

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5196 of 2011

Date of decision: 29.7.2015

Anita Sharma and Others

.... Appellants

Versus

Sh. Ram Dayal and Others

.... Respondents

Present: Mr. Rohit Ahuja, Advocate for the appellants.

Mr. R.K. Sharma, Advocate for respondents No.1 and 2.

Mr. Neeraj Khanna, Advocate for respondent No.3 –
Insurance Company.

S.S. Saron, J.

The claimants/appellants aggrieved against the inadequate compensation awarded by the learned Motor Accident Claims Tribunal, Faridabad ('Tribunal' – for short) have filed the present appeal for grant of more and higher compensation.

The deceased Umesh Kumar Sharma was owner of an 'Indica' Taxi bearing registration No. HR-38 (PT) 1287. It was on contract with M/s Sea Hawk Tours and Travels Pvt. Ltd., Gurgaon. The taxi was used for picking up and dropping employees working in BACS Infinity Tower, DLF, Phase-III, Gurgaon. According to daily routine, Umesh Kumar Sharma (deceased) picked up employees from their residences situated at different places at Gurgaon and was bringing them to their place of work. The occupants of the car

were Mr. Rajshree Ranjan Bhattacharya, Ms. Khushboo Ratra, Mohit Kanojia and Ms. Suhi Tandon. When the taxi crossed the fuel point petrol pump and was heading towards Shankar Road at about 3.15 p.m., the offending truck driven by Ram Dayal (respondent No.1) with registration No.HR-55C 1817 came in front of the 'Indica' car that was being driven by Umesh Kumar Sharma (deceased). The truck came all of a sudden in the centre of the road. The 'Indica' taxi being driven by Umesh Kumar Sharma (deceased) rammed into the back of the truck. The taxi was badly crushed and its driver Umesh Kumar Sharma (deceased) sustained injuries. He succumbed to the injuries while being taken to the hospital. Occupants of the car also suffered serious injuries. The injured were taken to Paras hospital by passersby.

According to the claimants/appellants, the deceased Umesh Kumar Sharma was 58 years of age at the time of accident. His date of birth was 21.4.1950. He was the sole earning member of his family. Smt. Anita Sharma (appellant No.1) wife of the deceased was a housewife. Ms. Isha Sharma (appellant No.2) daughter of the deceased was a student of MBBS Medical College at Pune and Mr. Udit Sharma (appellant No.3) son of the deceased had joined Bachelor of Engineering course in Lingayas Institute of Technology, Faridabad. The gross monthly income of Umesh Kumar Sharma (deceased) was Rs.38,000/- to Rs.40,000/- per month. The claimants who are the widow and children of the deceased were fully dependent on him.

Ram Dayal (respondent No.1), driver of the offending truck and Chander Pal (respondent No.2) owner of the offending truck in their written statements denied the accident to be a result

of rash and negligent driving of the truck. It was averred that no accident had ever taken place. FIR No.370 dated 8.12.2008 in this regard was false and frivolous. The truck was, however, duly insured with New India Assurance Company (respondent No.3).

The Insurance Company (respondent No.3) in its written statement apart from raising preliminary objections regarding maintainability of the petition, being bad for non-joinder and mis-joinder of necessary parties; besides, there being material that the terms and conditions of the policy were violated by respondent No.2, owner of the offending truck, inasmuch as the truck was being plied without any valid driving license, it was denied that the accident had occurred due to rash and negligent driving of the offending truck. The age and income of the deceased as well as dependency of the claimants/appellants were also denied. An alternative plea of contributory negligence was taken.

The learned Tribunal framed the following issues:-

1. Whether Umesh Kumar Sharma had died on account of motor vehicular accident (sic. that) took place on 8.12.2008 near fuel point, petrol pump, Shankar Road, IFCO Chowk, Gurgaon caused by respondent No.1 by his rash and negligent driving of vehicle truck bearing registration No. HR 55C 1817? OPP
2. Whether petitioners are entitled to compensation, as claimed in the petition, if so and to what amount? OPP

3. Whether the respondent No.1 was not holding a valid and effective driving license at the time of accident? OPR-3
4. Whether the respondent No.2 has contravened, violated and infringed the terms and conditions of the Insurance Policy? OPR-3
5. Relief.

In the present appeal, the grievance of the appellants/claimants is confined to the compensation that has been awarded, which is the only matter in issue. The issue regarding the driver of the truck having a valid and effective driving license has been considered and disposed of in the connected appeal i.e. FAO No.5544 of 2011.

