

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6364 of 2011

Date of decision : July 5, 2016.

Naresh Kumar and another

.... Appellants

Vs.

Chand Mandal and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

Present : Mr. J.S.Bagga, Advocate,
for the appellants.

Mr. Mohit Jaggi, Advocate,
for respondent No.2.

Mr.Abhishek Goyal, Advocate,
for Mr. Pardeep Goyal, Advocate,
for respondent No.4.

AMOL RATTAN SINGH, J.

1. This is an appeal by the claimants before the learned Motor Accident Claims Tribunal, Chandigarh, who sought compensation for the unfortunate death of their son, Nikhil Kumar, in a motor vehicle accident that took place on 24.10.2003 in Mohali, allegedly due to the rash and negligent driving of respondent No.1, who was driving a truck bearing registration No.PUT-2935.

The appellants seek enhancement of the compensation of

Rs.3,30,000/- awarded by the learned Tribunal. Interest @ 9% per annum, on

the aforesaid sum, was also awarded, running from the date of the filing of the claim petition till the date of the Award. It was further held by the Tribunal that in case compensation was not paid by the 3rd respondent, i.e. the insurance company (presently respondent No.4) with which the truck was insured, interest @ 9% per annum would further be payable till the date of realization of the amount. Thus, in fact, interest was awarded @ 9% till the date of realization.

However, since it was found that respondent No.1 was not holding a valid driving licence on the date of the accident, the insurance company was held entitled to recover the amount of compensation from respondents No.1,2 and 2-A, i.e. present respondents No.2 and 3. Respondent No.3 herein was found to be the owner of truck, who was also insured by the insurance company, but the custody of the truck was found to be that of respondent No.2, Inderbir Singh.

2. The facts, as taken from the Award of the learned Tribunal, are that on 24.10.2003, Nikhil Kumar was going from his residence in Sector-70, Mohali, to appear in the final exam of a diploma course that he was studying for, at Sector-38, Chandigarh, on a scooter bearing registration No.CH-23-T-7800. When he reached the "chowk" on the road dividing Sector-71 and Phase 3B-2, Mohali, a truck driven by respondent No.1 came from the opposite side, allegedly driven at a very high speed, in a rash and negligent manner, which came on to the wrong side of the road and hit the scooter of the deceased, which was on the correct side of the road. The deceased sustained injuries and was moved to Cheema Hospital, Mohali, but succumbed to his injuries the next day, i.e. 25.10.2003.

He is stated to have been 18 years of age at the time of the

accident, studying for a diploma course in Electrical Engineering, from the National Open School, New Delhi. He was also stated to have been operating a 'Playwin Online Lottery Terminal', from which, it was claimed, he was earning approximately Rs.10,000/-. He was stated to be the only son of the claimants. A sum of Rs.15,000/- was stated to have been spent on his medical treatment, and another Rs.15,000/- on his last rites.

3. Upon notice, respondent No.2 contested the petition and filed his written statement and firstly stated that no such accident had taken place with truck bearing registration No.PUT-2935, which he had purchased from Gurinder Singh and for which the transfer of ownership was under process.

The Oriental Insurance Company Limited also contested the petition by filing its written statement, stating that the driver of the 'offending vehicle' was not holding a valid driving licence at the time of the accident and that the vehicle was being driven in violation of the terms and conditions of the insurance policy, which otherwise was admitted.

The negligence of respondent No.1 was, however, still denied, further stating that in any case the company was not liable to pay the compensation.

The driver, respondent No.1, not having appeared, was proceeded against, *ex parte*.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

- "1. Whether deceased Nikhil Kumar died in a Motor Vehicle accident which took place on 24.10.2003 at around 2.15 pm on the road in between Sector 71 and Phase 3B02, Mohali near PCL Chowk due to rash and negligent driving of respondent Chand Mandal while driving truck

No.PUT-2935? OPP

2. If issue No.1 is proved, whether the claimants are entitled to the compensation? If yes, to which extent and from whom? OPP
3. Whether the respondent No.1 driving was not holding valid and effective driving license, If so, its effect? OPP
4. Relief."
5. The appellant-claimant No.1 (hereinafter to be referred to as the claimant) stepped into the witness box and testified in terms of the claim petition. The claimants also examined one Vinay Batra as PW2, who testified that on 23.10.2003 he had gone to Mohali for some personal work and when he was going on the road diving Sectors-70/71 at about 2.15 pm and was about to reach the PCL Chowk, the scooter ahead of him, bearing registration No.CH-23-T-7800, was being driven by a young boy wearing a helmet. A truck came from the opposite side of the road at a high speed and suddenly came on to the wrong side and struck against the scooter, which was on the correct side of the road. He thereafter came to know that the name of the scooter driver was Nikhil Kumar and that of the truck driver was Chand Mandal. He also testified with regard to the admission of Nikhil Kumar to Cheema Hospital, where he succumbed to his injuries.
6. The Tribunal, on the testimony of PW2, which went unrebutted by the driver of the truck and was also not found to be shaken in cross-examination, held respondent No.1 guilty of driving the truck in a rash and negligent manner.

