IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 569 of 2014 (O&M)
Date of Decision : 23.04.2016

Kamlesh Devi and others .....Appellants

Versus

Sanjay Sharma and another .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mukesh Yadav, Advocate
for the appellants.

Mr. Subhash Goel, Advocate
for respondent no. 2-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants-appellants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Narnaul (later referred to as 'the Tribunal') for death of Satpal (deceased), son of claimant-appellant no. 1 and brother of claimants-appellants no. 2 to 4, in a motor vehicle accident with Pick-Up bearing registration no. HR-66-6694 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation sought by appellants, detailed facts of the case are being skipped for the sake of brevity.

3. Case of claimants, in brief, is that on 15.08.2011, deceased, alongwith Devender son of Sumer Singh and Jai Bhagwan was going on motorcycle, when at about 2.30 p.m., near Gas Agency godown towards Ateli, the offending vehicle hit motorcycle, as a result of which occupants of motorcycle fell on the road. While Satpal died at the spot, Jai Bhagwan and

Devender were taken to CHC Ateli with serious injuries from where they were referred to PGIMS, Rohtak.

4. Claimants alleged that accident had taken place due to rash and negligent driving of the offending vehicle by its driver Sanjay Sharma. The deceased was 22 years of age and was working as electrician thereby earning ₹10,000/- per month. The entire family was dependent on income of the deceased as he was only breadwinner in the family.

5. The Tribunal calculated compensation of ₹5,96,000/- awardable to claimants as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased-Satpal	22 years 6 months
(ii)	Income of the deceased	₹4800 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	₹4800-₹1600 = ₹3200 per month
(iv)	Compensation after multiplier of 15 is applied	(₹3200X12X15) = ₹576000
(v)	Loss of consortium	₹10000
(vi)	Funeral and transportation expenses	₹10000
	Total	₹596000

6. Learned counsel for the appellants has assailed the award on two counts. Firstly, that compensation allowed is on lower side because the Tribunal has not taken into account future prospects of 50% of income of the deceased as per observations in the case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54** and ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447**; the multiplier as per norms laid down in the case of ***Sarla***

Verma and ors. ***vs.*** ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, applicable to the present case is 18, keeping in view the age of deceased while the Tribunal applied multiplier of 15. As per observations of the Apex Court in the case of ***Munna Lal Jain (supra)*** multiplier is required to be applied as per age of the deceased and not as per age of claimants. Even otherwise one of the claimants was still minor at the time of filing of claim petition while claimants no. 2 and 3 were major at that time and even if average of their age is taken, the multiplier applicable will come out to be 18 and not 15; the Tribunal has wrongly made deduction of 1/3rd instead of 1/4th from income of the deceased towards his personal expenses as per norms laid down in case of ***Sarla Verma (supra)***; Compensation allowed by the Tribunal towards loss of estate, love and affection to claimants is also on lower side. Secondly, the Tribunal held it to be a case of contributory negligence as the deceased alongwith Jai Bhagwan and Devender were going in triple riding on the motorcycle, despite observation that there was no negligence on the part of driver of the motorcycle in causing the accident. He has argued that triple riding may be an offence but it, in no manner, can be taken as rash and negligent driving of the motorcycle until and unless specifically proved.

7. Learned counsel for respondent no. 2-Insurance Company has argued that the deceased was going with other two occupants of the motorcycle. Triple riding on the motorcycle is not only against provisions of Motor Vehicle Act but amounts to negligence on the part of driver and occupants of the motorcycle.

The Tribunal has rightly taken it as negligence on the part of deceased who was driver of motorcycle, while imposing cut of 25% in compensation for contributory negligence of deceased. Compensation to claimants awarded in this case, keeping in view facts and circumstances of the case is just and reasonable calling for no enhancement.

8. I agree with learned counsel for respondent no. 2-Insurance Company to the extent that the Tribunal has to allow just and reasonable compensation to the victim or dependents of victim in motor vehicle accident case. The quantum of 'just and reasonable' compensation depends upon facts of each case. Apex Court in a catena of judgments has settled the law relating to norms required to be taken care while computing the quantum of compensation.

