

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

**FAO NO. 2154 OF 2005 (O&M)
DECIDED ON : 21.05.2015**

Rajinder Kumar Nirmal and another

...Appellants

versus

Joginder Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. N. C. Kinra, Advocate,
for the appellants.

Mr. Ravinder Arora, Advocate,
for respondent No.2.

K. C. PURI, J. (ORAL)

This is an appeal directed by the parents of deceased Nitin Kumar, against the Award dated 28.01.2005 passed by Shri Hari Paran Singh, Motor Accident Claims Tribunal, Rohtak, vide which the claim petition preferred by the claimants/appellants was partly accepted under Section 163-A of the Motor Vehicles Act (in short "the Act") and a sum of ₹1,36,000/- was allowed as compensation.

The learned Tribunal has taken the income of deceased as ₹3000/- per month. The dependency has been taken as ₹1500/- per month, after deducting one half in respect of

personal expenses. The yearly dependency was calculated as ₹18,000/-. This part of the Award has not been challenged by learned counsel for the appellants.

The only point urged by learned counsel for the appellants during the course of arguments is that it is a case under Section 163-A of the Act and as such, 30% in respect of contributory negligence cannot be deducted. It is further submitted that under Section 163-A of the Act, the claimants are required to prove the factum of accident only.

Learned counsel for the Insurance Company has submitted that the Award is correct.

I have heard learned counsel for the parties and have gone through the records of the case.

The relevant provisions of Section 163-A of the Act are reproduced as under :-

"163.A- Special provisions as to payment of compensation on structured formula basis - (1)

Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victims, as the case may be;

(2) In any claim for compensation, under sub section 1, the claimant shall not be required to plead or establish that the death or permanent disablement in

respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned, or of any other person;

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time, amend the Second Schedule.”

From the perusal of the same, it is revealed that negligence is not required to be proved. The Tribunal has lost sight of the basic provisions of the Act and has wrongly deducted 30% in respect of contributory negligence. In the present case, the factum of accident is proved and as such, the negligence is not required to be proved. Consequently, the said part of the Award stands set aside.

Now regarding the amount of compensation, it is submitted that multiplier has to be applied keeping in view the age of parents. Father of the deceased Rajinder Kumar Nirmal has mentioned his age as 44 years. His wife Saroj Nirmal must be less than the age of Rajinder Kumar Nirmal. In view of authority ***"Sarla Verma and others vs. Delhi Transport Corporation and another."*** 2009 (3) RCR (Civil) 77, the multiplier applicable at the age group of 41-45 is 14. The Tribunal has wrongly applied the multiplier of 10. So, by applying the multiplier of 14, the amount of compensation comes to ₹2,52,000/-. The Tribunal has allowed a sum of ₹10,000/- in

respect of last rites and consortium.

Learned counsel for the Insurance Company has submitted that ₹10,000/- allowed in respect of last rites and consortium cannot be more than ₹9500/-.

I have considered the said submission but do not find any force in the same.

The Motor Vehicles Act is a welfare legislation and has been enacted with a view to grant just and fair compensation to the road side accident victims. The Hon'ble Apex Court in authority "***Oriental Insurance Company Limited vs. Kulwinder Kaur and another***" 2014 (1) RCR (Civil) 756, has held that more amount can be granted than the amount as mentioned in the Schedule of the Act. So, the amount of ₹10,000/- allowed in respect of last rites and consortium stands maintained. The claimants are further held entitled to claim another sum of ₹25,000/- in respect of loss of love and affection. In this manner, the claimants are held entitle to claim ₹2,87,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of filing the application till its realisation. However, the liability to pay the amount shall remain the same as ordered by the Tribunal.

Disposed of accordingly.

MAY 21, 2015
shalini

(K. C. PURI)
JUDGE