According to the learned counsel for the appellants, the income of the deceased has not been correctly assessed inasmuch as the deceased Umesh Kumar Sharma was the owner and was also plying the taxi as a driver. Therefore, according to learned counsel, the income of the deceased has wrongly been taken as Rs.6000/- per month, which is on the lower side. It is also submitted that in any case the appellant is entitled to loss of consortium of Rs.1 lac as held by the Supreme Court in Rajesh v. Rajbir Singh, 2013 (3) RCR (Civil) 170. Besides, Rs.25,000/- for funeral expenses and Rs.1,00,000/- for loss of pain and suffering. Moreover, the appellants are entitled to 15% enhancement of the income towards future prospects.

In response, learned counsel for the Insurance Company has submitted that the compensation that has been awarded is already on the higher side and no more compensation is liable to be

given. It is submitted that the appellants have not brought any evidence on record to show that Umesh Kumar Sharma, was the owner of the taxi that he was plying. Besides, it is submitted that the compensation as has been awarded by the learned Tribunal being adequate is not liable to be further enhanced.

Learned counsel for respondents No.1 and 2 who are the driver and owner respectively of the offending truck has submitted that the claimants/appellants are not entitled for any compensation and in any case the liability, if any, is that of the Insurance Company (respondent No.3). It is submitted that Ram Dayal (respondent No.1) had a valid and an effective driving license which has been revealed in the information now got under the Right to Information Act. He reserves his right to prove the same on the basis of the order that has been passed in the connected appeal i.e. FAO No.5544 of 2011.

I have given my thoughtful consideration to the matter. The accident in the present case in which Umesh Kumar Sharma died had occurred on 8.12.2008. Umesh Kumar Sharma was 58 years of age at the time of the accident. The learned Tribunal held that he was driver of the 'Indica' car which was owned by him and was registered as a tourist taxi. The insurance policy (Ex.P7) of the 'Indica' car was also in his name. The monthly income of the deceased was assessed and taken as Rs.6000/- per month and his annual income was worked out to Rs.72,000/-. In *Rajesh v. Rajbir Singh* (supra) it was inter alia held that there should be addition of 15% of income in a case where the victim is between the age group of 52 to 60 years so as to make the compensation just, equitable, fair and reasonable. The deceased Umesh Kumar Sharma, as

already noticed was 58 years of age, therefore, the income is to be enhanced by 15% i.e. Rs.72,000/- plus Rs.10,800/- which comes to Rs.82,800/-. In Sarla Verma v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77 it was held by the Supreme Court that where the deceased was married and number of dependent members is two to three, deduction of $\frac{1}{3}^{\text{rd}}$ from the income is to be made. Therefore, from the amount of Rs.82,800/- a deduction of $\frac{1}{3}^{\text{rd}}$ is to be made, which the deceased must be spending on himself. This works out to Rs.82,800/- minus Rs. 27,600/- which comes to Rs.55,200/-. According to the said judgment in Sarla Verma's case (Supra), the multiplier for the age group of 50 years to 60 years is 9. Therefore, a multiplier of 9 is to be applied, which works out to Rs.55,200/ multiply 9 which comes out to Rs.4,96,800/-. According to the judgment in Rajesh v. Rajbir Singh (supra), it was held that it would be just and reasonable that the Court's award at least Rs.1 lac for loss of consortium. Besides, further sum of Rs.25,000/- is to be awarded towards funeral expenses. Learned counsel for the appellants has also claimed Rs.1,00,000/- for loss of care and guidance for the children. However, in Rajesh v. Rajbir Singh (Supra), Rs.1 lac was awarded for loss of care and guidance for minor children. In the present case, the children namely Isha Sharma (appellant No.2) and Udit Sharma (appellant No.3) are not minor. In the memo of parties of the petition for the grant of compensation shows that Ms. Isha Sharma (appellant No.2) is mentioned as 20 years of age while Udit Sharma (appellant No.3) is mentioned as 19 years of age. The claim petition was filed on 23.7.2009 while the accident had

occurred on 8.12.2008. Therefore, the claim for loss, care and guidance of minor children would not be maintainable.

The compensation payable, therefore, works out to Rs.4,96,800/- plus Rs.1,00,000/- (loss of consortium) plus Rs.25,000/- (funeral expenses) i.e. Rs.6,21,800/-. From this, an amount of Rs.3,47,000/- which has been awarded by the learned Tribunal, and if already paid, is to be deducted. This works out to Rs. 6,21,800 minus Rs. 3,47,000/- i.e. Rs.2,74,800/-. Therefore, this balance amount of Rs.2,74,800/- is payable which shall be paid along with interest at the rate of 7.5 % per annum, which interest has been awarded by the learned Tribunal, from the date of filing the petition till payment. It is made clear that in case the amount as awarded by the learned Tribunal i.e. Rs.3,47,000/- has not been paid, the same shall also be payable along with interest at the rate of 7.5% per annum.

With the enhancement of the amount of compensation, the appeal is partly allowed.

(S.S. Saron)
Judge

29.7.2015
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Note: Whether to be referred to the Reporter: Yes/No.

