

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

FAO No.2146 of 2013

Date of Decision: July 10, 2015

Paramjit Kaur and others

.... Appellants

vs.

Sarabjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Deepak Arora, Advocate for the appellants.

Mr. Bhanu Partap, Advocate for respondent No.1.

Mr. Rajesh Sharma, Advocate for respondent No.2.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Kuldip Singh J.

Claimants-appellants have filed this appeal against the Award dated 13.02.2013 passed by the Motor Accident Claims Tribunal, Hoshiarpur (in short 'the Tribunal'), vide which in a petition under Section 166 of the Motor Vehicles Act, 1988, a compensation to the tune of ₹3,09,000/- (rupees three lac nine thousand only) along with interest @ 7% per annum from the date of filing of the claim petition till its realization was allowed in favour of the claimants-appellants on account of death of Harpreet Singh.

The claimants are not satisfied with the quantum of compensation awarded by the Tribunal and have come up in the present appeal.

Brief facts of the case are that on 24.08.2010, Harpreet Singh (deceased) aged about 21 years was a pillion rider on the motorcycle bearing registration No.PB-07-AC-Temp-8860 being driven by Surjit Singh. At about 5.30 p.m., when they reached somewhat short of their village on Phagwara-Hoshiarpur road, then a truck bearing registration No.PB-07Y-2778 driven by respondent No.1-Sarabjit Singh in rash and negligent manner came from the opposite side of Hoshiarpur. Suddenly a stray cattle abruptly came in front of the truck due to which respondent No.1 steered the truck towards right side for saving the stray cattle. In this process, the truck struck against the motorcycle driven by Surjit Singh. As a result of the accident, Surjit Singh and Harpreet Singh fell on the road. Harpreet Singh came underneath the truck and succumbed to the injuries on the spot itself. It is claimed that the police of Police Station Mehtiana in connivance with Sarabjit Singh driver, instead of registering a criminal case, wrongly recorded the statement of Surjit Singh that there was fault of none in the accident because the motorcycle struck against the stray cattle that came in front of the motorcycle. Proceedings under Section 174 Cr.P.C. on the basis of statement of Surjit Singh were initiated. DDR No.14, dated 25.08.2010 was recorded. Thereafter, claimant Paramjit Kaur, mother of the deceased filed an application on 01.09.2010 before the Senior Superintendent

of Police, Hoshiarpur. But no case was registered. Therefore, she filed a criminal complaint before Illaqa Magistrate, Hoshiarpur for registration of a criminal case against respondent No.1. It is stated that the deceased was working as turner in GNA Factory, Mehtiana with Arun Sharma, Contractor and was earning ₹7,000/- per month.

In the written statement, respondent no.1, who is owner and driver of the offending truck took preliminary objection that the accident took place as a result of the contributory negligence of the driver of the motorcycle. The driver of the motorcycle was not holding a valid driving licence. The deceased was never employed in GNA factory, Mehtiana. The plea was taken that DDR was rightly recorded by the police but the FIR was registered on the basis of false statement. It was further pleaded that the truck was insured with United India Insurance Company.

The Insurance Company took the usual plea to deny the claim. From the pleadings following issues were framed:

- “1. Whether Harpreet Singh son of Avtar Singh died in motor vehicular accident due to rash and negligent driving of the Truck bearing registration No.PB-07-Y-2778 respondent No.1? OPA*
- 2. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident, if so, its effect? OPR2*
- 3. Whether the respondent no.2 was not holding a valid route permit and fitness certificate at the time of alleged accident. If so, its effect? OPR2*
- 4. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties? OPR1*

5. *To what amount of compensation, if any, the claimants are entitled to an from whom? OPA*

6. *Relief.”*

The Tribunal recorded the findings that the truck was being driven rashly and negligently. The Tribunal determined the income of the deceased @ ₹3,500/- per month and applied the multiplier of 14 as per the age of the parents of the deceased and calculated the dependancy of the claimant @ ₹2,94,000/- per annum. ₹10,000/- on account of funeral expenses and ₹5,000/- on account of loss of estate was allowed. The total compensation of ₹3,09,000/- was allowed along with interest @ 7% per annum from the date of filing of the claim petition till its realization. The compensation was ordered to be apportioned as under:

Sr. No.	Name of the claimant	Amount
1	Paramjit Kaur (mother	₹1,09,000/-
2	Avtar Singh (father)	₹70,000/-
3	Mandip Kaur (major sister)	₹65,000/-
4	Sandeep Kaur (major sister)	₹65,000/-

I have heard learned counsel for the parties and have also carefully gone through the case file.

First of all, it is to be determined that whether the truck in question was involved in the accident or not.

A perusal of the written statement shows that the driver/owner of the truck in the written statement has taken the contradictory pleas. In the preliminary objection, it was stated that

that the accident is the result of contributory negligence of the driver of the motorcycle thereby admitting that there was some negligence on the part of the truck driver also. However, on merits, it was stated that DDR was rightly recorded and that the FIR has been registered against him on the basis of false statement.

