

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

FAO No.6627 of 2012

Date of decision : July 18, 2016.

Bhola Ram

.... Appellant

Vs.

Sanjiv Rana and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present : None for the appellant.

Mr. Nitin Gupta, Advocate, for
Mr. Abhinav Gupta, Advocate,
for respondent No.3-Insurance Company.

AMOL RATTAN SINGH, J.

This is an appeal filed by the claimant before the learned Motor Accident Claims Tribunal, Mohali, seeking enhancement of the compensation of Rs.4,36,000/- awarded to him by the Tribunal, on account of the death of his son Mohit, in a motor vehicle accident that took place on 01.11.2010 at about 1:30 PM, near the bus stand of village Sante Majra.

2. The facts, as taken from the Award of the Tribunal, are that deceased Mohit, alongwith one Lakhwinder Singh, was coming back from village Bairampur Bhagomajra, on motorcycle bearing registration No.PB-27-C-5367, with Mohit driving the motorcycle and with Lakhwinder Singh as his pillion rider.

When they reached the aforesaid village Sante Majra, a truck bearing registration No.HR-68-A-1369, driven by respondent No.1, allegedly in a rash and negligent manner, came from behind and struck against the motorcycle, as a result of which Lakhwinder Singh fell down on the "Kacha" part of the road and received minor injuries, whereas Mohit fell down on the middle of the road and unfortunately came under the tyres of the said truck.

Mohits' brother was alleged standing on the spot, waiting for a bus and witnessed the accident.

Mohit was first taken to the Civil Hospital, Kharar, from where he was referred to the PGI Chandigarh, where he unfortunately succumbed to his injuries.

He is stated to have been 23 years old at the time of his death, working as a Salesman with M/s R.K.Fashion World at Kharar, drawing a salary of Rs.10,000/- per month.

A sum of Rs.50,000/- was stated to have been spent on transportation, medicines and other miscellaneous expenses of the deceased. The appellant-claimant (hereinafter to be referred to as the claimant), sought a compensation of Rs.25,00,000/- on account of the death of his son.

3. Upon notice issued, the first respondent appeared and filed a written statement, stating that no such accident took place and that in connivance with the police, a false case had been registered against him and as such, no compensation was payable, and in any case, it was a highly exaggerated claim.

The owner of the truck, respondent No.2, also filed a separate written statement and took similar pleas.

The insurance company, with which the truck was insured, i.e.

respondent No.3, also filed a separate written statement, firstly taking preliminary objections with regard to the maintainability, non-holding of a valid driving licence by the truck driver, locus standi etc.

On merits, again it was claimed that no such accident actually took place and no intimation in any case had been given of the accident to the Company.

Again, the quantum of compensation claimed was also opposed, alongwith other pleas of denial.

4. Upon the aforesaid pleadings, the following issues were framed:-

- “1. Whether deceased Mohit died due to the injuries received by him in a road side accident, caused due to the rash and negligent driving by respondent No.1 while driving truck bearing No.HR-68A-1369? OPP
2. Whether the claimant is entitled to receive compensation? If so, what extent and from whom? OPP
3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, if so, its effect? OPR
4. Relief.”

5. The claimant examined himself as PW1 and Lakhwinder Singh as PW2.

The respondents, on the other hand, did not examine any witness but placed on record a copy of the driving licence of respondent No.1, the registration certificate of the truck, as also the insurance policy.

6. In the light of the evidence, read with the post mortem report, it was held by the Tribunal that the deceased had died on account of the

accident caused by the rash and negligent driving of respondent No.1.

On the issue of compensation, neither the employer nor any other co-employee of the deceased was examined and as such, the salaried income of Rs.10,000/-, was held to have not been proved. It was assessed by the Tribunal, that being a hale and hearty person, the deceased may have been earning about Rs.4000/- per month or Rs.48,000/- per annum.

1/3rd of that amount was deducted towards his personal living expenses, thereby following that the dependent income of the claimant, upon the deceased, was Rs.32,000/- per annum. A multiplier of 13 was applied to the aforesaid sum, thereby bringing the total loss of dependent income to Rs.4,16,000/-.

To that amount, another Rs.20,000/- was added on account of loss of estate and funeral expenses, thus bringing the total compensation payable to Rs.4,36,000/-.

All the three respondents were held jointly and severally liable to pay the aforesaid amount of compensation.

8. No appeal having been filed by the respondents, against the impugned Award, this Court is only, therefore, required to see whether any enhancement of compensation is called for or not. Before this Court, though earlier counsel had been appearing for the appellant, however, on the date when the appeal was actually taken up for hearing, none appeared for him and consequently, this Court has considered the grounds of appeal filed, to determine the compensation payable to the appellant, on the basis of settled principles of law.

