

102.

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

FAO-5155-2013 (O&M)

Date of decision:07.04.2017

KAMLESH

... Appellant

versus

RANJIT SINGH AND ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.S. Mamli, Advocate, for the appellant.

Ms. Sheena Sura, Advocate,
for respondent No.3-Insurance Company.

Mr. Munish Mittal, Advocate, for respondent No.4.

HARI PAL VERMA, J. (Oral)

The appellant-claimant, namely, Kamlesh has filed the present appeal, seeking modification in the award dated 20.09.2013 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal'), on account of death of Gulzar @ Anuj son of Karan Pal and Kamlesh. Before the Tribunal, two separate claim petitions were filed, one by the mother (Kamlesh) i.e. MACT Case No.95-A of 2011, titled as 'Kamlesh Versus Ranjit Singh and others', under Section 166 of Motor Vehicles Act; and another by the father (Karan Pal) i.e. MACT Case No.43 of 2011/2012, titled as 'Karan Pal Versus Ranjit Singh and others', under Section 163-A of Motor Vehicles Act. The Tribunal, vide award dated 20.09.2013, allowed both the claim petitions and awarded compensation of ₹2,25,000/- in equal share.

Briefly stated, on 03.08.2011, Gulzar @ Anuj had gone to Government School, Ledi for study. At about 2.30 PM, when he was returning to Village Dhakwala on his bicycle on his correct side and had reached near School of Lady Doctor Sunita, in the meantime, a vehicle i.e. Tractor Trolley (Marka Sonalika) No.HR71-A-6947, being driven by Ranjit Singh (respondent No.1 herein) in a rash and negligent manner, came from the opposite side i.e. Dadupur Jattan side. It hit the cycle of Gulzar @ Anuj while coming on the wrong side. Due to this impact, Gulzar @ Anuj fell down along with his cycle and had sustained multiple grievous injuries. The whole incident was witnessed by Chuhru Ram (brother-in-law of the appellant-Kamlesh) along with his brother-in-law Shish Pal, who were following Gulzar @ Anuj on their motorcycle. They took the injured-Gulzar @ Anuj to the Hospital, but on the way, he succumbed to the injuries. In this regard, an FIR No.84 dated 03.08.2011, under Sections 279, 304-A IPC was registered at Police Station Chhachhrauli. As per the claim petition, the deceased was 11 years of age and a student of 5th standard in Government School, Ledi. Since the mother as well as the father have filed independent claim petitions, the Tribunal has passed one consolidated award and awarded a total compensation of ₹2,25,000/-, on account of death of their son-Gulzar @ Anuj. Para 25 of the award reads as under:-

“25. Admittedly, deceased was aged 11 years. As set out in the 2nd Schedule to the Motor Vehicle Act, for a boy of 11 years of age, a multiplier of 15 would have to be applied. As per the 2nd Schedule, deceased

being a non-earning person, a sum of Rs.15,000/- per annum have to be taken into consideration as the income. Thus, the compensation comes to Rs.2,25,000/-. The case law titled as **Kamlesh Singh Yadav and another versus Sukaram Pal Singh and others, 1 (2012) ACC 671 and Sunil Kumar versus Gopal Shah and another, III (2012) ACC 180** relied upon. So, accordingly, claimant Kamlesh and claimant Karan Pal are entitled to get compensation in the tune of Rs.2,25,000/-. So, accordingly, issue no.2 is decided in favour of the claimant and against the respondents.”

The awarded amount was ordered to be equally distributed between the claimants i.e. mother-the present appellant, namely, Kamlesh and the father i.e. Karan Pal. The father, who has also been awarded compensation, has not opted to file appeal.

Learned counsel for the appellant-claimant has argued that the deceased-Gulzar @ Anuj was aged about 11 years at the time of his death and was a student of 5th class. He was exclusively being taken care by the appellant-Kamlesh, whereas the father i.e. Karan Pal is living separately with his other brother though in the same village. He is not extending any supervisory, financial or other help to the family in any manner. It is the appellant who made her sincere effort to give education to her other son, namely, Sukhwinder, who is pursuing a diploma course. He relied upon the judgment of the Hon'ble Supreme Court rendered in **Kishan Gopal and another Versus Lala and others- 2013 (4) RCR (Civil) 276** to contend that where a child of about 10 years had died, the Hon'ble Supreme Court had awarded compensation of ₹5 lakhs. The said judgment has also considered the judgment

another-2009(6) SCC 121. He has argued that even otherwise the Tribunal has not awarded any amount under the head of love and affection and funeral expenses. The co-claimant i.e. Karan Pal, who is though a husband of the present appellant and owned 1 ½ acres of land, but he is not extending any financial help or income earned from the agricultural land to the bereaved family. In this manner, Karan Pal is not entitled even for the compensation as awarded by the Tribunal.

On the other hand, learned counsel for the respondent No.3- Insurance Company has argued that the appellant-claimant has adequately been compensated by the Tribunal and considering the age of the deceased- Gulzar @ Anuj, adequate compensation of ₹2,25,000/- has been awarded. As regard the fact that Karan Pal is extending any help to the bereaved family, it is *inter se* dispute between them.

Learned counsel for respondent No.4 has not disputed the fact that the claimants, namely, Kamlesh and Karan Pal, are not residing together, and as the respondent No.4-Karan Pal is a patient of epilepsy, he is not capable to extend any help to the present appellant-claimant. But he being father is entitled for equal amount of compensation, as being awarded to appellant.

I have heard learned counsel for the parties.

This Court finds that the award passed by the Tribunal certainly requires modifications. The deceased-Gulzar @ Anuj was aged about 11 years and was a student of 5th standard at the time of his death, whereas in the judgment cited by learned counsel for the

appellant i.e. **Kishan Gopal's case** (supra), the deceased was 10 years of age, who died in the accident, and the Hon'ble Supreme Court awarded a compensation of ₹5 lakhs.

Accordingly, the award passed by the Tribunal is modified to the extent that the appellant-claimant shall be entitled for a consolidated sum of ₹5 lakhs instead of ₹2,25,000/-. However, the appellant-claimant shall also be entitled for the interest @ 6% per annum from the date of passing of the award i.e. 20.09.2013 by the Tribunal. Since respondent No.4-Karan Pal is not staying with the present appellant-claimant and is not extending any help to the bereaved family, whereas the appellant-Kamlesh is still taking care of her another son, who is pursuing his diploma course. Thus, the benefit of this enhancement shall not be extended to him (Karan Pal-father of the deceased) and his claim is restricted only to the award already passed by the Tribunal. He shall not be granted anything over and above the awarded amount passed by the Tribunal.

With the aforesaid modification, present appeal is disposed of.

(HARI PAL VERMA)
JUDGE

07.04.2017
sanjeev

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