Now, if the DDR is examined, it comes out that Surjit Singh had initially stated before the police that stray cattle came in front of the truck and that truck driver tried to save the stray cattle and in this process, the truck hit the motorcycle. Surjit Singh fell left side on kachha portion of the road and Harpreet Singh along with the motorcycle fell down on the pacca portion of the road and the tyre of the truck passed over his abdomen and Harpreet Singh died at the spot. Subsequently, the mother of the deceased made a complaint to the police on 01.09.2010 (Ex.A5), wherein she had stated that the police had recorded wrong statement of Surjit Singh and the truck was being driven rashly and negligently and hit the motorcycle.

It appears that when the police carried out the investigation, it came up with a different story. On the complaint of the mother of the deceased, FIR No.58, dated 03.10.2010, under Sections 304A, 279 and 427 IPC at Police Station Mantiana, District Hoshiarpur was registered. The inquiry was conducted by the police in which a third story was put forward, in which it was stated that due to coming of cattle before the truck, the car going on the road ahead of the motorcycle, applied breaks and motorcycle hit the said car and as a result of which both the motorcyclists fell on the road and

Harpreet Singh fell near the rear tyre of the truck.

A person may tell lies but not the facts. A perusal of the post-mortem report giving the details of sustained injuries by the deceased show that there was crushed injury on the abdomen, left leg, hip area and both upper parts of thighs, which makes it evident that the width of the tyre, which passed over the body of Harpreet Singh was much more than the tyre of a car. It indicates that the tyre of the truck passed over the body of Harpreet Singh which falsify the conclusion drawn by the police that the motorcycle had fell near the rear tyre of the truck after hitting the car going in front of the motorcycle. The post-mortem report shows that the front tyre of the truck passed over the body of Harpreet Singh. The photographs placed on file also show that the motorcycle and dead body are lying just in front of the rear tyre of the truck and skid mark of the truck are also there. Therefore, the truck appears to have applied the breaks after the motorcycle and Harpreet Singh were ran over by it. Therefore, it goes to show that the truck was being driven rashly and negligently. The car was not taken into possession by the police and this story was introduced later on. Therefore, this court is to find out the truth from the initial statement made by Surjit Singh, the complaint made by the mother of the deceased and the police investigation.

This Court comes to the conclusion that the truck was being driven rashly and negligently and it ran over Harpreet Singh and caused his instant death.

Now coming to quantum portion, it comes out that from the statement of Gurdip Singh, Assisant General Manager, GNA Axles Limited, Mehtiana, (AW4) that deceased Harpreet Singh was working as a trainee in the Machine Shop. The witness also produced his stipened payment of July and August 2010 and after completion of training, he was to be absorbed in the said factory. The stepend for complete month of July was ₹3500/-. Therefore, at the time of accident, the deceased was getting ₹3,500/- per month.

Recently a three Judges Bench of Hon'ble Supreme Court in ***“Munna Lal Jain and another vs Vipin Kumar Sharma and others”*** in Civil Appeal No.4497 of 2015, decided on 15.05.2015, examined the question of grant of compensation to the self-employed person, who was self-employed *Pandit* and was bachelor in the said case. The question of grant of future prospects to self-employed person was also considered. The Apex Court after examining the authority of ***“Santosh Devi vs National Insurance Company Limited”, (2012) 6 SCC 421, “Smt. Sarla Verma and others vs Delhi Transport Corporation and another” (2009) 6 SCC 121***, took the view that even in case of self-employed person, addition of future income on account of future prospects is to be added.

After considering the authorities of ***Sarla Verma's case (supra), “Reshma Kumar and others vs Madan Mohan and another”, (2013) 9 SCC 65*** and ***Santosh Devi's case (Supra)***, the Hon'ble Supreme Court also took the view that the multiplier as per

age of the deceased is to be applied and not as per age of the dependents and accordingly enhanced the compensation.

As such, 50% i.e. ₹1,750/- is added on account of future prospects. The total income of the deceased comes to ₹5,250/- per month. As the deceased was unmarried, 50% of the income is to be deducted as personal expenses, which comes to ₹2,625/- per month.

Keeping in view the age of the deceased, multiplier of 18 is applied. Thus, the total compensation comes to ₹5,67,000/- (₹2625x12x18). ₹1,00,000/- on account of loss of love and affection to the parents of the deceased and ₹25,000/- towards funeral expenses are also allowed. In this way, the total amount of compensation comes to ₹6,92,000/-. The compensation amount shall be paid with interest @ 7.5% per annum in place of 7% per annum from the date of filing of the claim petition till its realization. The enhanced amount of compensation shall be paid to the mother of the deceased with interest.

The appeal is accordingly allowed to the aforesaid extent.

July 10, 2015
sarita

(KULDIP SINGH)
JUDGE