

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

FAO No.508 of 1998.

Date of Decision: 16.03.2016.

Kelapati and others

....Appellants.

VERSUS

Sant Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.A. Sheoran, Advocate for the appellants.

Mr. Nipun Verma, Advocate for
Mr. Mani Ram Verma, Advocate for respondent No.2.

Mr. Raja B.S. Jain, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellants-Kelapati and others seek enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Bhiwani (for short, "the Tribunal") vide the award dated 24.10.1997 passed in MACT Case No.65 of 1994 on account of death of Suresh Kumar, husband of appellant No.1, father of appellants No.2 to 5 and son of appellants No.6 and 7 who lost his life in a vehicular accident.

The submissions made by Mr. R.A. Sheoran, learned counsel for the appellants, Mr. Nipun Verma, learned counsel for respondent No.2 and Mr. Raja B.S. Jain, learned counsel for respondent No.3-insurance

company have been heard and record perused.

The claim petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 was filed by widow and minor children as well as father of deceased Suresh Kumar who died on 20.04.1994 due to the injuries suffered in a motor accident. The claimants alleged that on 14.02.1994 at about 7:00 p.m. one Sumer Singh was going from his village Satnali to village Rambas and on reaching near village Kadma he found Suresh Kumar lying on the roadsides with his motorcycle. His face and head was badly damaged. He was brought to Civil Hospital, Bhiwani from where he was referred to Medical College, Rohtak. Later, Sumer Singh disclosed the identity of a Tata four-wheeler the driver of which due to his rash and negligent driving had caused the accident and fled away. On the statement of Sumer Singh, a First Information Report No.46 dated 15.02.1994 was registered under Sections 279, 337 and 427 of the Indian Penal Code at Police Station Badhra and the driver of the offending four wheeler (respondent No.1) was arrested.

The claimants pleaded that as a result of the injuries deceased Suresh Kumar became epileptic and ultimately due to the epileptic fits he died on 20.04.1994.

Learned counsel for the appellants argued that PW1 Ram Sarup, father of the deceased stated that his son had suffered multiple injuries on his head and mouth. The head injury made him epileptic and due to the head injury and epileptic fits he died. Learned Tribunal though held that it was established on record that Suresh Kumar deceased sustained

injuries in a motor vehicular accident on 14.02.1994 but observed that it could not be proved that Suresh Kumar died due to the injuries suffered by him in the accident. The injured died almost after two months of the accident but not attributing his death to the injuries the claimants were awarded only a lump sum amount of Rs.25,000/- towards loss of estate. Learned counsel urged that the claimants lost the only earning member of their family and they should be compensated on account of loss of dependency, loss of consortium and loss of love and affection etc.

Based on the documentary and ocular evidence led by the claimants, learned Tribunal came to the conclusion that Shri Suresh Kumar had met with a motor accident on 14.02.1994 and had suffered injuries during the same. The medical documents indicated that Suresh Kumar was given first aid at village Kadma hospital from where he was referred to General Hospital, Bhiwani where he was medico legally examined on 14.02.1994 itself at 10:00 p.m. and thereafter he was referred to Medical College and Hospital, Rohtak where he remained admitted from 15.02.1994 to 25.02.1994 and subsequently he visited the OPD ward of the said hospital on 11.03.1994, 15.03.1994 and 22.03.1994.

Importantly, the X-ray investigation film Ex.P4, the follow up and discharge card Ex.P5 of Medical College and Hospital, Rohtak indicate that Suresh Kumar suffered fracture mandible right side and fracture of the nasal bone. He was advised X-ray skull for detecting the nasal bone fracture. Apart from that he had suffered multiple other injuries but as shown in the medico legal report Ex.PA the same were lacerated wounds on

various parts of the body. No doctor was examined to prove that any of the injuries suffered by Suresh Kumar could have led to development of epileptic fits. Admittedly, no postmortem examination was conducted on the dead body of Suresh Kumar when he died after more than two months of the accident. There was absolutely no document to prove the cause of death of Suresh Kumar. Neither it could be proved that he became epileptic because of the injuries suffered by him nor that he died due to epileptic fits. In fact, the medical documents do not indicate that deceased Suresh Kumar had suffered any injury which could make him epileptic. The solitary ocular testimony of the father of the deceased was not sufficient to conclude that the deceased had epileptic fits or that he developed the said disease as a result of head injury. Learned Tribunal rightly held that the claimants had failed to prove that Suresh Kumar died as a result of injuries suffered by him during the accident.

Since the victim-injured of the accident had died the claimants were entitled to compensation only to the extent of loss of estate. Learned Tribunal allowed a lump sum amount of Rs.25,000/-. Ex.P5 the follow up and discharge card indicates that deceased Suresh Kumar remained admitted in Medical College and Hospital, Rohtak for nine days i.e. w.e.f. 15.02.1994 to 25.02.1994. Thereafter, he had been visiting the OPD ward for follow up treatment. Considering the expenditure on treatment, transportation of the victim and of the family members who were attending on him during his hospitalization, special diet, loss of earnings during the period of treatment etc., the amount of Rs.25,000/- given by learned

Tribunal for loss of estate is enhanced to Rs.1,00,000/-.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 24.10.1997 passed by learned Tribunal is modified. The appellants-claimants are held entitled to enhanced compensation of Rs.75,000/- in addition to the amount of Rs.25,000/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization. The amount of compensation will be disbursed to the appellants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

16.03.2016.
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