

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

-.-

**F.A.O No. 583 of 1998 (O&M)
Decided on : January 19, 2015**

Nirmala Rani & Ors.

... Appellants.

Versus

Gain Chand & Ors.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. R.S.Mamli, Advocate, for the appellants.

Mr. R.C.Gupta, Advocate, for respondent No.3.

Mahavir S. Chauhan, J. (Oral)

Manohar Lal, a resident of Yamuna Nagar working at National Saw Mills, Saharanpur Road, Yamuna-Nagar, was returning home from his place of working on a bicycle on 16.01.1994. When he reached in front of small gate of Sugar Mills a, tractor bearing registration No. HNQ-7636, with trolley loaded with sugarcane attached, came there being driven at a high speed and in a negligent manner. It hit the bicycle of Manohar Lal on its rear. As a result Manohar Lal fell on the road and received multiple injuries on his back, legs and other parts of the body. He was taken to Civil Hospital, Yamuna Nagar and remained under treatment there as an indoor patient from 17.01.1994 to 02.02.1994. Thereafter, he was given treatment at his home, but was taken to the hospital daily for check-up. He also

received treatment from Gaba Hospital, Yamuna Nagar for about 30 days and was ultimately taken to Post Graduate Institute of Medical Education and Research, Chandigarh, on 05.05.1994. He was treated there till filing of the claim application and ultimately succumbed to the injuries. Claim application No. 103 of 25.11.1994, brought by his legal representatives, numbering four, was resisted by the respondents. From the pleadings of the parties following issues were framed by the learned Motor Accident Claims Tribunal, Jagadhri ('the Tribunal' – for short):-

1. Whether Manohar Lal sustained injuries as a result of rash or negligent driving of the vehicle in question by respondent No.1, as alleged? OPP
2. Whether Manohar Lal died as a result of injuries sustained in the accident, if so to what effect? OPP
3. Whether the petitioners are entitled to compensation, if so to what amount and from whom?OPP
4. Whether the respondent No.1, was not duly licenced driver, if not to what effect? OPR.
5. Whether the respondents No. 1 & 2, have paid a sum of Rs.25,000/- on 21.01.1994 to Manohar Lal, as alleged and whether they entitled to be indemnified?OPR
6. Relief.

Both the sides adduced evidence. Learned Tribunal on appraisal of the evidence brought on record by the parties, in the light of

submissions made at the bar returned findings on all the issues favourable to plea of the applicants and vide award dated 08.12.1997, awarded compensation amounting to Rs.1,92,000/- together with interest @12% per annum from the date of filing of application till realisation of the amount of compensation.

To seek modification of award dated 08.12.1997 and enhancement of compensation, the applicants have brought this appeal, which the respondent-insurer is contesting.

I have heard learned counsel for the appearing parties.

It is argued on behalf of applicants-appellants that the learned Tribunal has wrongly taken income of the deceased as Rs.1,500/- per month whereas even a daily wager would earn at least Rs.2,000/- per month. Further, according to learned counsel for the appellants-applicants learned Tribunal has wrongly deducted 1/3rd of the assessed income as expenditure of the deceased upon himself inspite of the fact that the deceased has left behind four dependents; has granted no compensation for loss of love and affection and for loss of consortium and has allowed only Rs.4,500/- for expenditure on last rites of the deceased whereas in view of the settled position of law an amount of Rs.1 lac has to be awarded towards loss of consortium, Rs.1 lac towards love and affection and Rs.25,000/- as expenditure on last rites of the deceased. It is also argued that though age of the deceased has been rightly taken as 50 years, but multiplier of 11 adopted by the learned Tribunal is on the lower side and it ought to have been 13.

The contentions, however, are resisted by learned counsel for

the respondent-insurer and it is argued that the impugned award does not admit of any interference.

Nothing more has been urged on the either side.

Factum and manner of occurrence as also age of the deceased are not in dispute. It has also remained unchallenged that the deceased is survived by his widow- Nirmala Rani, daughter- Seema Rani and sons – Anil Kumar and Rajni Pal. The learned Tribunal assessed income of the deceased at Rs.1,500/- per month because it was so pleaded in the application.

Nothing to the contrary has been shown during the course of hearing.

Out of monthly income of the deceased an amount equivalent to its 1/4th share i.e. Rs.375/- is deducted towards expenditure of the deceased upon himself in terms of **Sarla Verma Vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77**. Thus, loss of dependency comes to Rs.1125/- per month or say Rs.13,500/- per annum. In terms of Sarla Verma's case (supra), a multiplier of 13 has to be applied as the deceased was in the age group of 46-50 years. By applying multiplier of 13 compensation on account of loss of dependency comes to Rs.1,75,500/-. Applicant-Nirmala Rani, is also entitled to compensation amounting to Rs.1 lac on account of loss of consortium and Rs.25,000/- on account of expenditure on last rites of the deceased, as also an amount of Rs.5,000/- on account of loss of estate, while Seema, Anil Kumar and Rajni Pal are entitled to an amount of Rs.1 lac on account of loss of love and affection. There is no dispute with regard to

compensation amounting to Rs.25,000/- awarded by the learned Tribunal on account of expenditure on treatment etc and Rs.25,500/- as loss of income to the deceased during his treatment. So calculated total compensation payable to the applicants-appellants comes to Rs.4,55,500/-. This shall be inclusive of the amount of compensation awarded by the learned Tribunal. The enhancement amount shall carry interest @6% per annum from the date of this order till date of payment/realisation of the enhanced amount. Applicants-appellants shall also be entitled to costs of this appeal which are assessed at Rs.2200/-. Other terms of the impugned award shall remain unchanged.

The appeal is disposed of in the above said terms.

January 19, 2015
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[Mahavir S. Chauhan]
Judge