

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

**FAO No.265 of 2008
Date of decision : 15.09.2015**

Sunita Devi & others

...Appellants

versus

Ishwar Dayal & another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arvind Bansal, Advocate
for the appellants.

Mr. Harsh Garg, Advocate
for respondent No.1.

Mr. Vijay Pal, Advocate
for respondent No.2.

RITU BAHRI, J (Oral)

The appellants/claimants have come up in appeal against the award of the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as “the Tribunal”) dated 01.10.2007, whereby the Tribunal has awarded a compensation of Rs.2,89,600/- on account of death of Roshan Lal, who died in a road accident which took place on 25.04.2006.

Facts not in dispute are that on 25.04.2006, Ishwar Dayal, respondent No.1 started for Narwana for selling the woods loaded in his tractor-trolley bearing No.HR-08-F/6860 from Pundri alongwith Roshan Lal son of Radha Krishan, Balbir Singh son of Kura Ram, Sultan son of Man Singh who were working with him as labourers and when at about 8 p.m., they reached near village Pinjupura, then

suddenly a cow came in front of the tractor, due to which, respondent No.1 immediately applied the brakes to save the cow, but the tractor trolley turned turtle in the ditches due to load in the trolley and Roshan Lal son of Radha Krishan fell down and was crushed under the tractor. It has been further alleged that after the accident, said Roshan Lal was taken to Civil Hospital, Kaithal in the same tractor, but due to his serious condition, he was referred to PGI Chandigarh, but on the way to PGI Chandigarh, he died. It has been further alleged that the said accident took place due to sudden arrival of a cow in front of the tractor trolley and the matter regarding the said accident was got registered by respondent No.1 himself to the Police. It has been further alleged that the said tractor in question was owned by respondent No.1 himself and insured by respondent No.2.

The Tribunal has framed the following issues:-

- “1. Whether the accident resulting into the death of Roshan Lal son of Radha Krishan took place on 24.04.2006 at about 8 p.m. near village Pinjkupura on account of use of tractor No.HR-08-F/6860 driven by respondent No.1? OPP.*
- 2. Whether the claimants are entitled to compensation if so to what amount and from whom? OPP.*
- 3. Whether respondent No.1 was not holding the valid and effective driving licence at the time of alleged accident? OPR-2.*
- 4. Relief.”*

Since the claim petition was under Section 163-A of the Motor Vehicles Act, 1988, there was no requirement to give finding on issue No.1 whether the accident caused on account of negligence on the part of respondent No.1. The claimant Sunita appeared as PW2

and tendered her affidavit as Ex.PW2/A and stated that her husband Roshan Lal son of Radha Krishan was a labourer and he used to work as labourer with Ishwar Dayal respondent No.1. She has deposed that on 24.04.2006, her husband was travelling in a loaded tractor with goods and the said tractor met with an accident and in the aforesaid accident, her husband Roshan Lal died. EHC Dheer Singh PW3 brought the register of DDR No.20 dated 25.04.2006, which was recorded on the statement of Ishwar Dayal respondent No.1. He has testified the said copy of the DDR as Ex.P2. No investigation was carried out as the tractor was having a trolley. Dr. Aman Sood PW1, who conducted the post mortem examination on the dead body of deceased Roshan Lal on 25.04.2006, has stated that the death of Roshan Lal took place on account of accident, which took place on account of turn turtling of the tractor trolley. He has testified the carbon copy of the said post mortem report as Ex.P1.

The respondents led into evidence driving licence Ex.R1, registration certificate Ex.R2 and insurance policy Ex.R3. Hence on issue No.1 a finding was given that the death of Roshan Lal was occurred in the accident and issue No.1 was decided in favour of the claimants.

On issue No.2, the insurance company was held liable to make the compensation as Roshan Lal was employed by respondent No.1. The Tribunal assessed the income of the deceased Roshan Lal as Rs.2400/- per month and the dependency of the claimants was assessed at Rs.1600/- per month after deducting 1/3rd towards personal expenses

of the deceased. The annual dependency of the claimants thus came to Rs.19,200/- (Rs.1600/- x 12). Multiplier of 13 has been applied as the deceased was 40 years of age at the time of his death. Thus, the total dependency of the claimants was assessed as Rs.2,49,600/- (Rs.19,200/- x 13). Rs.20,000/- on account of loss of love and affection and Rs.20,000/- towards funeral expenses were also awarded. Thus, a total compensation of Rs.2,89,600/- was awarded to the claimants.

Feeling aggrieved with the impugned award, the appellants/claimants have preferred the present appeal.

I have heard counsel for the parties and perused the case file.

The fact of accident is admitted and proved. The deceased died as a result of the accident. The claimants are seeking enhancement of the compensation. Their claim under Section 163-A had to be decided as per the structured formula in Second Schedule of Section 163-A of the Motor Vehicles Act, 1988.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of *Asha Verman & ors. Vs. Maharaj Singh & ors., 2015 (2) RCR (Civil) 520, Sarla Verma & ors. Vs. Delhi Transport Corporation & anr., 2009 (3) RCR (Civil) Page 77, Rajesh & ors. Vs. Rajbir Singh & ors., 2013 (9) SCC 54 and Munna Lal Jain & anr. Vs. Vipin Kumar Sharma & ors., 2015 (3) Recent Apex Judgments 459*, by taking the monthly income of the deceased as Rs.3500/- per

month as per the minimum wages for unskilled labourer in the year 2007. In view of the New India Assurance Company Limited Vs. Gopali & ors. 2012 (12) SCC 198, one tenth cut is being applied. The Hon'ble Supreme Court in the case of R.K.Malik Vs. Kiran Pal 2009 (8) JLT 461, while considering the case of compensation which was awarded under Section 163-A of the Motor Vehicles Act, had enhanced the compensation and the judgment of Delhi High Court, whereby the compensation under the head of prospective earning and other expenses of Rs.75,000/- has been upheld. Hence Rs.75,000/- is being awarded in the present case and the compensation is reassessed as under:-

Sr. No.	Heads	Calculation
(i)	Income	Rs.3,500/- per month
(ii)	Annual Income	Rs.3,500/- x 12 = Rs.42,000/- per annum
(iii)	30% of (ii) added for future prospects	(Rs.42,000/-) + (Rs.12,600/-) = Rs.54,600/-
(iv)	1/10 th of (iii) deducted towards personal expenses of the deceased	(Rs.54,600/-) – (Rs.5,460/-) = Rs.49,140/-
(v)	Compensation after multiplier of 15 is applied	(Rs.49,140/- x 15) = Rs.7,37,100/-
(vi)	Over head expenses	Rs.75,000/-
(vii)	Total Compensation awarded	Rs.8,12,100/-
(viii)	Enhanced amount of compensation	(Rs.8,12,100/-) - (Rs.2,89,600/-) = Rs.5,22,500/-

The enhanced amount of compensation of **Rs.5,22,500/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realisation, in view of the judgment of Hon'ble

Supreme Court in the case of *Kumari Kiran through her father Harinarayan Vs. Sajjan Singh & ors., 2015 (1) SCC 539*. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

15.09.2015
Vinay

(RITU BAHRI)
JUDGE