

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

FAO No.691 of 2015(O&M)
Date of Decision: May 20, 2016

Budh Ram and another ...Appellants

Versus

Davinder Singh and another ...Respondents

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

Present: Ms. Amandeep Kaur, Advocate for
Mr. Ashwani Arora, Advocate for the appellants.

Ms.Vandana Malhotra, Advocate with
Ms.Monika Jangra, Advocate for respondent No.2.

HARINDER SINGH SIDHU, J.

The present appeal has been filed by Budh Ram and Balwinder Kaur, parents of Dinesh Kumar(deceased) for modification of the Award dated 4.4.2014 passed by the Learned Motor Accident Claims Tribunal, Rupnagar (for brevity 'the Tribunal'), whereby, compensation of Rs.5,94,000/- along with interest from the date of filing of the petition till realisation of the awarded amount was awarded to the claimants.

On 22.12.2011 Surinder Singh, Dinesh Kumar (since deceased) and Jaswant Singh were coming back from the fields on tractor No.PB-12J-8164. Jaswant Singh was driving the said tractor with proper care and caution. When they reached on main road near small bridge of village Bara Pind, then a tipper bearing No.PB-12-(T) K-7371 (now PB-12-Q-0448), being driven rashly and negligently by Davinder Singh, came from back side

and hit the tractor. As a result, Dinesh Kumar fell down and was crushed under the tyres of said tipper resulting in multiple injuries to him. He succumbed to the injuries on 1.3.2012. Surinder Singh also received multiple injuries in this accident. FIR No.129 dated 26.12.2011 was registered at P.S.Kiratpur Sahib regarding this accident.

Parents of Dinesh Kumar-deceased filed claim petition seeking compensation for the death of their son in a vehicular accident.

Upon notice, respondents No.1 filed written statement taking preliminary objections that claim petition is not maintainable. He denied the accident in question and pleaded that the offending vehicle has been falsely involved in this case only to claim compensation. Respondent No.2 (insurer) filed separate written statement taking preliminary objection that the owner of the tipper did not inform respondent No.2 regarding the accident immediately after the accident. The driver of the offending vehicle was not holding valid and effective driving licence, route permit and fitness certificate at the time of accident.

On appreciation of the evidence led by the parties, Ld. Tribunal held that the accident was caused due to rash and negligent driving of the Tipper. It assessed the income of the deceased at Rs.5000/- per month treating him as unskilled labourer, deducted 50% towards his personal and living expenses, and after applying the multiplier of 17 considering the age of the claimants - dependent parents, assessed the loss of dependency at Rs.5,10,000/- (2500x12x17). Besides, the Tribunal also awarded Rs.30,000/- for loss of love and affection and Rs.54,000/- for the medical expenses.

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** 50% increase on account of future prospects should have been made 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 for funeral expenses and the amount awarded under the head of 'loss of love and affection' is also required to be enhanced.

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 Dinesh Kumar was 22 years old and, thus, his income was required to be enhanced by 50% towards future prospects.

The question regarding application of multiplier was examined by three Judge Bench of the Hon'ble Supreme Court in the case of **Reshma Kumari** (supra), wherein, **Sarla Verma** (supra), was considered and it was held that multiplier as given in Sarla Verma's case 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 22 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)	$5000+[5000\times 50/100] = 7500/-$ p.m.
	50% of (i) deducted as personal and living expenses of deceased	$7500-[7500\times 50/100]= 3750/-$
	After applying multiplier of 18	$3750\times 12\times 18= 8,10,000/-$
(ii)	Loss of Love and Affection	1,00,000/-
(iii)	Funeral Expenses	25,000/-
(v)	Medical bills	54,000/-
	Total	9,89,000/-

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.9,89,000/-, that is, Rs.3,95,000/- (989000-594000) 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 20, 2016
gian

(HARINDER SINGH SIDHU)
JUDGE