

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

FAO-7447-2014 (O&M)
Date of decision: 18.08.2017

MAHAVIR @ MAHAVIR SINGH & ANR.

...Appellants

Versus

BHUPENDER AND ORS.

...Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI

Present : Mr. Kunal Dawar, Advocate
for the appellants.

None for respondent Nos.1 and 2.

Mr. Rajbir Singh, Advocate
for respondent No.3-Insurance Company.

RITU BAHRI, J. (Oral)

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal') vide award dated 03.05.2014 on account of death of Bhanu Tanwar @ Bhanu Pratap in a vehicular accident, which took place on 17.08.2012. Appellants are parents of deceased-Bhanu Tanwar @ Bhanu Pratap.

Brief facts of the case are that on 17.08.2012 at 2.40 p.m., deceased, Bhanu Tanwar @ Bhanu Pratap was coming back from his school to the house of his uncle, which is situated in Civil Lines, Palwal.

When he reached near main gate of District Courts, Palwal, on Delhi –

Agra National Highway No.2 and was standing on the katcha berm of the road, a canter Tata – 709 bearing registration No.UP-80-BT-1151 came from opposite direction being driven by respondent No.1 in a rash and negligent manner and hit the deceased. Consequently, he received multiple grievous injuries and succumbed to the injuries in the accident. With regard to the accident, FIR No.399 dated 17.08.2012, under Sections 304-A and 279 IPC was registered at Police Station, City, Palwal. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

The Tribunal, on the basis of evidence led by the parties, accepted the claim petition and a sum of Rs.3,75,000/- was awarded as compensation on account of death of Bhanu Tanwar @ Bhanu Pratap along with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

The compensation has been assessed by taking age of the deceased as 16 years and his notional income as per the Second Schedule has been taken as Rs.15,000/- per annum and the multiplier of 15 was applied. Thus, the claimants were found entitled to compensation of Rs.2,25,000/- (15,000 x 15). In addition to it, further compensation of Rs.75,000/- was awarded towards future prospects and Rs.75,000/- on account of non-pecuniary damages. Hence, the claimants were found entitled to total compensation of Rs.3,75,000/-.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

Counsel for respondent No.3 has referred to the judgment of **Kishan Gopal & Anr vs Lala & Ors, 2013 (4) RCR (Civil) 276** and contends that the calculation of compensation with respect to death of children between 10 to 15 years of age has to be made as per Second Schedule. Whereas, the claim of the appellants is that being 16 years of age, compensation should be calculated by considering the deceased as daily wager. A perusal of judgment of Kishan Gopal's case (supra) wherein a reference is made for the judgment of **Lata Wadhwa & Ors. v. State of Bihar & Ors.**, AIR 2001 SC 3218 in which while examining the tortious liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. For this purpose, Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income was applied.

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

Since the deceased was 16 years of age at the time of accident, there is no ground to calculate the income of the deceased on the basis of Second Schedule and his income should be calculated by considering him an unskilled daily wager. As on 01.07.2012, the minimum wages of unskilled daily wager in Haryana was Rs.4,967/- per month. The accident took place on 17.08.2012. The income of the deceased can be taken as

Rs.5,000/- per month.

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 of **New India Assurance Co. Ltd. vs. Gopali & others**, 2012 (12) SCC 198, **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, **Rajesh and others vs. Rajbir Singh and others**, 2013 (9) SCC 54 and **Munna Lal Jain and another vs. Vipin Kumar Sharma and others**, 2015(3) Recent Apex Judgments 459. Thus, the compensation reassessed as under:-

Sr. No.	Heads	Calculation
(i)	Income	Rs.5,000/-
(ii)	50% of (i) above to be added as future prospects	Rs.5,000/- + Rs.2,500 = Rs.7,500/-
(iii)	50% of (ii) deducted as personal expenses of the deceased	Rs.7,500/- - Rs.3,750/- = Rs.3,750/-
(iv)	Compensation after multiplier of 18 is applied	Rs.3,750/- x 12 x 18 = Rs.8,10,000/-
(v)	Loss of love and affection for parents	Rs.1,00,000/- (Rs.50,000/- each)
(vi)	Funeral Expenses	Rs.25,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.9,35,000/-
(viii)	Enhanced amount of compensation	Rs.5,60,000/- (9,35,000 - 3,75,000)

The enhanced amount of compensation of Rs.5,60,000/- shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced 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 partly allowed.

18.08.2017

ashok

(RITU BAHRI)
JUDGE

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