited in a fixed deposit with some nationalized bank initially for a period of one year, which would be disbursed, subject to further order passed in the present appeals.

8. Further, in the first appeal filed by the parents, an application i.e. Civil Misc. No.8352-C-II of 2022 has been moved by widow and minor son of the deceased, wherein it has been apprised of that father of the deceased, being retired employee of postal department, is getting pension and thus, was not dependent upon the deceased. However, her mother was dependent upon him. Showing their bona fides, it has further been prayed by the widow and minor son of the deceased that the amount awarded to them be disbursed to mother of the deceased, as per her entitlement and remaining amount be given to them because both the parties are suffering as the one-third amount is still lying with the Executing Court.

9. After appreciating the evidence on record, the learned Tribunal held that the accident was caused due to rash and negligent driving by driver of the offending vehicle and also, there was contributory negligence to the extent of 25% on the part of the deceased himself. As per Salary Certificate (Ex.PW-2/A), salary of deceased was Rs.21,938/- per month. After deducting the washing allowance, the net salary was found to be Rs.21,853/-. 1/3rd of his income was deducted as personal expenses. Multiplier of 17 was adopted. 50% of the amount was taken as future expenses. The claimants were further held entitled to Rs.1,00,000/- each as loss of love and affection and Rs.25,000/- were granted as funeral expenses. The total amount of compensation was found to be Rs.35,12,335/-, rounded off to Rs.35,13,000/- along with interest @ 7.5% per annum from the date of filing of petition till realization of the amount. The widow and minor son were held entitled for compensation in the ratio of 70% & 30% respectively.

10. Learned counsel for the claimants (widow and minor son) in **FAO**

No. 2183 of 2017 has argued that the accident has taken place due to rash and negligent driving of driver of the offending vehicle. There was no contributory negligence on the part of the deceased. The driver failed to take care that in and around the bus stand, there is public always but he, by driving the bus at a very high speed and without blowing the horn, hit the deceased. So, deduction of 25%, as held by learned Tribunal, is totally wrong and compensation should have been awarded in whole.

11. Learned counsel for the claimants (parents) in FAO No. 5656 of 2016 has argued that the appellants are old parents of the deceased. They were dependent upon their son. They were proceeded against ex-parte before the learned Tribunal. No amount of compensation has been awarded to them.

12. Learned State counsel appearing in both the appeals on behalf of two respondents i.e. General Manager, Punjab Roadways, Hoshiarpur Depot (owner of the offending vehicle) and the Secretary, State Transport, Punjab has argued that the driver of the offending vehicle himself stepped into the witness box as RW-1 and deposed that the deceased himself was careless while crossing the road. There was no negligence on the part of driver while driving the bus. The bus was at a very slow speed and was going on its correct side.

13. The accident is admitted. Copy of FIR is Ex.P-2. The driver of the offending bus namely Parminder Singh stepped into the witness-box as RW-1. He deposed that the accident was result of rashness on the part of deceased himself. On the basis of FIR, challan was filed against said Parminder Singh. He faced trial for causing death of Mukesh Kumawat, by

driving the bus in rash and negligent manner. No doubt, he is acquitted in the said case as no eye-witness supported the case of the prosecution. The proceedings before the learned Tribunal are summary in nature. The material brought on record before the Tribunal is to be seen for deciding the case for compensation. Parminder Singh (RW-1) came to depose to save himself. Mukesh Kumawat has died in the accident with the bus which was being driven by Parminder Singh. The FIR was lodged. The accident had taken place outside the entry gate of Bus Stand, Sector 43, Chandigarh. It is well known that many people are always there at that place. It is the duty of the driver of the bus to drive in such a manner that no pedestrian/passenger is hit. In such circumstances, driver of the bus is liable to prove that there was no negligence on his part in causing the accident. The bald statement of Parminder Singh (RW-1) is not sufficient to come to the conclusion that he was not at fault. The pedestrians/passengers have every right to use the road. It cannot be denied that they have every right to cross the road. Rather, a heavy duty is cast upon the driver of the vehicle to remain more careful to keep in mind the safety of pedestrians since pedestrians are always prone to be careless. In case **Usha Rani and others vs. Barjesh Kumar and others** reported as **2012(5) R.C.R.(Civil) 687**, it has been held by a Co-ordinate Bench of this Court that in a situation of motor vehicular accident, where a pedestrian gets killed by a motor vehicle, the driver of the vehicle has to remain more careful to mind the safety of any pedestrian, even in a situation where a pedestrian is prone to be careless.

14. The slight carelessness on the part of the deceased cannot be denied. So, I am of the view that there was contributory negligence on the

part of the deceased, who was required to take some care while crossing the road near the entry gate of the Bus Stand. The learned Tribunal has considered the negligence to the extent of 25% which is on the higher side. This Court is of the view that negligence of the deceased can be considered only to the extent of 15%.

15. Apart from what has been held in preceding paragraphs, there is nothing on the file to show that the deceased was not having any brother. So, it cannot be said that parents of the deceased were fully dependent upon the deceased. In the first appeal i.e. **FAO No.5656 of 2016**, appellant no.1 is mother of the deceased and it is duty of every son to support her mother during her old age. In the absence of any evidence, it cannot be said that she was fully dependent upon the deceased. So, the parents are entitled to some amount of compensation on account of death of their son. Accordingly, the mode of compensation shall be calculated as detailed below :-

<u>No.</u>	<u>Head</u>	<u>Compensation Awarded</u>
01.	Monthly Income	Rs.21,853/-
02.	1/3 rd Deduction	Rs.7,284/-
03.	Net Income	Rs.14,568/-
04.	Annual Income	Rs.1,74,816/-(14,568/- x 12)
05.	Multiplier (age of deceased = 28 yrs.)	17
06.	Total Income (A)	Rs.29,71,872/-(1,74,816/- x 17)
07.	Future Prospects @ 50% (B)	Rs.14,85,936/-
08.	Total Income for computation (A+B)	Rs.44,57,808/-
09.	Loss of Estate, Funeral, Consortium	Rs.70,000/-
10.	Total Compensation	Rs.45,27,808/-
11.	15% deduction for negligence	Rs.6,79,171/-
12.	<u>TOTAL</u>	<u>Rs.38,48,637/-</u>

16. So, all the dependents of the deceased are held entitled to the above said compensation of Rs.38,48,637/-, along with interest @ 7.5% per annum from the date of filing of the petition till its realization. The driver and owner of the offending vehicle shall be jointly and severally liable to pay the amount of compensation.
17. Since there is no evidence that parents of the deceased were fully dependent upon the deceased, so mother of the deceased Bitamee Devi @ Bidamee Devi is held entitled for compensation of Rs.4,00,000/- and father of the deceased namely Narain Kumawat is held entitled for compensation to the tune of Rs.1,00,000/-, which shall be paid to them and balance amount of compensation shall be disbursed to widow and son of the deceased, in the same ratio and in the same terms, as awarded by the learned Tribunal.
18. Accordingly, both the appeals i.e. **FAO No. 5656 of 2016 & FAO No. 2183 of 2017** are partly allowed in the aforesaid terms.
19. Pending applications, if any, shall stand disposed of along with this judgment.
20. A photocopy of this judgment be placed on the file of other connected appeal.

July 24, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.