No appeal against that finding, or in fact, any appeal by the

respondents against the impugned Award, has been brought to the notice of this Court by the counsel for the parties.

7. Therefore, this Court is only to consider whether the compensation awarded by the Tribunal, to the present appellants, is adequate or not.

It was found by the Tribunal that though the first claimant appeared as PW1 had testified that his son was earning Rs.10,000/- from the 'Playwin Online Lottery Terminal', no evidence in that regard was led.

It was, however, proved from the identity card of the deceased, that he was pursuing studies from the National Open School. Therefore, with no other proof of income, his income was assessed to be that of a labourer @ Rs.3000/- per month. Applying the ratio of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, a multiplier of 18 was applied to the annual income of the deceased, which was thereafter halved, taking the personal expenses of the deceased, had he continued to live, to be 50% of his total income, he being a bachelor.

It needs to be mentioned here that the age of the deceased was accepted as per the post mortem report, to be 18 years.

Therefore, taking the monthly dependent income of the claimants to be Rs.1500/-, thereby making their annual income to be Rs.18,000/-, a multiplier of 18 was applied, in terms of the ratio of the aforesaid judgment. Thus, the loss of income was assessed at Rs.3,24,000/-. Upon guess work, another Rs.6000/- was added by way of expenses that may have been incurred by the claimants, thereby bringing the total compensation payable, to be Rs.3,30,000/-.

8. The plea of respondent No.2 having been accepted that he had purchased the truck from respondent No.2-A (respondent No.3 herein), all the four respondents were held liable to pay the compensation jointly and severally, (the truck still standing in the name of respondent No.3 herein, who was also insured, as already noticed).

9. Again as already noticed, it was found that as per the copy of the driving licence of respondent No.1, submitted by respondent No.2, the licence was actually issued only to drive a light vehicle, whereas the truck in question was a heavy transport vehicle. Hence, respondent No.1 was held to be not holding a valid driving licence at the time of the accident. Consequently, the compensation awarded was held to be recoverable by the insurance company from present respondents No.1,2 and 3, jointly and severally, after the insurance company made the payment to the claimants.

10. Mr. J.S.Bagga, learned counsel for the appellants, submitted that the income of the deceased was wrongly assessed to be only Rs.3000/- per month, i.e. the wages of an unskilled labourer, whereas even as per the finding of the learned Tribunal, he was studying for a diploma course from the National Open School. He, therefore, submitted that had the deceased continued to live, he would have gone on to obtain his diploma and earn far more than the aforesaid sum and therefore, the loss of income to the appellant, needs to be suitably enhanced.

In support of this argument, learned counsel relied upon a judgment of the hon'ble Supreme Court in **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and another**, 2014 (4) RCR (Civil) 543.

Learned counsel further submitted that no amount was awarded to the parents of the deceased towards the loss of love and affection of their

only son (other than a daughter that they had) and further, no reasonable amount was awarded towards his treatment from a private hospital. In the aforesaid judgment, their Lordships held that a deceased who was studying medicine would obviously have earned a much higher future income and as such, assessed his future income to be Rs.25,000/- per month, even though he was only 19 years of age and was still to graduate from Medical College.

While doing so, the Supreme Court had referred to its earlier judgment in Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254, wherein a student studying for a degree of Bachelor of Engineering, was held to have a prospective income of at least Rs.60,000/- per annum.

11. On the other hand, Mr. Mohit Jaggi, learned counsel appearing for respondent No.2 and Mr. Abhishek Goyal, learned counsel appearing for insurance company, i.e. respondent No.4, submitted that the deceased being only a diploma student, his income was correctly assessed at Rs.3000/- per month, he being an adult who was studying from the National Open School and possibly therefore, earning that much as an unskilled labourer.

12. Having considered the aforesaid arguments and the Award of the Tribunal, as regards the income of the deceased, who was accepted to be an 18 year old youth, on the basis of the age given in the post mortem report (even though he was shown to have been studying, but with no certificate proved), the judgment of the Supreme Court in R.K.Malik v. Kiran Pal, (2009) 14 SCC 1, can be referred to, even though in that case, the claim petitions were filed under Section 163-A of the Motor Vehicles Act, 1988, whereas in the present case, the claim petition was filed under Section 166 thereof. However, the ratio of what was laid down by the Supreme Court,

would still be the same, as regards future earning prospects of children.

