

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

FAO No.3946 of 2002 (O&M)

Date of decision:26.04.2014

Bimla Devi and others

... Appellants

versus

Dharam Pal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Randeep Singh, Advocate for
Mr. Suresh Ahlawat, Advocate, for the appellants.

Mr. G.D. Gupta, Advocate, for respondent No.3

Mr. Neeraj Khanna, Advocate, for respondent No.6.

K.Kannan, J.

1. I had directed on 04.04.2014 the Insurance Company to produce the copy of the policy of insurance for the Jeep. Now, I find that it was quite unnecessary direction since the accident was caused by the Maruti Car bearing registration No.HR-02E/0199, the direction given about on 04.04.2014 was not therefore required to be complied with.

2. The appeal is against the award of compensation of ₹50,000/- on no fault basis. The deceased was a passenger said to be travelling in a Jeep and got down from the Jeep near village Khrawar. When he was crossing the road, the Maruti Car driven by the respondent No.1 in a rash and negligent manner hit against the deceased and dragged him to a long distance. He was grievously injured and succumbed to the injuries by the time when he was taken to

the hospital. DDR was said to have been recorded on the statement of the brother of the deceased who stated that the accident was a chance of occurrence. The police did not escalate to further investigation and closed the case.

3. At the trial, evidence was given to the effect that the accident took place only on account of the rash and negligent driving of the first respondent. The Tribunal made the issue of the fact that even FIR had not been registered and the statement recorded in the DDR contained an admission that it was a chance occurrence. The Tribunal took it to be sufficient to uphold the defence and find that since no negligence has been established, the claimant could be afforded compensation only on no fault basis.

4. I find the appreciation of evidence to be bad. When the person who was said to have made the statement on the basis of which DDR was recorded, resiled from the statement and affirmed that the accident had taken place by the negligent driving of the driver, it is expected that the person who got recorded the DDR was examined to corroborate the statement alleged to have been made to the police. The driver himself ought to have given evidence to contradict the evidence given by the claimant's witnesses. The eye-witness account, therefore, stood unchallenged by any contradictory evidence from the side of the respondents. The Tribunal ought to have accepted that case of negligence has been established and more so, when the driver and the owner did not any contra evidence.

5. Under the circumstances, I set aside the finding of the Tribunal and hold the first respondent to be responsible for the accident.

6. The deceased said to be a driver on the stone crusher machine and was earning Rs.4,000/- per month. However, I find that there was no proof of his income. The Tribunal took the income to be ₹2,384/- being the minimum wages for a wagger earned in the said avocation. I will take the income of the deceased as ₹2384/- and make a 50% increase for future prospect of increase in income. I rework the compensation and tabulate the same as under:-

Date of accident	07.06.1999		
Age	24		
Occupation	Stone crusher	4000	
Claimants	Widow, Two minor children		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (Rs)	Amount (Rs)
1	Income	2384	2384
2	Add, % of increase 30%/50%		3576
3	Deduction 1/3		2384
4	Multiplicand		28,608
5	Multiplier		18
6	Loss of dependence		5,14,944
7	Medical expenses		
8	Loss of consortium		1,00,000
9	Loss of love and affection		1,00,000
10	Loss to estate		2500
11	Funeral expenses		10,000
	Total	50,000	7,27,444

7. The compensation of ₹7,27,444/- is rounded off to ₹7,27,500/-. The liability shall be joint against respondents No.1 to 3 and the claimant shall be directed to enforce the claim against the

insurer, namely third respondent. The entitlement shall be distributed equally amongst the claimants.

8. The accident had taken place on 7.6.1999 i.e. 15 years ago. As regards, the share of widow, she shall be permitted to withdraw 75% of the amount and the remaining 25% shall be split in four equal portions and the first portion shall be invested for a period of one year, the second portion of two years and so on. The investment shall be in a Nationalized Bank and the amount shall be disbursed to the claimant under the advised of the Tribunal without any further requirement having to be applied to the Court. As regards the share of the minor children, the amount shall be deposited in a Nationalized Bank during the period of minority and 75% of the amounts shall be disbursed to the respective claimants quondam on attaining the majority. The investment regarding 25% beyond minority shall be in the same manner as provided for the widow. The amount as regards the interest payable on the minor's share shall be released to the mother for maintenance of the children once in three months.

9. The award is modified and the additional amount brought through this judgment shall also attract the interest @ 7.5% from the date of petition till the date of payment.

10. The appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

26.04.2014
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