9. In this case the deceased was 22 years and 6 months of age. In view of the observations of the Apex Court in case of ***Munna Lal Jain (supra)***, the Tribunal was required to apply multiplier in calculating amount of dependency as per age of victim, as such, multiplier applicable to the instant case is 18 instead of 15. Claimants are also entitled to 50% addition in income of the deceased towards future prospects as per observations of the Apex Court in case of ***Rajesh (supra)*** and ***Munna Lal Jain (supra)***. Claimant-appellant no. 1-Kamlesh Devi, mother of the deceased, is also entitled to compensation of ₹1 lac towards loss of estate, love and affection. Due to death of his father, the deceased was only earning member in the family and claimants including Vikram Singh minor brother of the

deceased were dependent on income of the deceased for their livelihood, as such, claimants no. 2 to 4 are also entitled to compensation of ₹1 lac towards loss of estate, love and affection. Compensation amount of ₹10,000/- towards funeral expenses is also on lower side and is enhanced to ₹25,000/-. The Tribunal has rightly applied deduction of 1/3rd from income of the deceased towards his personal expenses. He was unmarried but had to look after his brother, sister and mother. The submission of learned counsel for appellants that dependents were 4 in number, as such, deduction should be 1/4th of income of the deceased as per norms settled by the Apex Court in case of ***Sarla Verma (supra)*** is not tenable as in the case of death of unmarried person, deduction towards his personal expenses is permissible as ½ of his monthly income. I find no reason to differ with the view taken by the Tribunal on this score.

10. The Tribunal imposed a cut of 25% with the observation that there was contributory negligence of the deceased in causing the accident as they were going in triple riding. Triple riding in itself does not raise the presumption that a person driving a motorcycle with two persons on pillion is rash and negligent or in any manner has contributed to the accident. Triple riding is an offence under the provisions of Motor Vehicles Act and renders the person going in triple riding on two wheeler liable to criminal action. While recording finding on issue no. 1, the Tribunal has observed that 'deposition of eye-witnesses of the occurrence attributing rashness and negligence of driver of the offending vehicle for causing accident could not be shattered

inspite of cross-examination'. Driver of the offending vehicle did not dare to appear in the witness-box to rebut the evidence produced by claimants. A specific finding was recorded that driver was rash and negligent while driving the offending vehicle. In view of these facts and circumstances attributing contributory negligence to driver and occupants of the motorcycle, who were going in triple riding, is not sustainable. There is nothing on record to show that driver of the motorcycle was in any manner rash and negligent and accident had taken due to his contributory negligence. Finding of the Tribunal making deduction of 25% on the ground of contributory negligence of occupants of the motorcycle is not sustainable in the eyes of law and is set aside.

11. In view of my discussion above, the compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Satpal as assessed by the Tribunal	₹4800 per month
(ii)	50% of (i) above to be added as future prospects	₹4800+₹2400 = ₹7200 per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	₹7200-₹2400 = ₹4800 per month
(iv)	Compensation after multiplier of 18 is applied	(₹4800X12X18) = ₹1036800
(v)	Loss of estate, love and affection for claimant no. 1-mother	₹100000
(vi)	Loss of estate love and affection for claimants no. 2 to 4	₹100000
(vii)	Funeral & transport expenses	₹25000
	Total	₹1261800

12. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation

allowed to claimants is enhanced from ₹5,96,000/- to ₹12,61,800/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Respondent No. 2 being insurer of the offending vehicle will deposit the share of claimants no. 1 to 3 in their bank accounts or pay the same through demand drafts. The share of claimant-appellant No. 4, who as per his age given at the time of filing of the claim petition, is still minor, will be deposited in some nationalized bank as fixed deposits till the period he attains majority. It is, however, made clear that the bank may take the documents regarding age of the minor as required at the time of deposit of the amount and the minor shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in his name after the date of his attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. Counsel fee is assessed at ₹ 20,000/-.

April 23, 2016 **(SURINDER GUPTA)**
jk **JUDGE**