

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

FAO No.2428 of 2013(O&M)

Date of Decision: April 12, 2016

Smt. Maya Kaur and another

...Appellants

Versus

Joginder Singh and others

...Respondents

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

Present: Mr. Sumit Sangwan, Advocate for the appellants.

Mr.Sanjiv Kodan, Advocate for Mr.R.S.Madan, Advocate for
respondent No.3 - Insurance Company.

HARINDER SINGH SIDHU, J.

The present appeal has been filed by Maya Kaur and Deepanshu, minor (mother and adopted son of Shri Krishan Kumar) for modification of the Award dated 22.1.2013 passed by the Learned Motor Accident Claims Tribunal, Bhiwani (for brevity 'the Tribunal'), whereby, a compensation of Rs.2,00,000/- along with interest from the date of filing of the petition till realisation of the awarded amount was granted in favour of claimant Maya Kaur. The claim petition was dismissed qua Deepanshu holding that he was not established as legal representative or dependent of the deceased.

On 04.08.2011, Krishan Kumar aged about 40 years, driver of vehicle No.HR-55J-6939 (container), along with co-driver Mahabir, resident of village Dhanana, was going from Ambala to Mumbai. On 5.8.2011 at about 3.30 a.m, when they reached near a petrol pump of village Jant on Mahendergarh road, a truck bearing registration no. HR-14/E-3245 being

driven by respondent No.1 – Joginder Singh in a rash and negligent manner and at a very high speed came from opposite side and struck against the driver side of container, as a result of which, Krishan Kumar and Mahabir sustained injuries. They were taken to General Hospital, Mahendergarh, but Krishan Kumar succumbed to his injuries on the way.

Mother and the alleged adopted son of the deceased filed claim petition pleading that the deceased was 40 years old, working as driver in a transport company based at Gurgaon and Ahmedabad, on a monthly salary of Rs.10,000/-.

Upon notice, respondents No.1 and 2 filed joint written statement, while respondent No.3 filed a separate one taking the pleas regarding maintainability, non-joinder and mis-joinder of necessary parties and respondent no.1 was not having valid and effective driving licence, etc., which led to framing of issues by the Tribunal and consequently evidence was led by the parties. After considering the evidence led before it, the Tribunal came to the conclusion that the accident had taken place on account of rash and negligent driving of the offending truck by respondent No.1. On the question of compensation, the Tribunal assessed the income of the deceased at Rs.6000/- per month and it held that in the absence of any documentary evidence, it cannot be said that claimant No.2 Deepanshu was adopted son of deceased Krishan Kumar and, thus, was not entitled for any compensation. Hence, considering that there was only one dependent i.e. Maya Kaur, mother of the deceased, 50% deduction was made in the income of the deceased towards his personal and living expenses. Considering the age of the dependent-claimant i.e. 70 years, the Tribunal

applied the multiplier of 5 and assessed the loss of dependency at Rs.1,80,000/- (3000x12x5). Besides, a sum of Rs.20,000/- was awarded towards funeral expenses, etc.

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**, 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 dependant mother. He also submits that the claimant is also entitled to compensation for loss of love and affection, besides increase in the amount of funeral expenses.

In **Rajesh's case** (supra), 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 Krishan Kumar was 40 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 **Sarla Verma's case** (supra) 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's case** (supra), 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 40 years old, multiplier of 15 was required to be applied. In addition, the claimants are also entitled to Rs.25,000/- and Rs.1,00,000/- towards 'funeral expenses' and 'loss of love and affection', respectively.

Accordingly, the claimants are entitled to compensation as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Loss of Income (after 50% increase)	$6000 + [6000 \times 50 / 100] = 9000$ p.m.
	50% of (i) deducted as personal and living expenses of deceased	$9000 - [9000 \times 50 / 100] = 4500$ p.m.
	After applying multiplier of 15	$4500 \times 12 \times 15 = 8,10,000/-$
(ii)	Loss of Love and Affection	1,00,000/-
(iii)	Funeral Expenses	25,000/-
	Total Compensation awarded	9,35,000/-

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.9,35,000/-, that is, Rs.7,35,000/- (935000-200000) 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.

April 12, 2016

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(HARINDER SINGH SIDHU)
JUDGE