

FAO-1302-2014 (O&M)

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

FAO-1302-2014 (O&M)

Date of Decision: May 20, 2015

Nisar

.....Appellant

Versus

Sahud and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.B.R.Vohra, Advocate
for the appellant.

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

Mr.Samuel Gill, Advocate
for respondent No.4.

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1. *Whether Reporters of local papers 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*

NARESH KUMAR SANGHI,J.(ORAL)

The present appeal has been filed by Nisar, father of Monis (since deceased), challenging the award, dated 18.08.2012 passed by learned Motor Accidents Claims Tribunal, Nuh (for brevity, 'the learned Tribunal').

Mother of Monis (since deceased), i.e. wife of the

appellant, has been arrayed as pro-forma respondent No.4.

The case came up for hearing on 12.05.2015 when a specific question was put to the learned counsel for the appellant as to why Smt.Sehnaz, mother of Monis (since deceased), has been arrayed as pro-forma respondent No.4, then it was disclosed that at the time of filing of the present appeal, she was not available and hence she was arrayed as pro-forma respondent No.4. On the directions of this Court, she appeared with her counsel, Mr.Samuel Gill, Advocate on 14.05.2015. It was disclosed by her (pro-forma respondent No.4) that she could not sign the power of attorney when the appeal was filed and, as such, she was arrayed as a pro-forma respondent No.4.

Learned counsel for the appellant submits that the appellant and pro-forma respondent No.4 had lost their six years old son on account of the injuries sustained in a motor vehicular accident. The learned Tribunal has awarded a meagre sum of ₹2,35,000/- (Rupees two lacs thirty five thousand only) without taking into consideration the latest pronouncement of Hon'ble the Supreme Court.

On the other hand, learned counsel for respondent No.3-Insurance Company submits that adequate compensation

has already been awarded by the learned Tribunal and, as such, there is no scope for further enhancement.

Though the issue involved in the present appeal is with regard to the award of adequate compensation to the appellant and pro-forma respondent No.4, yet to be clear, it is necessary to narrate brief description of the case.

Appellant Nisar and pro-forma respondent No.4 Sehnaz are parents of Monis (since deceased). On 25.11.2010 Monis (since deceased) along with his mother Sehnaz had gone to the house of his maternal uncle at village Adbar. At about 7.00 a.m. when he was standing by the side of the road, then a truck bearing registration No.HR-55G-6139 (for brevity, 'the offending vehicle') being driven by Sahud (respondent No.1) arrived there in a rash or negligent manner and at a fast speed and hit and crossed over the body of Monis (since deceased), as a result thereof he died at the spot. Respondent No.1 fled away from the spot after causing the accident. The matter was reported to the police on the basis of which FIR No.583, dated 25.11.2010, for the offences punishable under Section 279 and 304-A, IPC, was registered at Police Station, Nuh, District Mewat.

The claimants averred that Monis (since deceased)

was aged about six years at the time of death and was maintaining good health and physique.

Notice of the claim petition was given to the driver, the owner and the Insurance Company of the offending vehicle. The driver and the owner failed to appear despite service and, as such, they were proceeded against ex parte.

Respondent No.3, i.e. Insurance Company filed its reply. On the basis of the pleadings of the parties, the following issues were framed:-

- “1. Whether accident in question resulting into death of Monis son of Nisar took place on 25.11.2010 at about 7.00 am in the area of village Adbar, PS Nuh, District Mewat because of rash and negligent driving of vehicle No.HR-55G-6139 by its driver-respondent No.1? OPP.
2. If issue No.1 is proved, whether the petitioner is entitled to get compensation, if so, to what amount and from whom? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR (3)
4. Whether the insured has violated the terms and conditions of insurance policy? OPR-3.
5. Relief.”

In support of their claim, appellant and pro-forma

respondent No.4 examined Iqbal as PW1, pro-forma respondent No.4-Sehnaz appeared as PW2, Dr.T.R.Parashar was examined as PW3, Somesh Bhardwaj, Criminal Ahlmad of the Court of Judicial Magistrate Ist Class, Nuh, was examined as PW4, while Constable Raj Kumar appeared as PW5.

