

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

**FAO No.402 of 1991  
Date of Decision: 29.04.2015**

Hardip Singh

..... Appellant

VERSUS

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON**

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Present: Mr. A.S. Virk, Advocate for the appellant.

Mr. Kuldeep Sharma, DAG, Haryana for  
respondents No.1 and 2.

None for respondents No.3 and 4.

Mr. Neeraj Khanna, Advocate for respondent No.5-United  
India Insurance Company Ltd.

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**S.S. SARON, J.**

Publication of respondents No.3 and 4 has been carried out in the newspaper 'Daily Charhdikala, Patiala' in its issue dated 22.04.2015. The newspaper showing the publication is on record.

No one has appeared for respondents No.3 and 4. They are, therefore, proceeded against ex-parte.

Hardip Singh (claimant) aggrieved against the inadequate compensation granted by the learned Motor Accidents Claims Tribunal, Chandigarh vide its impugned award dated 27.08.1990 has filed the present appeal seeking higher compensation.

The claimant-appellant Hardip Singh and his wife Harshiwinder Kaur (who is the deceased in the case) on 18.06.1986 at about 5.40 am, after coming out from the bus stand, Sector 17,

Chandigarh, hired a three-wheeler auto rickshaw for going to Mani Majra. Two children from the previous wife of the appellant were also with them. The three-wheeler in which the claimant and his wife Harshiwinder Kaur as also minor children were travelling met with an accident with the offending bus of the Haryana Roadways, which was being driven by Mohinder Singh (respondent No.2). The offending bus was suddenly stopped by Mohinder Singh (respondent No.2) near Panchayat Bhawan, Chandigarh, as a result of which, the scooter in which the claimant, his wife and children were travelling struck behind the bus. Harshiwinder Kaur received head injuries. She was taken to PGI, Chandigarh, where, she succumbed to her injuries on the next day i.e. 19.06.1986 at about 7.50 am.

The claim petition was filed by the claimant Hardip Singh claiming compensation for the death of his wife. The manner in which the accident had occurred is not assailed by the respondents. The learned Tribunal awarded ₹96,000/- compensation to the appellant. However, the liability of the respondent No.5 United India Insurance Company Limited was to the extent of ₹50,000/- only in terms of Section 95 of the Motor Vehicles Act, 1939. It was held that United India Insurance Company Limited (respondent No.5) will be entitled to deduct ₹15,000/- from its over all liability and the remaining sum of ₹46,000/- shall be payable jointly and severally by respondents No.3 and 4 namely Surinder Pal Sharma, driver of auto rickshaw and Grib Dass Sethi, owner of the auto rickshaw. The claimants were held entitled to interest at the rate of twelve percent per annum from the date of petition till realization.

The only issue involved in the present case is as to whether the appellant is entitled to more compensation.

Harshiwinder Kaur (deceased) was working as a staff Nurse with the Haryana Government. She was on deputation from the Haryana State with the Chandigarh Administration. Her salary certificate (Ex.PA1) shows her monthly emoluments i.e. basic pay ₹1440/-, Chandigarh allowance ₹72/- and ₹70/- as other allowance admissible to her. Her salary in all was ₹1582/- per month. In the case of "Sarla Verma Versus Delhi Transport Corporation and another", 2009 (6) SCC 121, it was held that where deceased was married and number of dependent members is 2 to 3, deduction should be one-third. Therefore, from the amount of ₹1582/-, a sum of ₹527/- being one-third the salary is liable to be deducted, which works out to ₹1055/-. The annual income of Harshiwinder Kaur (deceased), therefore, works out to (₹1055 x 12) i.e. ₹12,660/-. The deceased was 34 years of age. As per **Sarla Verma's case (supra)**, a multiplier of sixteen is to be applied. Therefore, ₹12,660 x 16 works out to ₹2,02,560/-. In **Sarla Verma's case (supra)**, it was also held that where the deceased had a permanent job and was below forty years of age, an addition of fifty percent of actual salary is to be added towards future prospects. This works out to ₹3,03,840/-. A sum of ₹96,000/- has already been awarded by the learned Tribunal, which is to be deducted and the amount payable works out to ₹2,07,840/-.

