

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

FAO No. 1459 of 2010(O&M)

Date of Decision: August 27 , 2015.

Sushma Rani and another

..... APPELLANT (s)

Versus

Dharampal and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. HPS Ishar, Advocate
for the appellants.

Mr. Rajesh Malhotra, Advocate
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred for enhancement of compensation awarded to the parents of deceased – Ankit Walia by learned Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as, the 'Tribunal') vide award dated 10.10.2009 on account of the death of their son which took place on 10.02.2008 in a motor vehicular accident.

Brief facts of the case are that, Ankit Walia son of the appellants

was proceeding to his school i.e., Sarswati School, Jagadhri on 10.02.2008 on a motorcycle bearing registration No. HR-02S-1258 to attend a farewell party. Deceased Ankit Walia and Pardeep Walia, his cousin, were on separate motorcycles. When Ankit Walia reached a little ahead of Samrat Hotel at about 4.30 p.m., a truck bearing registration No. HR-37B-0490 driven in a rash and negligent manner by respondent No.1 – Dharampal came from the backside without blowing any horn and struck against his motorcycle. Resultantly, Ankit Walia's motorcycle fell in front of the truck and his body was crushed under the tyre of the truck which dragged him upto 15-20 yards. He was badly crushed and died at the spot. Driver of the truck fled from the spot. Accident was witnessed by Pardeep Walia, who lodged FIR No.46 dated 10.02.2008 at Police Station City Jagadhri. Deceased was taken to Civil Hospital, Jagadhri where his post-mortem was conducted on 11.10.2008.

Appellants preferred petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') and claimed compensation to the tune of ₹15 lacs on account of the death of their son Ankit Walia, who was 17 years old at the time of accident. It was averred that he was a brilliant student of Class 10+2 having secured 67% marks in Middle Examination and first Division in Matriculation Exam. He was also pleaded to be an athlete.

Claim was resisted by the respondents with respondents No.1 and 2 pleading that a false FIR had been registered and the truck in question was duly insured. Therefore, they are not liable to pay any compensation. Respondent – Insurance Company while denying the accident further averred that the driver of

the truck was not holding a valid and effective Driving Licence and was driving without a route permit.

Learned Tribunal on consideration of the facts and circumstances held that Ankit Walia lost his life in the accident which took place due to the rash and negligent driving of truck No. HR-37B-0490 by respondent No.1. Said finding is informed to have attained finality.

Learned Tribunal while holding that there can be no exact uniform rules for measuring the value of human life and the measure of damage cannot be arrived at by a precise mathematical calculation awarded a sum of ₹2,60,000/- as lump sum compensation including funeral and transportation expenses.

Learned counsel for the appellants submits that the deceased being 17 years old and a brilliant student would necessarily have earned a handsome amount and contributed to the household. Learned Tribunal has erred in awarding a lump-sum amount of ₹2,50,000/- and a meagre amount of ₹10,000/- towards funeral expenses and transportation charges. Income of the deceased should have been assessed to be at least that of a labourer and thereafter, multiplier as laid down in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77** should have been applied. He prays for awarding compensation on account of loss of love and affection.

Learned counsel for respondent No.3 – Insurance Company however refutes the said averments and submits that adequate compensation has already been awarded. Deceased was merely a student and was not earning therefore, it would be improper to assess his income in the manner suggested.

I have heard learned counsel for the parties and gone through the record.

It is not disputed that deceased – Ankit Walia was 17 years old at the time of accident. He was admittedly a student of Class 10+2. He was on his way to attend farewell function at school. Hon'ble Supreme Court in the case of **Krishan Gopal and another v. Lala and others, 2013(4) RCR (Civil) 276** has assessed notional income of a 10 years old child to be ₹30,000/- per annum. While referring to **Lata Wadhwa v. State of Bihar, 2001(4) RCR(Civil) 673**, Second Schedule to Section 163A of the Act was considered in respect to the income specified for non-earning persons i.e., ₹15,000/- per annum. However, keeping in view the declining value of Rupee, ₹30,000/- per annum was assessed as notional income of the deceased. In my considered opinion, it is just and reasonable to assess notional income of the deceased, in the present case, to be ₹30,000/- per annum on the same analogy.

In respect to the multiplier to be applied, it has been held by the Hon'ble Supreme Court in **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347** that multiplier should be applied in accordance with the age of the deceased and not according to the age of the parents. Therefore, a multiplier of 18 has to be applied as the deceased was 17 years old at the time of accident. Amount of compensation is, thus, assessed as ₹5,40,000/- (30,000x18). Deduction of 50% has to be effected towards personal expenses as deceased was 17 years old and unmarried. Loss of dependancy is, thus, calculated as ₹2,70,000/- (5,40,000 – 2,70,000).

Keeping in view the judgment of Hon'ble Supreme Court in **Rajesh**

and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC) and Vimal Kanwar and others v. Kishore Dan and others, (2013) 7 SCC 476, parents are entitled to a sum of ₹50,000/- each on account of loss of love and affection. Amount of ₹25,000/- is awarded on account of funeral expenses, transportation charges etc. instead of ₹10,000/-.

Appellants-claimants are, thus, entitled to total compensation of ₹3,95,000/- detail of which is as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of Dependency	2,70,000/-
2.	Loss of love and affection @ ₹50,000/- to each parent.	1,00,000/-
3.	Funeral and transportation expenses	25,000/-
	Grand Total	₹3,95,000/-

Compensation already awarded to the claimants by the Tribunal shall stand deducted from the amount as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the above modification in the award dated – passed by Motor Accident Claims Tribunal, Yamuna Nagar, present appeal is disposed of.

August 27 , 2015.
'om'

(LISA GILL)
JUDGE