

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

FAO No.6179 of 2014 (O&M)

Date of decision: 04.08.2017

Lehna Ram and others

.....Appellants

Versus

Sukhjinder @ Sukh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Munish Kumar Garg, Advocate,
for the appellants.

Mr. Mohan Singla, Advocate,
for respondent Nos. 1 and 2.

Mr. Ram Avtar, Advocate,
for respondent No.3-Insurance Company.

Ritu Bahri, J.

This appeal has been filed against the award dated 14.01.2014 passed by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal'), whereby claim petition filed by the claimant-appellants under Section 163-A of the Motor Vehicle Act, 1988 seeking compensation on account of death of Bura Ram in a motor vehicular accident, has been dismissed. Appellant Nos.1 and 2 are parents, appellant No.3 is widow and appellant Nos.4 to 6 are daughters of deceased Bura Ram.

Brief facts of the case are that on 17.04.2011, at about 5.00 A.M., when Bura Ram (since deceased) was coming back from village Dharsul Kalan on a motorcycle bearing registration No.HR-59-1038 and reached near the fields of Nirmal Singh at village Dharsul Kaalan, he met with an

accident with a tractor bearing registration No. PB-50-5895, as a result of

which, he received multiple injuries and died. The said tractor was being driven by Sukhjinder @ Sukh-respondent No.1 in a rash and negligent manner. With regard to the accident, FIR No.73 dated 17.04.2011, under Sections 279/304-A IPC was registered at Police Station, Sadar Tohana. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

The claim petition was contested by the respondents by filing separate written statements.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the accident in question involving vehicle bearing registration No. PB-50-5895 owned by Kuljeet Singh respondent took place due to rash and negligent driving by Sukhjinder @ Sukh respondent in which, Bura Ram son of Lehna Ram received serious and multiple injuries resulting in the death, if so, its effect? OPP
2. If issue No.1 is proved in affirmative, whether the claimants are entitled to compensation, how much and from whom? OPP
3. Whether the vehicle bearing registration No. PB-50-5895 was being driven by respondent No.1 in violation of the terms and conditions of policy of insurance? OPR3
4. Relief.

After going through the evidence led by the parties, the Tribunal dismissed the claim petition filed by the claimants on the ground that initially, a claim petition had been filed by the claimants stating that the income of deceased (Bura Ram) was Rs.20,000/- per month. However, the

said petition was withdrawn vide order Ex.P8 (Annexure A-1 herein) on account of some technical defect and permission was granted to the claimants to file a fresh petition on the same cause of action. After withdrawal of the earlier claim petition, the claimants filed the present petition on 03.07.2013. In this petition, they have stated that the deceased was a labourer and he used to earn Rs.3200/- per month. While dismissing the claim petition, Tribunal has taken into consideration two judgments passed in **Gurmeet Singh Vs. Chandigarh Transport Undertaking and others**, 1 (2009) ACC 534 and **Santosh Kumari and others Vs. New India Assurance Company Limited and another**, III (2009) ACC 15.

In **Gurmeet Singh's** case (supra), the claim petition under Section 163-A of the Act was filed by claiming the monthly income of deceased as Rs.9600/- plus Rs.1500/- as overtime income. During the pendency of claim petition, an application was filed under Order 6 Rule 17 CPC to reduce the pleaded income from Rs.9600/- plus Rs.1500/- to Rs.3200/- per month notionally and also to reduce the original claim of compensation from Rs.10,00,000/- to Rs.8,00,000/-. Vide order dated 26.07.2006, trial Court dismissed the said application. Revision against the said order was dismissed by this Court. While dismissing the revision, reference was made to a judgment passed in **Himachal Road Transport Corporation Vs. Baldev Kumar Nayyar**, 2007 ACJ 678 (P&H). It was held that it was not open for a person to notionally scale down his income so as to invoke the provisions of Section 163A of the Act. Provisions of Section 163A of the Act are meant for a specified class of citizens. It was further held that scaling down of the income of deceased would defeat the very object of Section 163A of the Act.

However, in the aforesaid judgment, application for scaling down the income was made during the pendency of claim petition. In the present case, Bura Ram (deceased) was 32 years of age at the time of accident and was a labourer. On the fateful day i.e. 17.04.2011, he was driving his motorcycle and met with an accident with a tractor bearing registration No. PB-50-5895. The claimants are parents, wife and minor daughters of the deceased.

After going through the facts of the case, there could not be any direct evidence of the income of deceased as he was a labourer. Even though the Tribunal has dismissed the claim petition, but it has proceeded to assess the compensation, by observing that if, later on at any stage, it would be held that the second claim petition on the same cause of action was maintainable, then what amount would be payable. In the absence of any proof of earning, income of the deceased was taken to be Rs.3200/- per month being a labourer, out of which 1/4th was deducted on account of his personal expenses. The dependency of claimant, thus, came to Rs.28,800/- per annum. As per postmortem report, age of the deceased was 32 years. After applying multiplier of 16, total compensation of Rs.4,60,800/- was awarded. Apart from this Rs.10,000/- were awarded as funeral expenses and another sum of Rs.10,000/- was awarded on account of loss of consortium. Thus, in all, a sum of Rs.4,80,800/- was allowed as compensation to be paid to the claimants.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. It is also admitted fact that earlier, the claimants had filed a claim petition by stating that the income of deceased (Bura Ram) was Rs.20,000/- per month. Later on, the said petition was withdrawn vide order Ex.P8 (Annexure A-1) on account of some technical defect and permission was granted to the claimants to file a fresh petition on the same cause of action. Once, permission had been granted to the claimants to file a fresh petition on the same cause of action, they were well within their right to file the present claim petition. On this ground itself, the impugned Award passed by the Tribunal is set aside.

Accordingly, in the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed in **Rajesh and others vs. Rajbir Singh and others**, 2013 (9) SCC 54, **Asha Verman and others vs. Maharaj Singh and others**, 2015(2) RCR (Civil) 520, **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **Munna Lal Jain and another vs. Vipin Kumar Sharma and others**, 2015(3) Recent Apex Judgments 459, as under:-

SR. No.	HEADS	CALCULATION
(i)	Income	Rs.3200/- per month
(ii)	50% of (i) above to be added as future prospects	Rs.3200 + Rs.1600 = Rs.4800/-
(iii)	1/3 rd of (ii) deducted as personal expenses of the deceased	Rs.4800 – 1600 = Rs.3200/-
(iv)	Compensation after multiplier of 16 is applied	Rs.3200 x 12 x 16 = Rs.6,14,400/-
(v)	Loss of consortium for the widow (appellant No.3)	Rs.1,00,000/-
(vi)	Loss of love and affection to the children (appellant Nos.4 to 6)	Rs.3,00,000/- (Rs.1,00,000/- each)
(vii)	Loss of love an affection to the parents of deceased	Rs.50,000/-

SR. No.	HEADS	CALCULATION
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL AWARDED	Rs.10,89,400/-

The amount of compensation of **Rs.10,89,400/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others**, 2015 (1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

04.08.2017
ajp

(RITU BAHRI)
JUDGE

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