According to learned counsel for the appellant, conventional heads like loss of consortium, funeral expenses as held in the case of "Rajesh versus Rajbir" 2014 (1) PLR 779 are also liable to be awarded.

Learned counsel appearing for respondent No.5-United India Insurance Company Limited has opposed the same and contended that in respect of the accident that had occurred on 18.06.1986, the said amount is not liable to be awarded as that was not the law at that time. In fact according to the learned counsel even the Schedule to

the Motor Vehicles Act, 1988 was not there when the accident had occurred.

In this regard, it may be noticed that the Supreme Court does not legislate and it only interprets the law and when a particular provision of the Motor Vehicles Act is interpreted then it declares law and it is to be taken as the law as it always had been.

In the case of "Sarwan Kumar and another v. Madan Lal Aggarwal" (2003) 4 SCC 147, it was held by the Supreme Court that when the Court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood from the beginning as per its decision. The Supreme Court in "Dr. Suresh Chandra Verma and others v. The Vice Chancellor, Nagpur University and others" (1990) 4 SCC 55 held that when the Court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise.

In "Sarla Mudgal (Smt.) President Kalyani and others v. Union of India" (1995) 3 SCC 635, the second marriage of a Hindu husband by conversion to Islam without having the first marriage dissolved under the law to be illegal. Thereafter, in "Lily Thomas and others v. Union of India" 2000 (3) RCR (Civil) 252 (S.C.), it was contended that the said law declared in Sarla Mudgal's case (supra) is to be taken as prospective from the date of the decision in that case. The Supreme Court held as follows:-

"We are not impressed by the arguments to accept the contention that the law declared in *Sarla Mudgal* case cannot be applied to persons who have solemnized marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new

law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment.” (Emphasis added)

Therefore, the Supreme Court only interprets the law and does not lay down any new law regards the applicability of the schedule to the Motor Vehicles Act. It may be noticed that the schedule relates to the award of compensation in terms of Section 163 (c) of the Motor Vehicles Act, 1988 and not to the compensation as in the present case claimed under Section 110-A of the Motor Vehicles Act, 1939.

In the case of “**Rajesh v. Rajbir**” (supra), it was held that for the loss of consortium, the Court should award atleast ₹1,00,000/- and funeral expenses of ₹25,000/-. Therefore, ₹1,00,000/- for the loss of consortium and ₹25,000/- for funeral expenses are liable to be awarded and the compensation payable works out to (₹2,07,840/- + ₹1,25,000/-) i.e. ₹3,32,840/-.

According to learned counsel for respondent No.5-Insurance Company, the liability of the Insurance Company in terms of Section 95 of the Motor Vehicles Act, 1939 is ₹50,000/- only and it cannot be

burdened and held liable for any amount of compensation over and above the same. However, in “Oriental Insurance Company Limited v. Cheruvakkara Nafeessu, 2001 (1) RCR (Civil) 475 (S.C.) as to what is the extent of liability of an Insurance Company towards third party as per Section 95 (1) (b) of the Motor Vehicles Act, 1939 and what are its rights in case of payment of an amount in excess of the limits of the liability under the insurance policy vis-a-vis the insured. It was held with respect to liability of Insurance Company that the Insurance Company is liable to pay the entire amount awarded to the claimants and upon making such payment, the appellant can recover the excess amount from the insured by executing the award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. Therefore, the Insurance Company is liable to pay the amount of compensation as awarded and recover the excess amount from the insured in terms of the provisions of Section 174 of the Motor Vehicles Act, 1988 as held in **Oriental Insurance Company Limited v. Cheruvakkara Nafeessu (supra)**.

Consequently, the award of the learned Tribunal is modified by enhancing the amount of compensation to ₹2,07,840/-, besides, ₹1,25,000/- towards loss of consortium and funeral expenses on the enhanced amount of compensation of ₹2,07,840/-. The appellant shall be entitled to interest at the rate of nine percent per annum from the date of the award till date of payment on the enhanced amount of ₹2,07,840/-

**(S.S. SARON)**  
**JUDGE**

**29.04.2015**  
G. Bhardwaj

Note: To be referred to Reporter: Yes