

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

FAO No. 4635 of 2013(O&M)

Date of Decision: September 15 , 2015.

Gurdial Singh and another

..... APPELLANT (s)

Versus

Rohit Kumar and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Surinder Singh, Advocate
for the appellants.

Mr. R.C.Kapoor, Advocate
for respondent No.3 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Present appeal has been preferred by the claimants – Gurdial Singh and Harbans Kaur who are parents of the deceased, praying for enhancement of compensation awarded to them by Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as, the 'Tribunal') vide impugned award dated 12.03.2013 on account of the death of their son – Sarabjit Singh.

Factual matrix of the case is that, Sarabjit Singh alongwith his father

– Gurdial Singh (appellant No.1) were going towards Bus Stand Rurki on 08.12.2011 at about 10.00 a.m. Sarabjit Singh was walking 5-6 karams ahead of Gurdial Singh. He stopped by the Grand Trunk road on reaching the Bus Stand. At that time, a car bearing registration No. PB-10AP-1031 being driven in a rash and negligent manner at a fast speed without blowing any horn came from Morinda side. It struck against Sarabjit Singh, due to which he fell on the road and sustained injuries. Driver of the car fled from the spot. Sarabjit Singh was removed to Civil Hospital, Kharar and thereafter referred to PGI Chandigarh. However, he succumbed to his injuries on 09.12.2011 at about 5.00 p.m. FIR, Ex.C1 was registered against respondent No.1 – Rohit Kumar.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the appellants-claimants claiming compensation to the tune of ₹30 lacs on account of the death of their son Sarabjit Singh, aged 32 years. Deceased was averred to be working as a mason and carrying on dairy business as well, thus earning ₹20,000/- per month.

Claim was contested by the respondents. Following issues were framed by the Tribunal:-

- “1 Whether Sarabjit Singh died in a road side accident caused by respondent No.1 while driving a Tata Indica Car bearing No. PB-10-AP-0131, in a rash and negligent manner? OPP
2. Whether claimants are entitled to receive compensation as prayed for, if so to what extent and from whom? OPP
3. Whether respondent No.1 was not holding a valid driving licence, a valid registration certificate of car in question at the time of accident? OPR
4. Whether the claim petition is not maintainable? OPR

6. Relief.”

Learned Tribunal on appreciation of the evidence on record concluded Sarabjit Singh to have sustained fatal injuries in the accident on 08.12.2011 which was caused by the rash and negligent driving of the offending vehicle by respondent No.1 – Rohit Kumar. Said finding is informed to have attained finality.

A sum of ₹2,15,000/- was awarded as compensation to the claimants. Income of the deceased was assessed as ₹5,000/- per month i.e., ₹60,000/- per annum. 50% deduction on account of personal expenses was effected and an addition of 30% was afforded on account of future prospects, thereby assessing his income to be ₹9,000/- per month, ₹39,000/- per annum. Multiplier of 5 was applied, taking into account the age of the father of the deceased. Loss of dependancy was worked out at ₹1,95,000/-. A sum of ₹10,000/- each was awarded on account of funeral expenses and loss of estate.

Learned counsel for the appellants prays for enhancement of the compensation so awarded primarily on the ground that multiplier of 16 should be applied keeping in view the age of the deceased. An addition of 50% has to be afforded on account of loss of future income rather than 30% as has been done by the learned Tribunal. Compensation on account of love and affection should be awarded and that of funeral expenses be enhanced. Compensation on account of medical expenses should also have been awarded.

Per contra, learned counsel for respondent – Insurance Company submits that multiplier has to be applied as per the age of the parents of deceased

and not the deceased himself as has been held by Hon'ble Supreme Court New India Assurance Company Ltd. v. Shanti Pathak (Smt.) and others, (2007) 10 SCC 1. It is further submitted that in view of the matter regarding addition in income on account of the loss of future prospects to self-employed/private employed persons stands referred to a larger Bench by Hon'ble Supreme Court vide order dated 02.07.2014 passed in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others), no such compensation should have been awarded on account of future prospects.

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

There is no dispute regarding the age of deceased – Sarabjit Singh to be 32 years at the time of accident. Learned counsel for the appellant is unable to point out any evidence on record which indicates an income higher than ₹5,000/- per month as assessed by learned Tribunal. Deduction of 50% has been correctly effected keeping in view the decision of Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77.

Keeping in the judgment of Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC), addition on account of loss of future prospects has been rightly afforded. It is relevant to note that Insurance Company has not laid any challenge to the award of future prospects at the rate of 30% by the Tribunal, therefore, it is not open to the said respondent to raise this plea.

It is not disputed that operation of decision in Rajesh v. Rajbir's case

(supra) has not been stayed. Hon'ble Supreme Court in a decision subsequent to the reference in Pushpa's case (supra) has awarded addition on account of loss of future prospects in respect to private employed persons in **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347**. Keeping in view the judgments of Hon'ble Supreme Court in Rajesh v. Rajbir's case (supra) and Munna Lal Jain's case (supra), it is an addition of 50% which has to be awarded on account of loss of future prospects as the deceased was 32 years of age at the time of accident.

Multiplier of 16 has to be applied in this case. It has been held by Hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Company Ltd., 2012(4) RCR (Civil) 343** and a subsequent decision in Munna Lal Jain's case (supra) that selection of multiplier should be based on the age of the deceased and not on the age of the dependant.

Therefore, on a deduction of 50% i.e., ₹2,500/- towards personal expenses and addition of 50% i.e., ₹2,500/- on account of future prospects having been made, income of the deceased is assessed as ₹5,000/- per month. Annual dependancy of the claimants is assessed as ₹60,000 (₹5,000x12). After applying the multiplier of 16, loss of dependancy works out to be ₹9,60,000/- (₹60,000 x 16).

Contention of learned counsel for the appellants that compensation on account of medical expenses should be awarded is devoid of any merit as there is no evidence whatsoever to indicate any expense which may have been incurred in this respect.

Claimants are however entitled to compensation of ₹50,000/- each on account of loss of love and affection and a sum of ₹25,000/- on account of

funeral expenses. Appellants-claimants are, thus, entitled to total compensation of ₹10,85,000/- detail of which is as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of Dependency (5,000x12x16)	₹9,60,000/-
2.	Loss of love and affection at the rate of ₹50,000/- each parent	₹1,00,000/-
3.	Funeral expenses	₹25,000/-
	Total	₹10,85,000/-

Compensation already awarded to the claimants by the Tribunal shall stand deducted from the amount as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the above modification in the impugned award dated 12.03.2013 passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali, present appeal is disposed of.

September 15 , 2015.
'om'

(LISA GILL)
JUDGE