9. In the grounds of appeal, it has been stated that even if no salaried income of the deceased was proved, his income should have been

assessed as per the minimum wages applicable on the said date, which according to the appellant were Rs.5000/- per month, even for an unskilled worker.

It has further been stated that the multiplier of 13 has been wrongly applied, the deceased being 23 years of age and actually a multiplier of 16 should have been applied.

Consequently, enhancement of compensation has been prayed for.

10. For the respondent-insurance company, Mr. Nitin Mittal submitted that the deceaseds' income was correctly assessed, no salary having been proved and consequently, the compensation awarded was also correctly assessed, even factoring in Rs.20,000/- by way of loss of estate and funeral expenses. Hence, he and learned counsel appearing for respondents No.1 and 2, prayed that the appeal be dismissed.

11. Having considered the grounds of appeal, the aforesaid arguments and the Award of the Tribunal, as regards the income of the deceased, assessed at Rs.4000/- by the Tribunal, it needs to be noticed that obviously with no other proof of income or even the level of education of the deceased, the Tribunal would have no other choice but to assess his income as that of an unskilled worker.

On the date of accident, i.e. on 01.11.2010, the notified wages by the Punjab Government were Rs.4348/-, as tallied with the chart of minimum wages maintained by this Court.

Though it has not been so pleaded by the counsel for the respondents, however, it has been settled by the hon'ble Supreme Court in

Smt. Manjuri Bera v. The Oriental Insurance Company Ltd. And Anr.,

(2007) 10 SCC 643, that unless a father of the deceased is shown to have been actually dependent upon the deceased, he is not entitled to any compensation by way of loss of dependent income. In the present case, only the father of the deceased was the claimant before the learned Tribunal and is also the sole appellant presently. The deceased being a bachelor, obviously the only other person who could have been shown to have been dependent upon him was his mother, who was not impleaded as a claimant. With the father not having been shown to be dependent on his son, obviously, if the deceased had any siblings, they too could not have been taken to be dependent upon the deceased but only upon their father. In any case, that question is also rendered only academic, in view of the fact that no siblings were also claimants before the Tribunal or before this Court.

Hence, no matter what the parameters of assessment of income of the deceased, the sole claimant, ie. the father, not having been shown to be dependent upon him, in any case, no enhancement of compensation under that head can be given to him.

However, since the respondents are also not in appeal against the findings of the Tribunal, this Court would not, despite having observed as above, deprive the appellant of the compensation already awarded even under the head of loss of income, as it strikes against the conscience of the Court to deprive the father of a deceased young son, of a compensation of even Rs.5,00,000/- for such loss.

12. Further, in the opinion of this Court, the father would be entitled to compensation for the loss of love and affection of his son, as also to Rs.25,000/- towards funeral expenses and last rites of the deceased. Since the deceased is shown to have been taken first to one hospital and then another,

obviously some amount was spent on transportation, if not on medical expenses (since both the hospitals were Government hospitals and unfortunately the deceased died on the same date that he met with an accident). Rs.5,000/- is thus awarded under that head.

13. Thus, Rs.50,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and last rites and Rs.5000/- towards transportation etc., is awarded to the appellant, by this judgment.

Even though Rs.50,000/- is wholly inadequate compensation to a father for loss of his son, that is the amount which has been conventionally awarded by this Court, to each parent of a deceased adult son/daughter, who died in a motor vehicle accident. Also, since otherwise no compensation for loss of income is awardable to the appellant, as discussed herein above, no more enhancement, than what is now being awarded, is payable.

14. Hence, what is now awarded by this Court, is as follows:-

i) Towards loss of dependent income	Rs.4,16,000/-
	(as awarded by the Tribunal)
ii) Towards loss of love and affection	Rs.50,000/-
iii) Towards funeral expenses and last rites	Rs.25,000/-
iv) Transportation charges and miscellaneous expenses	Rs.5000/-
Total	Rs.4,96,000/-

The Tribunal, had already awarded Rs.20,000/- towards the last rites and loss of estate, to the appellant and thus a sum of Rs.5000/- stands increased by this judgment, under that head. Consequently, the enhanced compensation now awarded by this Court, over and above the Rs.4,36,000/- awarded by the Tribunal, is Rs.60,000/-. The said enhanced sum would carry interest @ 8% per annum, as already awarded by the Tribunal, running from

the date of the filing of the claim petition, till the date of realization thereof.

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

July 18, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE