

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

FAO-8368-2014

DATE OF DECISION:31.5.2016

RAMESH CHAND @ RAMESH KUMAR AND ANR.

.... Appellants

VS.

ROSHAN LAL AND OTHERS

.... Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikram Singh, Advocate
for Mr. Ashok Kaushik, Advocate
for the appellants.

Mr. Rakesh Kumar Sharma, Advocate
for respondents No.1 and 2.

Mr.Sanjiv Kodan, Advocate
for respondent No.3.

LISA GILL, J. (ORAL)

Prayer in this appeal is for enhancement of compensation awarded to the appellants by the learned Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal'), vide award dated 01.05.2014 on account of death of the appellants' son.

The appellants' son i.e. deceased-Anil Kumar was proceeding to Agra Chowk on his motorcycle while his cousin Ajit was travelling along with him on a separate motorcycle on 19.10.2011. A truck bearing registration No.HR-38H-6711 being driven in a rash and

negligent manner hit Anil Kumar's motorcycle from behind due to which he fell down and was crushed to death by the offending truck. He was shifted to General Hospital, Palwal and his postmortem was conducted. FIR No.456 dated 19.10.2011 was registered against the offending truck's driver under Sections 279, 427, 304-A IPC.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') was preferred by the appellants who are the parents of the deceased-Anil Kumar, claiming compensation to the tune of Rs.20 lacs on account of his death. It was averred that the deceased, aged 25 years was a driver, working with M/s Sita Singh & Sons Private Limited earning Rs.8280/- per month. The claim was contested by the respondents and the following issues were framed by the learned Tribunal on the basis of pleadings of the parties:-

1. Whether Anil Kumar son of Ramesh Kumar alias Ramesh Chand had died on 19.10.2011 at about 7.00 a.m. in the way of Krishan Colony to Agra Chowk, which falls within the jurisdiction of police station, Camp Palwal, on account of accident caused by respondent no.1 Roshan Lal son of Ram Kishan with his rash and negligent driving of offending vehicle bearing registration no.HR-38H-6711? OPP
2. If Issue no.1 stands proved, to what amount the petitioners are entitled for compensation and from whom? OPP

3. Whether the respondent no.1 was not having valid effective driving licence on the date of alleged accident? OPR
4. Whether the respondent no.1 has violated the terms and conditions of insurance policy? OPR
5. Whether the petitioners have got no cause of action and locus-standi to file the present petition? OPR
6. Relief.

Learned Tribunal on consideration of the evidence on record as well as the facts and circumstances of the case, concluded that Anil Kumar has lost his life on 19.10.2011 on account of the accident caused by rash and negligent driving of the offending vehicle by its driver- Roshan Lal. This finding has attained finality as it has not been challenged by any of the respondents. A sum of Rs.2,73,000/- was awarded on account of compensation to the appellants. Income of the deceased was assessed as Rs.3600/- per month as no evidence was led to prove that the deceased was working as a driver earning Rs.8200/- per month. Deduction of 1/3rd was effected on account of personal expenses. Taking the age of the deceased to be 35 years at the time of accident the multiplier of sixteen was applied. A sum of Rs.10,000/- on account of funeral expenses and transportation was also awarded.

Learned counsel for the appellants submits that the income of the deceased is duly proved to be Rs.8200/- on account of pay-slip (Mark B) and his age was 25 and not 35, therefore multiplier of 18 is required to be applied. No amount has been awarded on account of loss

of love and affection to the parents and a very meagre amount has been awarded on account of funeral expenses.

Learned counsel for the respondents while not refuting the fact that the age of the deceased was indeed 25 at the time of his death as reflected in school certificate i.e. Mark A wherein his date of birth is recorded as 14.12.1964, however, contends that income of the deceased has been correctly assessed as Rs.3600/- and a deduction of 50% should have been applied as the deceased was a bachelor. It is submitted that there is no ground for enhancement of the compensation awarded to the appellants.

I have heard learned counsel for the parties and have gone through the record.

There is indeed no evidence on record to prove that the deceased was working as a driver with M/s Sita Singh & Sons Private Limited, Faridabad, earning Rs.8200/- per month. Neither the employer nor any other person has been examined to set forth proof of employment as well as salary allegedly received. Even the driving licence of the deceased is not produced on record. However, it cannot be ignored that the daily wage of an unskilled labourer in the State of Haryana in the year 2011 was approximately Rs.4600/- per month. Therefore, keeping in view the fact that the deceased was an able bodied young man aged 25 years, it would be in the fitness of things to assess the income of the deceased as Rs.4600/- per month. Deduction of 50% on account of personal expenses is required to be applied, the deceased being a bachelor thereby assessing his income to be Rs.2300/-. This is in consonance with the judgment of the Hon'ble Supreme Court in **Sarla Verma & Ors Vs. DTC and others, (2009) 6 SCC 121.** Similarly, a

multiplier of 18 has to be applied keeping in view the age of the deceased being twenty five years, at the time of death. Loss of dependency is calculated as Rs.4,96,800/- (Rs. 2300 x 12 x 18). A sum of Rs.1 lac is awarded on account of loss of love and affection as held by Hon'ble the Supreme Court in **Rajesh and others vs Rajbir Singh and others, 2013(9) SCC 54**. Claimant-appellants are entitled to a sum of Rs.25,000/- on account of funeral expenses instead of the awarded amount of Rs.10,000/- Consequently, the appellants are held entitled to a total compensation of Rs.6,21,800/- as detailed hereunder:-

Sr. No.	Head under which compensation is awarded	Amount
1	Loss of dependency	Rs.4,96,800/-
2	Funeral expenses and transportation	Rs.25,000/-
3	Loss of love and affection	Rs.1,00,000/-
	TOTAL	Rs.6,21,800/-

The appellants shall be entitled to the interest @ 6.5 per cent per annum from the date of filing of the claim petition till realization. The amount already released shall obviously be adjusted.

With the said modification in the award, this appeal is partly allowed.

(LISA GILL)
JUDGE

31.05.2016
SwarnjitS