

F.A.O. NO. 298 OF 1990

[1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. NO. 298 OF 1990

DATE OF DECISION: 26.7.2006

MISS ANU JYOTI AND OTHERS

...APPELLANTS

VERSUS

MOHINDER SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. SUVIR SEHGAL, ADVOCATE

FOR THE APPELLANTS

MR.INDERPREET S. KOHLI, ADVOCATE

FOR RESPONDENT NO. 2

JUDGMENT

The claimants have approached this Court by filing the present appeal for enhancement of compensation arising out of order of Motor Accident Claims Tribunal, Jalandhar, in MACT case No. 40 of 1987, dated 29.8.1989. The accident took place on 21.12.1986 while deceased Ashok Jyoti was going on scooter bearing No. PAX –162, when he was hit by a truck bearing No. PJX 6451. The Truck hit deceased Ashok Jyoti from behind, as a result of which he died on the spot. FIR was also registered. Deceased was employed as a lecturer in Dayanand Model Senior Secondary School, Jalandhar.

As far as the question of negligence is concerned, finding has been recorded by the Tribunal that the accident occurred due to rash and negligent driving of the driver of truck as a result of which Sh. Ashok Jyoti died.

The claim petition has been filed by mother, wife, brother and minor children of deceased. As far as brother of the deceased is concerned, his claim petition was rejected by the Tribunal. In the appeal filed on behalf of the brother of the deceased before this Court, I also do not find any merit and accordingly, the same is dismissed.

As far as the other claimants-appellants are concerned, namely, mother, wife and minor children of the deceased, the primary contention raised by the counsel for the appellants is that the amount of compensation assessed is not in consonance with the evidence on record. It is further

submitted that the Tribunal has failed to award interest on account of delayed payment of compensation and also that the Tribunal had gone wrong while directing that the liability of the Insurance Company to pay the amount would be restricted to Rs. 1.50,000/- only, as the same is contrary to the law laid down by Hon'ble the Supreme Court. On the other hand counsel for respondent No. 2 submitted that just and fair compensation had been awarded by the Tribunal and there is no scope for enhancement thereof.

I have heard counsel for the parties and have perused the material on record with their assistance.

It is not disputed that w.e.f. 1.1.1986, the deceased, who was employed as a lecturer in Physics in Dayanand Model Senior Secondary School, Jalandhar, was getting a salary of Rs. 2,000/- per month. It is also not in dispute that the deceased left behind mother, wife and two minor children. The Tribunal while applying 1/3rd cut has assessed the dependency of the deceased at Rs. 16,000/- per annum and by applying a multiplier of 14, the compensation was assessed at Rs. 2,24,000/-. It is not in dispute that the deceased was supporting a family consisting mother, wife and two minor children and was a permanent employee with the school. He would have certainly risen in career and his salary would also have increased further. Keeping future prospects of progress in view, his dependency is assessed at Rs. 1600/- per month and applying a multiplier 15, the amount of compensation is assessed at Rs. 2,88,000/-. In addition to this a sum of Rs. 2,000/- as funeral expenses and Rs. 10,000/- on account of consortium is also awarded, making a total of Rs. 3 lacs. The amount of compensation so awarded shall be paid to the claimants-appellants alongwith interest at the rate of 7.5 % per annum from the date of application till its payment. Out of this the interest for the period the amount awarded by the Tribunal and already paid to the claimants shall be reduced.

The additional amount of compensation alongwith interest thereon shall be shared by the claimants in the following manner i.e. Rs. 5,000/- to the mother of the deceased, namely, Smt. Asha Jyoti, Rs. 31,000/- to the wife of the deceased, namely, Smt. Santosh Sharma and Rs. 20,000/ each to the two minor daughters of the deceased, namely, Ms. Anu Jyoti and Ms. Abha Jyoti.

As far as the liability of the insurance company is concerned, the same shall remain limited to Rs. 1,50,000/-. Counsel for the appellants contended that even if the liability of the insurance company is restricted to Rs. 1,50,000/-, still in terms of settled position of law by various judgments of Hon'ble the Supreme Court as well as this Court, the entire amount of compensation should be directed to be paid by the Insurance Company to the claimants/appellants, who may recover the excess amount from the insured. To support his arguments he has relied upon the judgments in **Oriental Insurance Co. Ltd. vs. Cheruvakkara Nafeessu and Ors** JT 2001 (1) Supreme Court 341, **National Insurance Co. Ltd. vs. Challa Bharathamma and others** 2004 (3) ACJ 2094 and **Gurmeet Kaur and another vs. Mohinder Singh and others** 2006 (1) PLR 684. In Cheruvakkara Nafeessu's case (supra) it is held as under:

“11. The appeal is accordingly allowed holding that the appellant-company is liable to pay the entire award amount to the claimants. Upon making such payment the appellant can recover the excess amount from the insured by executing this Award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. No costs”

I have perused the judgments which clearly support the contention raised by the counsel for the appellants. In this view of the matter, it is directed that the entire amount of enhanced compensation shall be paid by the Insurance Company to the claimants and in terms thereof they would be entitled to recover the excess amount from insured in accordance with law.

The award of the Tribunal is modified to the extent indicated above.

The appeal is disposed of accordingly.

July 26, 2006
gsv

(RAJESH BINDAL)
JUDGE