
(2011) 01 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 5200 of 2003 and FAO No. 2637 of 2004

Union of India (UOI) and Another

APPELLANT

Vs

Brij Lata and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Citation : (2012) ACJ 1505 : (2011) 162 PLR 800 : (2011) 5 RCR(Civil) 604 : (2011) 3 TAC 568

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kanan, J.—Both the appeals arise out of the same accident. FAO No. 2637 of 2004 is for enhancement for compensation for the award

passed for death of a person, while FAO No. 5200 of 2003 is an appeal filed by the Union of India against the finding of the involvement of Army

truck belonging to the Union of India. The accident had taken place on 18.11.2002 and the death of the person in the motor accident was itself not

denied. The denial was, however, of the involvement of the Army truck. The accident was reported immediately after it had occurred and the FIR

lodged made reference to the involvement of the Army truck. There was eye witness account in the shape of statement of nephew and another

Company Secretary of the company in which the deceased was a partner about the involvement of the truck. The evidence on the side of the

Respondents, RW1 and RW2 was that the vehicle had not been involved at all. The Tribunal took note of the fact that although the witnesses were

close relatives but the evidence was natural and that the FIR had also made reference of the involvement of the vehicle and there was nothing to

suspect that there was any untruth in what was stated in the FIR. The Tribunal also reasoned that there could not have been any occasion for a

false case to be registered by, the Police and found the Union's vehicle to have been involved in the accident. The Tribunal has considered all the

relevant facts relating to the accident and I have no reason to disagree with the same. The appeal filed by the Union of India FAO No. 5200 of

2003 questioning the liability is consequently dismissed.

2. I proceed, therefore, to examine the adequacy of compensation which is the subject matter of appeal in FAO No. 2637 of 2004. The appeal is

for enhancement of compensation for death of a person who was engaged in the business of Glass works and he was himself a partner in the

business in the name and style of M/s Maheshwari Glass Works. He was an income tax Assessee and the assessment years for the relevant year

from 1999-2000 shows that even apart from his salary as a partner he was drawing to the tune of Rs. 35,000/- annually, he had other investments

and he was dealing in shares. For instance the Chartered Accountant has extracted the income which he was earning as follows:

Assessment Income from Business Share profit from Total Income.

Year Capital Gains and Maheshwari Glass

Ors. Sources. Works Bathinda.

2000-01 165384 11284 176668

2001-02 169196 11214 18040

2002-03 129379 11139 140518

2003-04 166346 8107 174453

3. If it was merely a return on income on investments then it should be possible to state that the capital remaining the same, an income from his

investments could not be treated as loss to the family. But here I find that he was trading in shares and augmenting income and the capital gains

which the deceased was making from his trading shows that he was averaging somewhere close to about Rs. 1,66,000/- for each one of the year

2000, 2001, 2002, 2003 and 2004. He had a share on profit in the Glass Works also which was averaging about Rs. 11,000/- and his total

income was in the range of about Rs. 1,75,000/-. The Tribunal had not read this statement of Chartered Accountant in the evidence and assigned

mark "X" to the document. I have seen that the income certificate which the Chartered Accountant has drawn is replication of details which are found in the income tax returns, but it gives additional details about the bank accounts held and several items of expenditure incurred by the deceased the aggregate of which was mentioned in the income tax returns. The Tribunal took the average income at Rs. 60,000/-. Learned Counsel would state that the additional income, even it were to be taken in the manner that was taken by the Tribunal, it should have been Rs. 66,000/- and not Rs. 60,000/-. The Tribunal had rejected the income which the deceased was earning from the trading of shares and had provided only partial income from his capital assets. The proper approach in such cases could be that if the business which the deceased was having had capital assets still available for the estate to be inherited by the legal representatives, then the income generated through capital assets need not be taken as loss to the family, for, the same will be still available. But if the business was trading in shares and not merely receiving dividend income through investment in shares, then the death of a person will have an immediate bearing to the loss to income. I have already observed that through trading of shares the deceased was earning an amount in the range of Rs. 1,60,000/-. I would take the average income to be Rs. 1,25,000/- and provide for deduction of 1/3rd for personal expenses and take Rs. 83,333/- as annual dependency and I would adopt a multiplier of 11 to find the loss of dependency at Rs. 9,16,666/-. I would add Rs. 5000/- towards loss of consortium to the wife and another Rs. 5000/- towards loss of love and affection to one of the minor child and I would also provide for Rs. 2500/- towards funeral expenses and make no separate provision for loss to estate, since I have already taken note of the fact that the deceased had left behind sufficient estate to be inherited and the entire income from the estate has not been, however, taken into account. There is no need to make any separate provision for loss to estate. The total compensation payable will be Rs. 9,29,166/- which I would round off to Rs. 9,29,200/-. The amount in excess over what has already been awarded by the Tribunal shall attract interest @ 6% from the date of petition till the date of payment. The amount of increase over what has already been awarded by the Tribunal shall be distributed amongst all the claimants equally. The liability amongst the Respondents shall

be in the same manner as determined already by the Tribunal. The accident had taken place on 18.11.2002 and since I have provided for a

multiplier of 11, I would allow for 80% of the amount to be withdrawn by the claimants and the balance amount of 20% shall be retained in deposit

for a period of three years and the amounts which are payable to the representative-claimants shall be divided into three shares. The first share

shall be invested for a term of 1 year, the second for a term of 2 years and the third for a terms of 3 years and shall be paid on the respective dates

on maturity of the respective claiMs.

4. The appeal is allowed to the above extent.