

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

FAO No.2998 of 2013 (O&M)

Date of decision : 10.09.2015

Anshul @ Pankaj (minor) & another

...Appellants

versus

Kartar Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kulvir Narwal, Advocate
for the appellants.

Respondent Ex-parte.

RITU BAHRI, J (Oral)

CM No.13376-CII of 2013

There is a delay of 122 days in filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 122 days in filing the appeal is condoned.

CM stands disposed of.

FAO No.2998 of 2013

The appellants/claimants have come up in appeal against the award of the Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as “the Tribunal”) dated 24.09.2012, whereby their claim petition has been dismissed. The appeal appeal has been filed by Anshul @ Pankaj (minor) son of deceased Asha and husband Naveen Kumar.

Facts not in dispute are that Asha (since deceased) was married with claimant No.2 Naveen Kumar on 27.06.2002. The couple was leading a happy married life. Master Anshul (minor) claimant

No.1 was born out of this wedlock on 13.10.2003. After birth of Anshul, Asha was allured by her parents on the point of separate living. Claimant No.2 did not accept her demand, so Asha left her matrimonial house on 25.03.2006 and started living with her parents at village Jondhi, District Jhajjar. She was M.A. Qualified and was doing teaching work. By way of tuition work she was earning about Rs.6,000/- per month. She was getting coaching for admission in B.Ed. Course. When Naveen (claimant No.2) categorically refused to accept their demand of separate living, her father concocted a story of harassment and dowry demand instigating her daughter Asha (deceased) and got registered a false case under Section 498-A IPC against claimant No.2 and his family members. Relations of claimant No.2 with his in laws were not cordial, but the deceased was interested to live with her husband (claimant No.2) and he too also never wanted to remain away from her.

On 27.07.2007, she met with a roadside accident at Bhiwani Road Octroi Chowk, Rohtak. Immediately, she was taken to PGIMS, Rohtak by unknown person. Claimant No.2 was also informed telephonically. He rushed to PGIMS, Rohtak and found his wife lying unconscious in A&E Ward. Her lower limb was crushed by the trailer. Her parents also reached in PGIMS, Rohtak. His father-in-law got an opportunity. He joined hand with the police and owner of the offending vehicle (respondent No.1) and got registered a criminal case against claimant No.2. In fact, it was a road accident, which took place due to the rash and negligent driving of respondent No.1.

Claimant No.2 visited the spot and on enquiry, he came to know through Ashok Kumar son of Satyawar resident of Indira Colony, Rohtak and Ram Nath son of Dharam Chand resident of Bhiwani Chungi, Rohtak, who had witnessed the accident as they were having their shops at the spot that it was a roadside accident and took place due to the rash and negligent driving of trailer bearing registration No.HR-55C-3206 by respondent No.1.

On account of death of Asha, the claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988. Claimant No.2-Naveen Kumar before the Tribunal has admitted that in the backdrop of the dispute between him and the wife (Asha), a petition under Section 304-B of the IPC was registered against him and this fact was admitted by claimant No.2-Naveen Kumar that he was facing a trial after registration of the FIR. The Tribunal dismissed the claim petition in view of the above fact. However, the Tribunal proceeded to calculate the notional income of the deceased at Rs.3,000/- per month as she was a household lady. Dependency of the claimants after deducting the 1/3rd on personal expenses came to Rs.2,000/-. Thus, annual dependency of the claimants came to Rs.24,000/- (Rs.2,000 x 12). Multiplier of 18 was applied as the deceased was 25 years of age at the time of accident and after applying the multiplier of 18 the claimants were found entitled to Rs.4,32,000/- (Rs.24,000/- x 18) as compensation.

Feeling aggrieved with the impugned order, the

appellants/claimants have preferred the present appeal.

I have heard counsel for the appellant and perused the case file.

The claim of the appellants/claimants has been rejected by the Tribunal. Even if the appellant No.2/claimant No.2-Naveen Kumar was initially tried under Section 304-B IPC, the claim of the minor son appellant No.1/claimant No.1, could not have been rejected.

A reference at this stage can be made to a judgment of this Court passed in the case of *Paramjit Singh & anr. Vs. Dilbagh Singh @ Bagga & ors., 2014 (4) AICJ 65*, whereby it has been held that the claim of a minor child could not have been dismissed. The finding of the Tribunal on this point is set aside.

Counsel for the appellants has informed the Court that appellant No.2/claimant No.2 has been acquitted by the trial Court. This Court is inclined to held that appellant No.2/claimant No.2 is not entitled to compensation as a matrimonial dispute is going on between the parties. However, the compensation of the minor (appellant No.1) is being reassessed. The income of the deceased Asha is taken at Rs.3,000/- per month by reference to a judgment of a Division Bench of this Court in the case of *Paramjit Singh & anr. Vs. Dilbagh Singh @ Bagga & ors., 2014 (4) AICJ 65*. Compensation is hereby revised in view of the judgments of *Asha Verman & ors. Vs. Maharaj Singh & ors., 2015 (2) RCR (Civil) 520*, *Sarla Verma & ors. Vs. Delhi Transport Corporation & anr., 2009 (3) RCR (Civil) Page 77*, *Rajesh & ors. Vs. Rajbir Singh & ors., 2013 (9) SCC 54* and *Munna Lal*

Jain & anr. Vs. Vipin Kumar Sharma & ors., 2015 (3) Recent Apex

Judgments 459. Since the deceased was supporting her child staying with her parents, the dependency shall be 1/3rd. Accordingly, the compensation is reassessed as under:-

Sr. No.	Heads	Calculation
(i)	Annual Income	Rs.36,000/-
(ii)	50% of (i) added for future prospects (age of the deceased was 25 years)	(Rs.36,000/-) + (Rs.18,000/-) = Rs.54,000/-
(iii)	Dependency of the claimant after deducting 1/3 rd of (ii) towards personal expenses of the deceased	(Rs.54,000/-) – (Rs.18,000/-) = Rs.36,000/-
(iv)	Compensation after multiplier of 18 is applied	(Rs.36,000/- x 18) = Rs.6,48,000/-
(v)	Loss of estate	Rs.1,00,000/-
(vi)	Loss of love and affection to the child	Rs.1,00,000/-
(vii)	Funeral expenses	Rs.25,000/-
(viii)	Total Compensation awarded [(iv)+(v)+(vi)+(vii)]	Rs.8,73,000/-

The amount of compensation of **Rs.8,73,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order to appellant No.1/claimant No.1-minor. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realisation, in view of the judgment of Hon'ble Supreme Court in the case of **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh & ors., 2015 (1) SCC 539.** Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

10.09.2015
Vinay

(RITU BAHRI)
JUDGE