

(2019) 03 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2163 Of 2005 (O&M)

Ranjit Kaur And Others

APPELLANT

Vs

Shiv Kumar And Another

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Citation : (2019) 03 P&H CK 0142

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : R.N. Singal

Final Decision : Allowed

Judgement

1. This appeal seeks to challenge the award dated 20.9.2004 passed by the Motor Accident Claims Tribunal, Rupnagar, wherein the appellants herein have been allowed compensation of Rs.3,22,000/- on account of death of Tarlochan Singh.

2. In brief, the facts are that on 1.8.2003 deceased Tarlochan Singh was coming from Barmana towards Kiratpur Sahib, while driving Truck No. HP-11-2557. He was being followed by Harmesh Singh (PW-2) who was driving truck bearing No. HP-11-2557. When Tarlochan Singh reached in the area of village Ghabrola bridge at about 6.45 p.m. suddenly heavy rain started and a heavy stone slipped from the rock and struck against the truck being driven by the deceased. He received multiple injuries and died on the spot. A claim petition was filed on the ground that the deceased was about 33 years at the time of death and he was drawing salary of Rs.5500/- per month. The claimants stated that they were fully dependent on the deceased.

The claim petition was contested by respondent No.1 claiming that the deceased died on account of his own negligence and as such prayed for dismissal of the claim petition. Respondent No.2-Insurance Company also contested the claim petition, inter-alia, taking preliminary objections that the petition was not

maintainable, the claimants have no locus-standi to file the instant claim petition and the deceased was not holding a valid and effective driving licence at the time of accident. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, appellant No.1 stepped into the witness box as PW1 and also tendered in evidence copy of the FIR and the post mortem report Ex. P.1 and P.2 respectively. On the other hand, the respondents did not lead any oral evidence but tendered into evidence RC of the truck (Ex. R.2), Insurance Policy (Ex. R.1) and driving licence of the driver (Ex. R.3).

After scrutiny of the evidence brought on record, the Tribunal held that the death of Tarlochan Singh occurred due to the use of the offending Truck No. HP-11-2557 and on assessment of the facts and evidence before it allowed compensation of Rs.3,22,000/- which has been now challenged in the instant appeal. It was also held that onus to prove whether the driver was not holding a valid and effective driving licence at the time of accident was on the respondents, but they did not lead any evidence in this regard.

None appeared either on behalf of the appellants or respondent No.1 when the case was taken up for hearing. I have heard learned counsel for respondent No.2 and also perused the record of the case with his able assistance.

The Tribunal, after examining the evidence produced by the respective parties held that the claimants were not able to prove that the deceased was earning Rs.5500/- per month, as no salary certificate was produced on record. However, since it had come in the statement Harmesh Singh (PW-2), who was following the deceased, that he was also a driver in some other truck and was drawing salary of Rs.2500/- per month, therefore, the Tribunal rightly presumed that the deceased must be earning Rs.2500/- per month. The deceased was held to be 33 years old at the time of accident and after deducting 1/3rd towards personal expenses of the deceased, the Tribunal, while applying multiplier of 16, rightly awarded the amount of compensation, as mentioned above. However, increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009. Therefore, compensation payable to the appellants are re-worked and tabulated as under:-

Sr. No.

Heads

Calculation

(i)

Name of the deceased

Tarlochan Singh

(ii)

Date of accident

1.8.2003

(iii)

Age of the deceased

33 years

(iv)

Monthly income of the deceased

Rs. 2500/-

(v)

40% of (iv) is to be added towards future prospects

(Rs. 2500+Rs.1000)= Rs. 3500/- per month

(vi)

1/3rd of (v) above deducted towards personal expenses

(Rs. 3500-Rs.1166) = Rs. 2334/- per month

(vii)

Compensation calculated after applying the multiplier of 16

(Rs.2334X12X16) = Rs. 4,48,128

(viii)

Funeral expenses

Rs. 15000

(ix)

Compensation for loss of consortium

Rs. 40000

(x)

Compensation for loss of estate

Rs. 15000

Total

Rs.5,18,128

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants

shall be Rs. 5,18,128/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.