It needs to be noticed that though in the present case, obviously the deceased was accepted to be a 18 year old adult, however, since he was shown to have been studying a diploma course through the National Open School, Delhi, as such, can be taken to be a student, especially with the contention that he was earning from online lotteries not having been accepted.

13. Taking the above as such, it is seen that in *R.K.Maliks'* case (supra), the issue was with regard to the unfortunate death of 29 school going children, in a bus accident.

Their Lordships eventually held that though pecuniary damages are very difficult to assess in the case of non-earning children, however, dependent upon their academic performance etc., a reasonable compensation can be awarded, taking their future prospects into consideration. In that case, compensation of Rs.75,000/- by way of future prospects of income, was awarded to the claimants.

In the present case, the Tribunal assessed the monthly income of the deceased to be Rs.3000/- as already noticed, which is actually marginally higher than the notified wages of a skilled (upper) worker, employed in the State of Punjab, w.e.f. 01.09.2003, i.e. the minimum wages of such a worker have been shown to be Rs.2959.35 per month by the Punjab Government, as on the date of death of the victim in the present case (24.10.2003).

The deceased was, to again repeat, studying for a diploma "in electrical", as per the Award of the Tribunal. Thus, obviously he was studying for a diploma in Electrical Technology and as such, may have qualified to be a highly skilled worker.

Therefore, taking the above wage of Rs.3000/- as the yardstick, another Rs.2000/- is added towards his future prospects of income, he being still a student, thereby bringing the total income of the deceased to be Rs.5000/- per month.

From that amount, 50% has to be deducted towards his personal living expenses, he being a bachelor, thus leaving Rs.2500/- per month as the loss of dependent income to the claimants. The claimants, of whom only the mother of the deceased, i.e. present appellant No.2, is entitled to compensation for loss of income, the father not having proved that he was dependent on his son, which in any case he could not have been, his son still shown to have been studying.

Hence, to the aforesaid Rs.2500/- per month (Rs.30,000/- annually), a multiplier of 18 is to be applied, the deceased being only 18 years of age. Thus, the total loss of dependent income to appellant No.2, i.e. the mother of the deceased, comes to Rs.5,40,000/-.

14. Thereafter, coming to the issue of payment under other heads. Firstly, the Tribunal wholly erred in awarding only Rs.6000/- by way of miscellaneous expenses. As per the ratio of the judgments in **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476, followed constantly thereafter, Rs.25,000/- is awardable to appellant No.1 towards the funeral expenses and last rites of the deceased.

Other than that, both the appellants would also be entitled to compensation for the loss of love and affection of their son, which normally is awarded @ Rs.50,000/- each to the parents of an adult. However, in this case, the deceased being only 18 years of age, and the only son of his

parents, (other than a daughter that they had, as per the Award), a sum of Rs.1,00,000/- each is awarded to the two appellants herein.

15. Thus, the total compensation now awarded to the appellants, is as follows:-

i)	Towards loss of future dependent income (to appellant No.2)	Rs.5,40,000/-
ii)	Towards loss of love and affection to both the appellants, (Rs.1,00,000/- each).	Rs.2,00,000/-
iii)	Towards funeral expenses and last rites of the deceased (to appellant No.1)	Rs.25,000/-
	Total	7,65,0000/-

Hence, the enhanced amount now awarded, is Rs. 4,35,000/- over and above the compensation awarded by the Tribunal. The amount of compensation being more than double of what was awarded by the Tribunal, the rate of interest is kept down to 6.5% per annum, running from the date of the filing of the claim petition, till the date of realisation thereof.

16. In view of the fact that the Tribunal found that respondent no. 1 was not holding a driving licence to drive a heavy transport vehicle, the enhanced compensation, along with the interest thereupon, would be first paid by respondent No. 4 , i.e. the insurance company, after which the company would have a right of recovery of the same from respondents No. 1, 2 and 3 herein, for the same reason as recorded by the Tribunal, that is that respondent No.3 was shown to be the registered owner of the "offending vehicle", whereas custody of the said vehicle was actually with respondent No.2 herein, he having purchased it from respondent No.3, but with the transfer not effected in the reports of the concerned authority, on the date of

the accident. Respondents No.2 and 3, or either of them, are not shown to have filed any appeal against the Award.

The appeal is accordingly partly allowed to the above extent, with no order as to costs.

July 5, 2016
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(AMOL RATTAN SINGH)
JUDGE