

FAO-15869-2018(O&M) with
XOBJC-84-2019(O&M)

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

FAO-15869-2018(O&M) with
XOBJC-84-2019(O&M)
Reserved on : 15.3.2023
Date of Pronouncement:-23.3.2023

Union of India and another

...Appellants

Versus

Smt.Neelam Rani and others

...Respondents

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

Present: Mr.Arun Gosain, Advocate
for the appellants.

Mr.Vishal Aggarwal, Advocate
for the respondents No.1 and 2/cross-objectors.

H.S. MADAAN, J.

CM-28426-CII-2018 in
FAO-15869-2018

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 381 days in filing of the appeal is condoned.

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1. Smt.Neelam Rani – widow aged about 26 years and Baby
Niharika Rani – minor daughter aged 1 year of Kamal Deep, an
unfortunate victim of a road side accident, had brought a claim petition

under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as the Tribunal), against the respondents i.e. Union of India through Secretary, Ministry of Defence, New Delhi, Commanding Officer, 9 Sikh LI, Mamoon, Tehsil and District Pathankot and Gurdit Singh, No.4477265, 9 Sikh LI, c/o 56 APO.

2. As per the case of the petitioners/claimants on 7.9.2016 deceased Kamal Deep had gone to Dinanagar, District Gurdaspur on his motorcycle without registration number make 'Shine' in connection with some personal work and while he was returning to his village Jhumber from Dinanagar on that very day, at about 8:00 p.m. when the deceased had reached near Kathlour Check Post, he was driving the motorcycle on correct left hand side of the road and at reasonable speed, then an Army vehicle No.05C07688K (hereinafter referred to as the offending vehicle) came from Kollian side proceeding towards Check Post Kathlour side; it was being driven by its driver Gurdit Singh – respondent No.3 in a very rash and negligent manner and without blowing horn, at a very high speed and it struck against the motorcycle of the deceased; resultantly he fell down on the road and sustained serious injuries on various parts of his body including head.

The accident was witnessed by Rajesh Kumar son of Rattan Chand, resident of village Seunti Taraf Narot Jaimal Singh, Tehsil and District Pathankot, who was passing near the place of accident; the driver of the Army vehicle had taken Kamal Deep, who was injured at that time to Chauhan Hospital, Kotli, where he was declared brought dead. On the

statement of father of deceased Kamal Deep, namely Raj Pal, FIR No.39 dated 8.9.2016 was registered at Police Station Taragarh under Section 304-A IPC against respondent No.3 Gurdit Singh. The postmortem examination on the dead body of the deceased was conducted at Civil Hospital, Pathankot.

3. According to the claimants, deceased was a healthy, hardworking young man of 32 years and was the only bread winner of his family, the claimants, who are solely dependent upon his earnings. The claimants craved for acceptance of the claim petition.

4. On notice, all the three respondents appeared and contested the claim petition. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the claim petition was partly allowed by Tribunal vide award dated 30.8.2017 and compensation of Rs.33,35,144/- with interest at the rate of 7.5% per annum from the date of filing of the petition till the realization of that amount was awarded to the claimants, payable by all the respondents jointly and severally. The apportionment and mode of payment are detailed in the award itself.

6. Feeling aggrieved by the said award, the respondent No.1 – Union of India through Secretary, Ministry of Defence, New Delhi and respondent No.2 Commanding Officer, 9 Sikh LI, Mamoon, Tehsil and District Pathankot had filed an appeal before this Court, arraying Gurdit Singh driver of the vehicle as a proforma respondent. Along with the appeal, an application under Section 5 of the Limitation Act was also filed

by the appellants, notice of which was given to the respondents. Respondents No.1 and 2 have appeared and filed cross-objections, notice of which was issued to the appellants.

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

8. The Tribunal in view of the evidence available on the record has given a clear finding that respondent No.3 Gurdit Singh was author of the accident by his rash and negligent driving of the offending vehicle in which Kamal Deep had suffered injuries, to which he had succumbed. I am of the considered view that the finding so recorded by the Tribunal is based upon proper appraisal and appreciation of evidence and correct interpretation of law. For the said reason, all the three respondents were found liable to pay compensation to the claimants, who are LR's of the deceased. Respondents No.1 and 2 are vicariously liable being owners of the offending vehicle and respondent No.3 Gurdit Singh being its driver.

9. While assessing the compensation, the Tribunal had found the deceased to be aged 32 years and he was serving as Senior Lab Attendant in Government Secondary School, Datyal Faroza, Tehsil and District Pathankot drawing monthly salary of Rs.26,695/-. The salary certificate of the deceased Ex.C1 reflecting his last drawn salary for the month of August, 2016 as Rs.26,695/- has been taken into consideration. Whereas in terms of salary certificate for the month of July, 2016 Ex.C10, he was drawing net payable salary of Rs.24,298/-. Therefore, salary of the deceased was taken as Rs.24,298/-.

10. However, the Tribunal has not added any amount towards

future prospects. In view of the judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was having a permanent job and was below age of 40 years, an addition of 50% of the actual salary be made towards future prospects. Doing that the monthly income of the deceased is assessed to be Rs.36,447/-(24298 + 12149). Deducting 1/3rd of the amount towards personal and living expenses of the deceased, the monthly dependency of the claimants comes out to Rs.24,298/-, annual to be Rs.2,91,576/- (24,298 x 12). Considering the age of the deceased, the multiplier 16 was rightly applied by the Tribunal. Doing that the compensation amount is worked out to Rs.46,65,216/- (2,91,576 x 16).

11. Under the conventional heads, the Tribunal has awarded Rs.1 lakh towards love and affection, Rs.1 lakh to petitioner No.1 for loss of consortium and Rs.25,000/- towards funeral expenses.

12. However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. **Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333**, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment **National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)**, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

Doing that the compensation comes out to be Rs.47,75,216/-

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(46,65,216+40000+40000+15000+15000).

13. The Tribunal has awarded compensation of Rs.33,35,144/-.

14. In this way, the additional amount comes out to Rs.14,40,072/- (47,75,216 - 33,35,144). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants in cash and with regard to deposit in the form of FDR shall stand modified accordingly.

15. In view of the above discussion, FAO-15869-2018 filed on behalf of the appellants stands dismissed and with the above modification, XOBJC-84-2019 filed by the claimants is allowed partly with costs.

Since the main FAO-15869-2018 stands dismissed and XOBJC-84-2019 stands allowed partly with modification, the miscellaneous application(s), if any, stand disposed of accordingly.

23.3.2023
Brij

(H.S.MADAAN)
JUDGE

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