

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

FAO No. 5118 of 2012 (O&M)

DATE OF DECISION : 02.11.2017

Smt. Toshi and others

.... APPELLANTS

Versus

Surinder Kumar Gulati and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ishaan Cooner, Advocate, for
Mr. J.S. Cooner, Advocate,
for the appellants.

Mr. Amit Jaiswal, Advocate,
for respondent No.2.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.3 – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeal is for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal') vide award dated 22.02.2012.

The facts necessary for adjudication of the present appeal are that on 10.03.2009, Ram Phal was a pillion rider on motor cycle bearing registration No. HR-08D-7272, which was hit by a rashly and negligently driven Maruti car bearing registration No. PB-10-AH-6035. As a result of the accident, Ram Phal lost his life. FIR was registered on 10.03.2009.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the widow and four minor children of deceased Ram Phal.

The Tribunal, after considering the evidence and material placed before it, awarded a sum of ₹ 4,71,000/- along with interest at the rate of 6% per annum.

I have heard learned counsel for the parties and perused the paper book.

The facts have not been disputed by the parties.

Learned counsel for the appellants argued that the deceased was 40 years of age at the time of the accident and a multiplier of 14 has been wrongly applied by the Tribunal. He further submits that the appellants have been awarded a total sum ₹ 30,000/- under the conventional heads, i.e. ₹ 10,000/- each for loss of consortium, loss of estate and for funeral expenses, which is on the lower side. Learned counsel contended that involvement of the vehicle has not been disputed. It has also not been disputed that the vehicle was insured. In such circumstances, the Insurance Company should have paid the compensation amount to the appellants, and it may recover the same from the owner and driver of the offending vehicle.

Learned counsel for respondent No.3 – Insurance Company resisted any enhancement and further argued that since the owner and driver of the offending vehicle have not filed an appeal, therefore, they have been rightly held liable to pay the amount of compensation.

Learned counsel for respondent No.2 – owner of the offending vehicle submits that respondent No.2 had undertaken a driving test of the driver before employing him and hence, he is not liable to pay.

So far as the contention raised by learned counsel for the appellants regarding applying of multiplier is concerned, the same is no longer res integra and is covered by the decision of the Hon'ble Apex Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121,

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M- 11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

It has been held in the above referred decision that in a case where the deceased is aged 40 years, multiplier of 15 is to be applied. Keeping in view the facts of this case and the abovesaid decision, loss of dependency is re-calculated by accepting the annual dependency of the appellants as assessed by the Tribunal and by applying the multiplier of 15 :

$$2625 \times 12 \times 15 = ₹ 4,72,500/-$$

The issue with regard to awarding of amount under the conventional heads has been authoritatively decided by the Hon'ble Apex Court in its latest decision in the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, [Special Leave Petition (Civil) No. 25590 of 2014] decided on October 31, 2017, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are

likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

Keeping in view the aforesaid decision, the amount of ₹ 30,000/- awarded under the conventional heads is enhanced to ₹ 70,000/-.

So far as the contention regarding liability to pay the compensation amount is concerned, it is pertinent to mention that the owner or the driver has not filed appeal against the award. In absence of any challenge to the award on their part, the contention raised by learned counsel for respondent No.2 may not be adjudicated at this stage.

The issue raised by the appellants with regard to payment of compensation by the Insurance Company with right to recover the same from owner and the driver deserves acceptance. This issue has been dealt with by the Hon'ble Apex Court in National Insurance Company Ltd. &

others Vs. Swaran Singh and others, 2004 (3) SCC, 297, has held as under:-

“Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149 (2) (a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147 (3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury. Such a breach on the part of the insurer must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach. Under the Motor Vehicles Act, holding of a valid

driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.”

In the facts of the present case, there is no dispute with regard to involvement of the offending vehicle. It is also not disputed that the offending vehicle was duly insured with the Insurance Company. In such circumstances, in view of the aforesaid decision of the Hon'ble Apex Court, it would not be fair to allow the claimants to run from pillar to post to get compensation for loss of bread earner of their family. The claimants shall be entitled to get the amount of compensation from the Insurance Company. Insurance Company will have to recover the same from the owner and driver of the offending vehicle.

For the reasons recorded above, the compensation awarded to the appellants under various heads is enhanced as per the table given below :-

Head	Awarded by the Tribunal	Awarded now by this court
Loss of dependency	₹ 4,41,000/-	₹ 4,72,500/-
Conventional heads	₹ 30,000/-	₹ 70,000/-
Total	₹ 4,71,000/-	₹ 5,42,500/-

In view of the above, the award dated 22.02.2012 is modified to the extent that the compensation of ₹ 4,71,000/- awarded by the Tribunal is enhanced to ₹ 5,42,500/-.

The appellants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

November 02, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes