

**(2014) 11 SHI CK 0139**

**In the High Court Of Himachal Pradesh**

**Case No :** First Appeal From Order Nos. 482 of 2010 and 158 of 2011

Janku Devi and Others

APPELLANT

Vs

Managing Director, Himachal Road Transport Corporation

RESPONDENT

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**Date of Decision :** 21-11-2014

**Acts Referred:**

**Citation :** (2015) 1 ShimLC 405

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J.

**Bench :** Single Bench

**Advocate :** Kunal Verma, Advocate, for the Appellant; Jagdish Thakur, for the Respondent

**Final Decision :** Disposed off

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## **Judgement**

Mansoor Ahmad Mir, C.J.?Challenge in these appeals is to the award, dated 18th June, 2010, passed by the Motor Accident Claims Tribunal(II), Shimla, Camp at Rohru, (for short, the Tribunal), in claim petition No. 5-R/2 of 2007, titled Janku Devi and others v. The Managing Director, Himachal Road Transport Corporation, whereby and whereunder compensation to the tune of Rs. 5,35,000/-, with interest at the rate of 6% per annum from the date of filing of the Claim Petition till its realization, came to be awarded in favour of claimant No. 1 Janku Devi and against the respondent/Himachal Road Transport Corporation, (for short, the impugned award). Facts of the case, in brief, are that Miss Laxmi Devi was traveling in the bus bearing registration No. HP-14B-7501, on 2nd December, 2006, which was being driven by the driver rashly and negligently, met with the accident at Jakhru Mode, Salogra, District Solan, H.P., resulting into the death of Miss Laxmi Devi on the spot. The claimants, being dependants on the deceased, filed the claim petition for grant of compensation to the tune of Rs. 10.00 lacs, as per the break-ups given in the claim petition.

2. The respondent filed reply to the claim petition and resisted the same on various grounds.

3. On the pleadings of the parties, the following issues were settled by the Tribunal:

"1. Whether Miss Laxmi Devi died because of rash and negligent driving of vehicle No. HP-14B-7501 by its driver? OPP

2. If issue No. 1 is proved, what amount of compensation the petitioners are entitled to? OPP

3. Whether the petition is neither competent nor maintainable? OPR

4. Whether the petition is bad for non-joinder of necessary parties? OPR

5. Relief."

4. In order to prove their case, the claimants examined Janku Devi, Jaswan, Sunil Kumar and Bachan Singh as PW-1 to PW-4, respectively. The respondent, on the other hand, examined Krishan Lal as RW-1. Parties have also placed on record documents i.e. copy of postmortem report (Ext.PB), copy of legal heir certificate (Ext.PW-1/A), death certificate (Ext.PW-1/B), copy of FIR (Ext.PW-3/A), salary certificate (Ext.PW-4/A), copy of pariwar register (Ext.PA) and inquiry report (Ext.RW-1/A).

5. The Tribunal, after scanning the entire evidence, oral as well as documentary, came to the conclusion that the driver had driven the offending vehicle rashly and negligently and caused the accident in which Miss Laxmi Devi lost her life and awarded compensation to the tune of Rs. 5,35,000/-.

6. Feeling aggrieved, the claimants challenged the impugned award by way of FAO No. 482 of 2010 on the ground of adequacy of compensation, while the original respondent/Corporation challenged the same by the medium of FAO No. 158 of 2011, on the grounds taken in the memo of appeal, and prayed for the dismissal of the claim petition.

7. I have gone through the evidence and am of the considered view that the claimants have proved, by leading evidence, that the accident was the outcome of rash and negligent driving of the driver of the offending bus and no evidence was led" by the respondent/Corporation to the contrary. Therefore, the findings recorded on issue No. 1 by the Tribunal are upheld.

8. Before issue No. 2 is taken up, I deem it proper to deal with issues No. 3 and 4. Onus to prove both these issues was upon the respondent/Corporation, which the respondent has failed to discharge. However, I have gone through the claim petition. The claimants have pleaded and proved that the accident was the outcome of rash and negligent driving of the driver of the offending bus and the claimants are the victims of the vehicular accident. Accordingly, the findings recorded on issue No. 3 are upheld. Findings under issue No. 4 are also upheld being not pressed by the learned Counsel for the respondent/Corporation.

9. Coming to issue No. 2, admittedly, the deceased was employed in the

Electricity Board and her monthly income was Rs. 12,800/-, as per salary certificate Ext.PW-4/A and after making deductions, the Tribunal held that the claimants lost source of dependency to the tune of Rs. 75,000/- per annum and applied the multiplier of 7 keeping in view the age of the deceased and the claimants.

10. I am of the considered view that, while awarding compensation under the head "loss of source of dependency, the Tribunal has rightly recorded findings in paragraph 19 of the impugned award. It is apt to reproduce paragraph 19 of the impugned award hereunder:

"19. So far as the income of the deceased is concerned it is the admitted fact that she was serving in HPSEB, Shimla and as per salary certificate Ext.PW-4/A she was drawing a total salary of Rs. 12,835/- per month. After deducting the special allowance/pay etc. it can be said that the monthly income of the deceased was atleast Rs. 12,500/- per month or say she was earning 1.5 lacs per annum. Admittedly, the deceased was unmarried and 38 years old and so out of her total earning she must be spending at least 50% of her income on herself. In this manner the loss of income for the purpose of dependency comes to Rs. 75,000/- per annum. Keeping in view the age of the petitioner No. 1 the multiplier of 7 (seven) will be appropriate and on this basis the total loss of income comes to Rs. 5,25,000/- and the petitioner is entitled to this much amount as compensation. In addition, she is also entitled to Rs. 10,000/- as conventional amount. Hence, the total compensation payable by the respondent to petitioner No. 1 comes to Rs. 5,35,000/-."

11. In view of the above discussion, it is held that the compensation amount awarded by the Tribunal is neither excessive nor inadequate, rather is just and appropriate.

12. Learned Counsel for the appellant/claimants argued that the Tribunal has awarded interest at the rate of 6% per annum, which is on the lower side. I deem it proper to enhance the rate of interest from 6% to 7.5% per annum from the date of the claim petition till realization. The enhanced amount be deposited by the respondent/Corporation in the Registry within a period of eight weeks and the Registry is directed to release the award amount strictly in terms of the impugned award.

13. The appeal (FAO No. 158 of 2011) filed by the original respondent/Corporation is dismissed and the appeal (FAO No. 482 of 2010) is allowed to the extent, as indicated above. Both the appeals stand disposed of accordingly.