Respondent No.3 examined Amit Wadhwa, Assistant Manager, Bajaj Allianz General Insurance Company as RW1.

While dealing with issue No.1, the learned Tribunal held that there was no hitch to conclude that the accident in question took place due to rash or negligent driving of the offending vehicle by respondent No.1 and hence, issue No.1 was decided in favour of the claimants, i.e. appellant and pro-forma respondent No.4.

While dealing with issue No.2, the learned Tribunal held that yearly notional income of Monis (since deceased) could be taken as ₹15,000/- (Rupees fifteen thousand only) and after applying the multiplier of 15, the claimants were awarded ₹2,25,000/- (Rupees two lacs and twenty five thousand only) for dependency. An amount of ₹5,000/- (Rupees five thousand only) was awarded towards loss of estate and further an amount of ₹5,000/- (Rupees five thousand only) towards funeral expenses

and, as such, total compensation awarded was to the tune of ₹2,35,000/- (Rupees two lacs and thirty five thousand only). The appellants were further awarded the interest @ 6% per annum from the date of filing of the claim petition till realization.

Issue Nos.3 and 4 were decided together and it was held that the offending vehicle was insured with respondent No.3, therefore, the registered owner of the offending vehicle was to be indemnified by respondent No.3.

Sehnaz, mother of Monis (since deceased) appeared as PW2 and tendered in evidence her duly sworn affidavit, Ex.PW2/A, wherein she deposed that her son Monis died in a road side accident. It was further averred that Monis (since deceased) was aged about six years and he was very intelligent and a hard worker.

In the matter of **Kishan Gopal and another vs Lala and others**, 2013 ACJ 2594 (SC) while dealing with a case of the death of a child of ten years, it was held by Hon'ble the Supreme Court that notional income of the child could be taken as ₹30,000/- (Rupees thirty thousand only) per annum and keeping in view the age of his parents to be 36 years, multiplier of 15 was to be applied. It was further held that parents of the child were

also entitled to ₹50,000/- (Rupees fifty thousand only) under conventional heads, i.e. 'loss of love and affection' and 'funeral expenses' etc. and, as such, a sum of ₹5,00,000/- (Rupees five lacs only) was awarded.

In the case in hand, the age of Monis (since deceased) was 6 years. Keeping in view his age, the notional income is assumed to be ₹25,000/- (Rupees twenty five thousand only) per annum. A multiplier of 15 is applied, taking into consideration the young age of his parents, then the figure would arrive at ₹3,75,000/- (Rupees three lacs and seventy five thousand only). A sum of ₹1,00,000/- (Rupees one lac only) can be awarded under conventional heads, i.e. for 'love and affection' and 'funeral expenses' and hence, parents of Monis (since deceased) are entitled to ₹4,75,000/- (Rupees four lacs and seventy five thousand only) as compensation.

There appears to be substance in the submissions of the learned counsel for the claimants when they submitted that the interest awarded @ 6% per annum was also on the lower side. In the matters of **Neeta and others vs Divisional Manager, Maharashtra State Road Transport Corporation,** 2015 ACJ 598, and **Jitendra Khim Shankar Trivedi vs Kasam**

Daud Kumbhar, 2015 ACJ 708, Hon'ble the Supreme Court has awarded interest @ 9% per annum. Therefore, it is held that the claimants are entitled to interest @ 9% per annum on the amount awarded by this Court from the date of filing of claim petition till realization.

The amount awarded by this Court along with interest shall be disbursed to the appellant and pro-forma respondent No.4 as per the directions of the learned Tribunal.

Since the learned Tribunal had directed respondent No.3-Insurance Company, to deposit the awarded amount and recover it from the owner and the driver of the offending vehicle, therefore, this Court does not deem it appropriate to set aside the said finding in view of the facts and circumstances of the case.

As a sequel to the above discussion, the present appeal is partly allowed.

May 20, 2015
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(NARESH KUMAR SANGHI)
JUDGE