

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

**FAO No.7498 of 2014(O&M)
Date of Decision-11.07.2017**

Kirpa ... Appellant

Versus

Rafiq and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Dhivya Jerath, Advocate for the appellant.

Mr. Kshitij Sharma, Advocate for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. This appeal has been preferred by Smt. Kirpa against the award dated 24.03.2014, vide which palpably a less compensation was awarded by the Motor Accident Claims Tribunal, Palwal (for short 'the Tribunal') in respect of death of deceased Lekh Raj who was son of the appellant.

[2]. The accident took place on 21.12.2010 at 5:30 PM when Lekh Raj (deceased) along with his wife Smt. Roop Rani was going on his motorcycle from Hathin to village Meerpur Korali. Smt. Roop Rani (wife of the deceased) was pillion rider. When he reached near village Kot near Bilal Dharam Kanta, in the meanwhile, the offending motorcycle came from opposite side in a rash and negligent manner. The same was being driven by respondent No.1 with a high speed without following the traffic rules and the said motorcycle directly hit the motorcycle of Lekh Raj (deceased). Lekh Raj and his wife fell down on the road and sustained multiple grievous injuries.

Lekh Raj died on the spot. They were shifted to General Hospital,

Palwal by Satish Kumar. Ramjeet was following them on a separate motorcycle. Lekh Raj was declared to be brought dead in the hospital. It was asserted by the claimants that the accident took place due to rash and negligent driving of respondent No.1. A criminal case was registered against him.

[3]. The claim petition was filed by the appellant along with Smt. Roop Rani (widow of the deceased) and Jai Raj minor son of the appellant. The claim petition was clubbed with other claim petitions filed by Jameel and Rafiq.

[4]. The Tribunal after framing necessary issues held that the accident in question took place due to rash and negligent driving of respondent No.1 causing death of Lekh Raj and injuries to Rafiq and Jameel. Under issues No.3 and 4, it was held that the driving licence of respondent No.1 was valid and effective at the time of accident. Insurance Company could not lead any evidence that the vehicle was being driven in violation of any terms and conditions of insurance policy at the relevant time. The claim petition was found to be maintainable. In the claim petition filed by the appellant along with widow of the deceased and minor son of the appellant, the Tribunal held that the deceased was 27 years of age as per postmortem report Ex.P7 claimed by the claimants. The date of birth of the deceased as per school leaving certificate was found to be 20.04.1979. In this way the age of the deceased was assessed to be 31-32 years at the time of accident. As per Tilak Raj, Clerk,

Government High School, Meerpur Korlali (PW 7), salary certificate of the deceased Ex.P6 was proved in which his gross salary was shown to be Rs.27,300/- per month. As per Haryana Government Policy, the widow was held entitled to get full salary till the age of superannuation of the deceased husband and thereafter, she is entitled to family pension. Claimant Smt. Roop Rani i.e. widow of the deceased had got re-married with one Devi Lal and has also given birth to a child from the second marriage as per depositions of Smt. Kirpa (PW 2) and Roshan Lal, Namberdar (PW 6) and she is living happy life. The Tribunal held that the claimant No.2 being brother of the deceased cannot be held to be dependent. Only appellant was held to be legal heir of deceased Lekh Raj and the Tribunal awarded a consolidated amount of Rs.2,00,000/- as compensation to the appellant.

[5]. I have heard learned counsel for the parties.

[6]. Learned counsel for the appellant submitted that the Tribunal ought to have assessed the total amount of compensation payable to the heirs and thereafter, the payable compensation in favour of the appellant should have been worked out. Apparently, the deceased was 31-32 years of age at the time of accident and was employed in the school against salary of Rs.27,300/- per month. Keeping in view the ratio laid down in **Rajesh and others Vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170,** the deceased was having future prospects to the tune of 50% of the

income, therefore, after adding 50% of the income in respect of future prospects, the monthly income comes out to be Rs.40,950/- ($27,300+13,650=40,950$) rounded off to Rs.41,000/-. Keeping in view the composition of the family, $1/3^{\text{rd}}$ amount has to be deducted in respect of personal expenses of the deceased and in this way, the monthly dependency would come out to be Rs.27,334/- ($41,000-13,666=27,334$) and Rs.3,28,008/- (rounded off to Rs.3,28,000/-) per year, Keeping in view the age of Lekh Raj (deceased) and in view of ratio laid down in **Smt. Sarla Verma Vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77.** a multiplier of 16 would be just and appropriate and after applying multiplier of 16, the total amount of compensation comes to be Rs.52,48,000/- ($3,28,000 \times 16=52,48,000$). An amount of Rs.1,00,000/- is awarded towards loss of love and affection in view of ratio laid down in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013(2) RCR (Civil) 945** and an amount of Rs.25,000/- is awarded towards funeral expenses and transportation. Therefore, total amount of compensation would come out to be Rs.53,73,000/- ($52,48,000+1,00,000+25,000=53,73,000$). Since there were three claimants, however, the maintainability of the claim petition qua claimant No.2 minor brother of the deceased was discarded by the Tribunal itself on the ground that he was not held to be dependent and entitlement of Smt. Roop Rani (widow of the deceased) was also negated on the ground that she was entitled last pay salary of the deceased and thereafter, family pension, but she contracted second marriage and was living happily in her new

family, therefore, the claimant appellant is entitled to only 50% of the total compensation i.e. Rs.26,86,500/- (53,73,000 X 50%=26,86,500). Since amount of Rs.2,00,000/- has already been awarded by the Tribunal, therefore, the appellant is entitled to Rs.24,86,500/- (26,86,500-2,00,000=24,86,500) along with interest @ 7.5% from the date of filing of claim petition till final realization of the amount.

[7]. With the aforesaid modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

11.07.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No