

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2079 of 2014 (O&M)

Date of decision : 14.08.2015

Kitabo Devi and others

.....Appellants

Versus

Lalit Chaudhary and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Kotla, Advocate
for the appellants.

Brig. B.S. Taunque (Retd.), Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Panipat (hereinafter referred to as the 'Tribunal') on account of death of Om Parkash. Claimants are the widow, three minor children and parents of the deceased.

Brief facts are that Om Parkash since deceased met with an accident on 22.06.2012 which took place due to rash and negligent driving of the offending vehicle (tralla) bearing registration No. HR-38G-9521. Offending vehicle hit the auto rickshaw in which the deceased was travelling. Auto rickshaw turned turtle and Om

Parkash as well as one Bhupender Singh were crushed under the three wheeler. Respondent – driver fled from the spot. Om Parkash died on the way to the Civil Hospital, Panipat. FIR No. 788 dated 22.06.2012 under Sections 279 and 304-A IPC was registered at Police Station City Panipat. Om Parkash, aged 38 years was stated to be working as a driver having a monthly income of ₹10,000/-. A sum of ₹25 lakhs was claimed on account of his death by the claimants, who were dependent upon the deceased. The claim was contested by the respondents.

Following issues were framed:-

1. Whether death of Om Parkash son of Preeta Ram had resulted in an accident, which allegedly took place on 22.06.2012 at about 11.40 p.m. at Fatehpuri chowk, Panipat, because of alleged rash and negligent driving by respondent No. 1 Lalit Chaudhary, while driving the offending vehicle bearing no. HR-38G-9521? OPP
2. If issue No. 1 is proved, then, what amount of compensation do the claimants are held entitled to claim, and from whom? OPP
3. Whether the claim petition is not maintainable in the present form, whether there has been any breach of policy condition/provision of Motor Vehicle Act on the part of insured and whether respondent no. 1 Lalit Chaudhary was not holding a valid and effective driving licence to drive the offending vehicle bearing no. HR-38G-9521, if so, to what effect? OPR-3

4. Relief.

Learned Tribunal on consideration of facts and evidence concluded that the accident in question was a result of rash and negligent driving of the offending vehicle No. HR-38G-9521 by respondent No. 1 – Lalit Chaudhary. Issue No. 3 was decided against the insurance company as respondent No. 1 was found to have a valid and effective driving licence. Total compensation to the tune of ₹8,55,000/- was awarded to the claimants.

Learned counsel for the appellants prays that correct compensation has not been awarded inasmuch as component of loss of future prospects has not been incorporated. Meagre compensation has been awarded on account of loss of consortium, loss of love and affection as well as funeral expenses.

Learned counsel for respondent No. 3 – insurance company while refuting the pleas taken by the appellants submits that proper compensation has already been awarded by the Tribunal which permits of no further enhancement. It is further urged that Tribunal has already given benefit of ₹1000/- in addition to the income of ₹500/- by hedging in a hypothetical increase in the daily wages, therefore, there is no scope for enhancement on account of future prospects.

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

Learned Tribunal has assessed the income of the deceased as that of daily wage earner i.e. ₹5000/- per month. A sum of ₹1000/- has been added to counter price rise and inflation thereby

assessing his income to be ₹6000/- per month. Age of the deceased being 38 at the time of accident, multiplier of 15 has been rightly applied and loss of dependency worked out to ₹8,10,000/- after applying a deduction of $1/4^{\text{th}}$ ($₹4500 \times 12 \times 15 = ₹8,10,000$). Total compensation awarded by the Tribunal is as under:-

Loss of dependancy	₹8,10,000/-
Loss of Love/affection	₹ 10,000/-
Loss of estate	₹ 10,000/-
Loss of consortium (widow)	₹ 5,000/-
Transportation	₹ 10,000/-
Funeral and last rites	₹ 10,000/-
Total	₹8,55,000/-

Keeping in view the judgment of the Hon'ble Supreme Court in **Rajesh and others versus Rajbir Singh and others** 2013 (3) RCR (Civil) 170 and **Munna Lal Jain and others versus Vipin Kumar Sharma and others** 2015 (6) SCC 347 when the deceased is under 40 years of age 50% increase has to be accorded while assessing the income. Therefore, income of the deceased is assessed as ₹5000/- per month and not ₹6000 per month. Keeping in view the guidelines in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77 deduction of $1/4^{\text{th}}$ is to be applied as number of dependents is six (6), thereby rendering income of the deceased to be ₹3750/-. On account of addition of 50% for future prospects, income is assessed as ₹7500/- per month and loss of dependancy is assessed as ₹13,50,000/- ($₹7500 \times 12 \times 15$). Claimants are also entitled to enhanced compensation on account of loss of consortium, love and affection as

well as funeral expenses etc.

Claimants are, thus, entitled to enhanced compensation detailed as under:-

Loss of dependency (7500x12x15)	₹13,50,000/-
Loss of love and affection (₹ 50,000/- each)	₹ 1,00,000/-
Loss of consortium	₹ 1,00,000/-
Loss of care and guidance @ 50,000/- per child (50,000x2)	₹ 1,00,000/-
Funeral/transportation expenses	₹ 25,000/-
Total	₹16,75,000/-

The amount of compensation already awarded to the appellants shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per cent per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

August 14, 2015
rts

(Lisa Gill)
Judge