

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

FAO No.1546 of 2013(O&M)

Date of Decision: May 10, 2016

Rajnandan Pawan and another

...Appellants

Versus

Ram Chander and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:

Mr.Vikram Bali, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for
respondent No.3 – Insurance Company.

HARINDER SINGH SIDHU, J.

The present appeal has been filed by Rajnandan Pawan and Girza Devi, parents of Vipin Kumar (deceased) for modification of the Award dated 29.11.2011 passed by the Learned Motor Accident Claims Tribunal, Panchkula (for brevity 'the Tribunal'), whereby, a compensation of Rs.3,44,000/- along with interest from the date of filing of the petition till realisation of the award amount was granted in favour of the claimants.

On 16.3.2006, Vipin Kumar-deceased along with driver-respondent No.1 was travelling by Swaraj Majda bearing registration No.HP-31-3567. They were going from Kullu to a site of Jai Bala Ji Construction Company on Sainj Road, Kullu. At about 1.30 P.M., when they reached on Sainj Road, the driver while shifting the gear of the vehicle, could not control it and the vehicle fell in the khud (ditches).

Parents of the deceased filed claim petition pleading that the deceased was 19 years old and was working as skilled drill operator, earning Rs.5000/- per month.

Upon notice, Ram Chander - respondents No.1, driver of the offending vehicle appeared through his counsel but later on did not turn up, as such, he was proceeded against ex parte. Shashi Bala - respondent No.2, owner of the offending vehicle filed written statement taking the preliminary objections that the petition is not maintainable as no accident took place due to rash and negligent driving of respondent No.1. The respondent No.3 - Oriental Insurance Company also resisted the claim of claimants and, inter-alia, pleaded that no accident took place with the vehicle in question. The insurer also denied that the vehicle was insured with the said company and that the driver-respondent No.1 was not holding a valid and effective driving licence. It was also pleaded that the deceased was neither driver nor cleaner of the vehicle in question, as such, the Insurance Company is not liable to pay the compensation.

Ld. Tribunal assessed the income of the deceased at Rs.3600/- per month and he being a bachelor deducted 50% towards his personal and living expenses. It applied the multiplier of 15, considering the age of the claimants-dependents - mother (40 years) and father (42 years). The Tribunal awarded compensation as under:-

Head of Compensation	Amount (in Rs.)
Loss of dependency	3,24,000/- (1800x12x15)
For last rites	10,000/-
Loss of Estate	10,000/-
Total	3,44,000/-

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the parties.

Ld. Counsel for the claimants has stated that as per the settled law in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr, 2009(6) SCC 121**, **Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403**, **Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65**, **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (7) SCC 476** and **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347** the increase towards future prospects should have been 50% and multiplier was to be applied as per the age of the deceased and not the dependants. He also submits that the claimants are also entitled to compensation for loss of love and affection, besides increase in the amount of funeral expenses.

In **Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403**, the Hon'ble Supreme Court has held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% to the actual income of the deceased. In the instant case, the deceased Vipin Kumar was 19 years old and, thus, his income was required to be enhanced by 50% towards future prospects.

Now, coming to the second argument, the matter regarding application of multiplier was examined by three Judge Bench of the Hon'ble Supreme Court in the case of **Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65**, in which **Smt.Sarla Verma and others v. Delhi Transport Corportaion and another, 2009(3) RCR (Civil) 77**, was considered and it was held that multiplier as given in Smt.Sarla Verma's case (supra) has to be applied. In the said case, Supreme Court applied the multiplier as per age of the deceased. Once again, in a recent judgement in **Munna Lal Jain**

and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347, the Hon'ble Supreme Court has upheld the same view that multiplier is to be applied with reference to the age of the deceased and not age of dependents of deceased. As the deceased was 19 years old, multiplier of 18 was required to be applied. Besides, the claimants are also entitled to Rs. 25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of love and affection.

In view of above, the claimants are entitled to compensation as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Loss of Income (after 50% increase)	3600+[3600x50/100] = 5400 p.m.
	50% of (i) deducted as personal and living expenses of deceased	5400-[5400x50/100] 2700
	After applying multiplier of 18	2700x12x18= 5,83,200/-
(ii)	Loss of Love and Affection (exclusively for the claimant mother)	1,00,000/-
(iii)	Funeral Expenses	25,000/-
(iv)	Loss of Estate	10,000/-
	Total Compensation awarded	7,18,200/-

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of Rs.7,18,200/-, that is, Rs.3,74,200/- (718200-344000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

May 10, 2016

(HARINDER SINGH SIDHU)
JUDGE