

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2839 of 2012 (O&M)
Date of Decision: June 30, 2015

Dilshad and another

...Appellants

Versus

Shripal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.K.Bishnoi, Advocate
for the appellants.

Mr.Ankur Gupta, Advocate
for respondent No.3.

INDERJIT SINGH, J.

The present appeal has been filed by appellants Dilshad and Smt.Meena against respondents Shripal, driver, Vikash alias Vikas, owner and IFFCO Tokio General Insurance Company Limited, Insurer of Canter bearing registration No.DL-1M-5053 (offending vehicle) challenging the impugned Award dated 08.02.2012 passed by learned Motor Accidents Claims Tribunal, Nuh (hereinafter referred to as 'Tribunal'), for enhancement of the compensation amount.

The brief facts of the case are that appellants-claimants Dilshad and Smt.Meena filed claim petition against Shripal and other respondents under Section 166 of the Motor Vehicles Act regarding the compensation on account of death of their son Istgaar in a road

side accident.

As per the claimants' case, on 05.06.2010, Istgaar was returning to his house on foot and when he reached near police chowki Pataudi road, then all of a sudden a canter bearing registration No.DL-1M-5053 being driven by respondent-driver rashly and negligently came from Taoru side and hit Istgaar as a result of which, he suffered injuries. He was rushed to General Hospital, Nuh but he died on the way.

Respondent driver and owner denied the accident. Respondent Insurance Company mainly took the plea regarding route permit etc.

The Tribunal after going through the evidence, awarded compensation of ₹2,35,000/- along with interest @ 6% per annum from the date of filing of the claim petition till actual payment to be paid by respondents jointly and severally.

Aggrieved from the above-said Award, present appeal has been filed for enhancement of the compensation.

Notice of motion was issued to respondent No.3-Insurance Company and learned counsel for respondent No.3 appeared and contested the appeal.

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

At the time of arguments, learned counsel for the appellants argued that the Tribunal has taken the notional income of the deceased as ₹15,000/- per annum, which is less. Istgaar was 13

years of age at the time of his death.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***Kishan Gopal and another vs. Lala and others, 2013(4) RCR (Civil) 276***, in which the child was of about 10 years. It is held that child was assisting his parents in agricultural occupation. Had the deceased child been alive, he would have contributed substantially to the family of the appellants by working hard and the notional income of the child was taken at ₹30,000/- per annum and multiplier of 15 was applied and ₹50,000/- was awarded under conventional heads (i.e. loss of love and affection, funeral expenses, last rites).

Learned counsel the respondent-Insurance Company has not cited any law contrary to the law cited by learned counsel for the appellants.

The judgment relied upon by the learned counsel for the appellants fully applies in the present case. In that case, rather the age of the deceased was 10 years whereas in the present case the age of the deceased was 13 years. Therefore, in view of the law cited by learned counsel for the appellant, I find merit in the arguments of learned counsel for the appellants and find that the Tribunal has taken the notional income as less. The notional income of the deceased is taken as ₹30,000/- per annum and by applying the multiplier of 15, the compensation amount comes to ₹4.5 lacs and further ₹50,000/- is awarded on the ground of loss of love and affection, funeral expenses and last rites.

Therefore, the compensation amount is enhanced to ₹5 lacs along with the interest from the date of filing of the claim petition till actual payment, as awarded by the Tribunal in the impugned Award, which is to be paid by the Insurance Company

Therefore, finding merit, the present appeal is allowed accordingly.

June 30, 2015
Vgulati

(INDERJIT SINGH)
JUDGE