
(2014) 12 P&H CK 0191
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 5352 of 2010 (O and M)

Santosh Kumari and Others

APPELLANT

Vs

Purshotam Singh and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 2 ACC 788

Hon'ble Judges : Ajay Tewari, J.

Bench : Single Bench

Advocate : Ekta Thakur, Advocate, for the Appellant; D.P.S. Randhawa, for the Respondent

Final Decision : Disposed off

Judgement

Ajay Tewari, J.?This appeal has been filed by the appellant-claimants for the enhancement of compensation. The brief facts of this case are that on 6th September, 2005 Rishi Kumar Sharma (since deceased) aged 19 years was coming as pillion rider upon Hero Honda bearing registration No. PB-10BF/5971 from the side of Morinda for going to his college at Kharar, driven by respondent No. 2 on its correct left side and when they reached near Bhattis at about 1.30 p.m. respondent No. 1 came driving Tractor No. PB-18-J/6256 from the side of Kharar at a high and rash speed and in a negligent manner and struck the above said motorcycle from behind as a result of which, Rishi Kumar Sharma as well as the driver of the motorcycle fell down on the road and received multiple injuries, which proved fatal for deceased Rishi Kumar Sharma. After the accident, Rishi Kumar Sharma was taken to the Civil Hospital, Kharar where he was declared dead.

2. The Tribunal has awarded compensation of Rs. 1,60,000 along with interest @ 7% p.a. from the date of filing of the petition till its realisation.

3. At the very outset, the learned Counsel for the appellants has pointed out that the learned Trial Court erred in calculating the compensation and instead of Rs.

1,60,000 it should have been Rs. 2,35,000. This fact has been accepted by the learned Counsel for the respondent No. 1 and consequently order this correction.

4. Learned Counsel for the appellants has argued that the deceased was educated and brilliant student but Tribunal has erred in taking the income as Rs. 1,5000 per annum.

5. Learned Counsel for the appellants has further argued that as per the law laid down in *Rajesh and Others Vs. Rajbir Singh and Others*, , some amount has to be awarded on account of loss of love and affection.

6. Learned Counsel for the appellants has further argued that some more amount has to be awarded under conventional heads since only an amount of Rs. 10,000 has been granted under this head and has relied upon the decision of the Hon"ble Supreme Court in *Vimal Kanwar and Others Vs. Kishore Dan and Others*, and *AmritBhanu Shali v. National Insurance Co. Ltd.*, 2012 (4) T.A.C. 775.

7. Learned Counsel for the appellants has further argued that the age of the father could not have been taken for the purpose of multiplier and has relied upon *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, ; *P.S. Somanathan and Others Vs. District Insurance Officer and Another*, and *Amrit Bhanu Shali's case (supra)*, wherein the Hon"ble Supreme Court held that only the age of the deceased should be kept into consideration while fixing the multiplier.

8. Learned Counsel for the respondent No. 1 has countered this argument while relying upon *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, , *Ramesh Singh and Another Vs. Satbir Singh and Another*, and *Shakti Devi Vs. New India Insurance Co. Ltd. and Another*, , wherein the Hon"ble Supreme Court has laid down a different provision by stating that the multiplier should be applied after taking into consideration the age of the claimants.

9. In my opinion, while adopting a multiplier, the age of the deceased as well as the age group of the claimants is a valid consideration. The expectancy of life of deceased is to be taken into consideration to arrive at a conclusion as to for how many years he could have supported the claimants. So far as the claimants are concerned their age group is required to be considered to arrive at a conclusion as to for how many years they would have survived and could have enjoyed the dependency allowance of the deceased. Keeping in view the conflicting decisions of the Supreme Court and taking support from the decision of Division Bench of this Court in *United India Insurance Company Limited Vs. Raj Rani and Others*, , in my considered view, the age of the deceased as well as the age group of the claimants is required to be taken into consideration while adopting a multiplier for determining the dependency to award compensation to the claimant.

10. In the present case, the claimants are about 45 to 46 years Consequently, even though for the deceased who was 19 years old there would be multiplier of 18 yet keeping in view the age of the claimants the multiplier of 16 is ordered.

11. Learned Counsel for the appellants has relied upon Rekha Rani and Another Vs. Ranjit Singh and Another, , wherein this Court has taken the notional income of a 19 years old engineering student as Rs. 10,000 per month.

12. In the present case the deceased was also a student of 2nd year of 3 years Diploma of Electrical Engineering. Thus, his notional income is taken as Rs. 7,000 per month.

13. I further increase the interest to 8% p.a. from the date of filing of the claim petition till the date of realization. The management would be as per the direction of the Tribunal.

14. Another plea taken by the learned Counsel for respondent No. 1 is that RW 2 had mentioned in his statement that three people were riding on the motorcycle and therefore it is a case of contributory negligence.

15. Learned Counsel for the appellant has argued that the respondent No. 1 never appeared before the Trial Court and was proceeded against ex parte and never took any such plea. Further the statement of RW 2 is essentially a self-exculpatory statement. The same person RW 2 had lodged the FIR wherein he had taken the plea that he was not driving the motorcycle. However, in the written statement he had taken the plea that the motorcycle was being driven by him and had never taken the plea that three persons were riding on the motorcycle.

16. In the circumstances, in my considered opinion, the statement made by RW 2 can be of no avail to the respondent No. 1.

17. Appeal stands disposed of in the above terms and the award is modified accordingly. Since the main case has been decided the pending civil miscellaneous application, if any, also stands disposed of.