

102.

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

FAO-5096-2011

Date of decision:24.03.2017

MANOJ KUMAR

... Appellant

versus

ANIL KUMAR AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Naveen Madhan, Advocate,
for Mr. Pankaj Bali, Advocate,
for the appellant.

Mr. Sandeep Singh, Advocate,
and Mr. Manoj Kumar, Advocate,
for respondents No.1 and 2.

Mr. M.B. Jain, Advocate,
for respondent No.3.

HARI PAL VERMA, J. (Oral)

The appellant-claimant has filed the present appeal, seeking enhancement of compensation, thereby modification in the award dated 01.03.2011 passed by Motor Accident Claims Tribunal, Karnal (for short, the Tribunal).

Briefly stated, the appellant-claimant has filed a claim petition under Sections 166 and 140 of the Motor Vehicles Act, for compensation on account of death of his father, namely, Roshan Lal in a motor vehicular accident which took place on 30.09.2008. As per the claim petition, the deceased-Roshan Lal along with Jitender Kumar

(PW2-an eye witness and author of FIR) were going towards Village Jundla from Village Katlaheri on their respective motorcycles for their personal work. Roshan Lal (deceased) was driving his motorcycle bearing Registration No.HR-05-S-1401, on a normal speed, observing the traffic rules on his left hand side of the road, while his grandson, namely, Krishan was a pillion rider. When they have reached near Rathore Petrol Pump at Jundla, a vehicle i.e. TATA ACE bearing registration No.HR-69-5949, being driven by Anil Kumar-respondent No.1, in a rash and negligent manner, without observing traffic rules, came from Karnal side and hit the motorcycle being driven by the deceased-Roshan Lal. As a result thereof, Roshan Lal fell down on the road and died, while his grandson received simple injuries. The claimant has claimed compensation while impleading his other brother Narinder Kumar as respondent No.4.

The Tribunal, vide award dated 01.03.2011, awarded compensation of ₹50,000/- each, to the appellant-claimant as well as his brother-Narinder Kumar-respondent No.4, on account of death of their father-Roshan Lal. Since the driver was not holding a valid driving licence, the recovery rights were given to the Insurance Company as per the law laid down by the Hon'ble Apex Court in **New India Assurance Company Limited Versus Roshanben Rahemansha Fakir and another-2008 ACJ 2161**. Neither the driver nor the owner challenged the said award and it is only the claimant, who has filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellant-claimant states that the awarded compensation is on lower side as the deceased-Roshan Lal was aged about 52 years and was doing agriculture work. Therefore award need modification by enhancing compensation.

On the other hand, learned counsel for the respondents No.1 and 2 i.e. driver and owner respectively, has argued that the driver was holding a valid driving licence of LMV and, therefore, was entitled to drive LTV as the weight of the vehicle was less than 7500 kg. Since the claimant and respondent No.4 were not proved to be the dependents on the income of their father (deceased-Roshan Lal) as they owned agricultural land, the Tribunal has awarded the just compensation of ₹50,000/- each. Whereas learned counsel for respondent No.3- Insurance Company states that since the respondents No.1 and 2 (driver and owner) have not come forward to file an appeal, therefore, they are not entitled to take the defence that the driver of the offending vehicle was holding a valid driving licence.

I have heard learned counsel for the parties.

Considering the fact that the appellant-claimant and respondent No.4-Narinder Kumar are the sons of the deceased-Roshan Lal and the Tribunal has awarded compensation of ₹50,000/- each, under 'no fault liability' under Section 140 of the Motor Vehicles Act, this Court finds that the appellant-claimant and respondent No.4-Narinder Kumar deserve to be awarded some compensation under the head of love and affection, loss of estate and funeral expenses.

Accordingly, the award dated 01.03.2011 is modified and in addition to the compensation already granted by the Tribunal, the appellant-claimant-Manoj Kumar and respondent No.4-Narinder Kumar are held entitled to ₹20,000/- each on account of love and affection, and a consolidated sum of ₹10,000/- for funeral expenses.

With the abovesaid modifications in the award, the present appeal stands disposed of.

(HARI PAL VERMA)
JUDGE

24.03.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No