

(2012) 08 P&H CK 0244

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 3686 of 2001

Bodh Raj and Others

APPELLANT

Vs

Kartar and Others

RESPONDENT

Date of Decision: Aug. 22, 2012

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: Divya Sharma, Amicus Curiae, for the Appellant; Ashwani Talwar, Advocate, for Respondent No. 3-Insurance Company, for the Respondent

Judgement

T.P.S. Mann, J.

Petition filed by the appellants u/s 166 of the Motor Vehicles Act, 1988 for grant of compensation to them on account of death of Parveen Kumar in a road accident, was accepted by the Motor Accidents Claims Tribunal, Hisar by awarding them an amount of Rs. 1,50,000/- along with interest @ 12% per annum from the date of filing of the petition till date of payment. All the respondents, including respondent No. 3-Insurance Company, were made jointly and severally liable to pay the compensation amount. The aforementioned amount of Rs. 1,50,000/- consisted of Rs. 1,44,000/- towards the total dependency and Rs. 6,000/- for transportation of the dead body and expenses incurred on funeral and last rites. In the present appeal, the claimants have prayed for enhancement of the compensation amount.

2. I have perused the appeal record as well as the record of the Tribunal, which has been reconstructed with the help of the parties as the original record got burnt in a fire incident which occurred in the month of January, 2011.

3. According to the claimants/appellants, deceased Parveen Kumar, who was a student of BA-IIId year had been doing the work of preparing video cassettes in marriage and other functions and was earning Rs. 3,000/- per month. In that regard

they had examined PW1 Bodh Raj and PW2 Rajinder, father and brother respectively of deceased Parveen Kumar, who had deposed that the deceased had been earning Rs. 3,000/- per month by doing the work of videography at marriage and other functions. One Dr. P.S. Sawant was also examined as PW3, who had deposed that he had seen the deceased working at the shop, namely, A.K. Studio, in Churamani Complex on part time basis and doing videography and his income was Rs. 2,000/- to Rs. 4,000/- per month. However, fact remains that no documentary evidence had been brought on record by the claimants to show the actual income earned by the deceased. After considering the fact that even an unskilled casual labourer was expected to earn about Rs. 1,500/- to Rs. 1,800/- per month, the Tribunal found it appropriate to consider that the deceased must have been earning an amount of Rs. 2,000/- per month or Rs. 24,000/- per year by doing the work of videography. No fault can be found with the approach of the Tribunal in coming to such a conclusion.

4. The deceased was unmarried and the claimants are his father aged 60 years, mother aged 55 years, younger unmarried sister aged 16 years and younger brother aged about 13 years. Keeping in view the large size of the family of the deceased, a deduction of 1/3rd could be made towards the amount spent by the deceased upon himself out of the income earned by him and not 40% as had been done by the Tribunal. Therefore, the annual dependency is calculated as Rs. 16,000/-.

5. The Tribunal had applied the multiplier of 10 in assessing the total compensation payable to the claimants on account of death of deceased Parveen Kumar. In doing so, the Tribunal was of the view that the younger sister of the deceased would have got married in about three years" time as she was already 16 years of age whereas the younger brother of the deceased would become major in a couple of years and would start earning his own livelihood. However, in view of the fact that father of the deceased had described his age as 65 years and that of his wife as 60 years, while appearing as PW1, the Tribunal kept in view the age of the mother of the deceased as 60 years and, accordingly, applied the multiplier of 10 while calculating the total dependency. However, at the time of filing of the claim petition, father of the deceased was stated to be 60 years while mother of the deceased as 55 years. Under these circumstances, it would be appropriate to consider the age of the mother of the deceased at the time of filing the claim petition while calculating the total dependency and, thus, multiplier of 11 has to be applied and, accordingly, the total dependency works out to Rs. 1,76,000/-. Over and above the said amount, Rs. 20,000/- can also be awarded to the claimants under the conventional heads of loss of love and affection, transportation of the dead body and the expenses incurred on the funeral and last rites of the deceased. Resultantly, the total amount of compensation to which the claimants would be entitled to is calculated as Rs. 1,96,000/-. Besides, the claimants would also be entitled to interest on the enhanced amount of compensation @ 7.5% per annum from the date of filing of the claim petition till realization of the said amount.

6. Resultantly, the amount of compensation is enhanced from Rs. 1,50,000/- to Rs. 1,96,000/-. The claimants shall also be entitled to interest @ 7.5% per annum on the enhanced amount of compensation from the date of filing of the claim petition till its realization. It is also made clear that all the respondents including respondent No. 3-Insurance Company shall be jointly and severally liable to pay the enhanced amount of compensation as well. The enhanced amount of compensation along with the accrued interest shall be paid to appellant Smt. Gian Devi by way of a demand draft within a period of two months from today by sending the same at her address. The appeal is, accordingly, disposed of.