

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

FAO No.7566 of 2014

Date of decision: 28.04.2017

Prem Lata and another

..Appellants

Versus

Rajesh Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vikram Bali, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for respondent No.3-Insurance Company.

Daya Chaudhary, J.

Appellant-claimants have filed the present appeal for modification of award dated 16.08.2013 passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter called as 'the Tribunal') contending that an amount of ₹5,54,000/- has been awarded as compensation, which is on the lower side.

Briefly, the facts of the case are that the appellant-claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). As per claim petition, deceased-Ajay Gupta was travelling along with his Uncle and Aunt on 29.04.2011 by motorcycle bearing registration No.HR-03K-8279, which was being driven by his Uncle-Rajinder Kumar. While returning to their village, when they reached near Garg Hospital, Village Raipur Rani, a truck bearing registration No.HR-04N-5555, being driven at a very high speed and in a rash and negligent manner, came from behind and hit the motorcycle. The

motorcycle fell down, Ajay Gupta died at the spot and pillion rider, Neelam, suffered injuries. The claim petition was contested by the driver, owner of the offending vehicle as well as the Insurance Company by filing separate written statements. Respondent-Insurance Company raised preliminary objections that no accident had taken place and the claim petition is liable to be dismissed. It was also mentioned in the written statement that the offending vehicle was not insured with the company and the driver of the offending vehicle was not having valid and effective driving licence on the date of alleged accident. An objection was also raised that the claim petition was bad for non-joinder of the necessary parties. Ultimately, the claim petition was allowed qua claimant No.1-Prem Lata and it was dismissed qua claimant No.2-Karam Chand. Claimant-Prem Lata was granted compensation to the tune of ₹5,04,000/- by applying multiplier of 14 and after deducting 50% towards personal expenses of the deceased. She was also held entitled for ₹25,000/- towards funeral expenses and ₹25,000/- towards loss of estate. As such, the total amount of ₹5,54,000/- was awarded as compensation. An amount of ₹40,000/- was awarded to the claimant Neelam in second claim petition titled as Neelam vs. Rajesh etc. The claimants in both the petitions were also held entitled to interest @ 6% per annum from the date of filing of claim petition till its actual realization. All the respondents were held liable to pay the amount of compensation jointly and severally, which was to be indemnified by respondent No.3-Insurance Company. However, out of total amount of compensation, 50% was ordered to be given in cash to claimant-Prem Lata and remaining 50% was ordered to be deposited in the shape of fixed deposits of any nationalized bank for a

period of one year and the same was ordered to be paid after expiry of period of one year without any order of the Tribunal.

The present appeal has been filed by the appellants on the ground that less amount of compensation has been awarded wherein notice of motion was issued to respondent No.3 only. There was delay in filing as well as in re-filing this appeal, which has already been condoned.

Learned counsel for the appellants submits that the amount awarded by the Tribunal is on the lower side as no amount has been granted towards love and affection as well as future prospects. Learned counsel further submits that the compensation has been awarded by considering the age of the dependent-mother whereas the age of deceased was to be taken into consideration. Learned counsel for the appellants has also relied upon judgments rendered by Hon'ble the Apex Court in *Munna Lal Jain and another vs. Vipin Kumar Sharma and others, (2015) 6 SCC 347, Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others, 2012 ACJ 2002 (SC)* and *New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others, 2007 AIR (SC) 2649* in support of his arguments.

Learned counsel for respondent No.3-Insurance Company has opposed the submissions made by learned counsel for the appellants and submits that the age of dependent is to be taken into consideration and not the age of deceased and the amount of compensation awarded to the claimant-Prem Lata cannot be said to be on the lower side. Learned counsel further submits that the issue regarding future prospects is pending before Hon'ble the Apex Court. Learned counsel has also relied upon judgment rendered by this Court in *Usha and another vs. Krishan and others, FAO*

No.2455 of 2015 decided on 02.02.2017 in support of his arguments.

Heard arguments of learned counsel for the appellants as well as counsel for respondent No.3 and have also perused the impugned award.

The facts relating to accident, filing of claim petition, written statements and passing of award are not disputed.

The Tribunal has awarded compensation to the tune of ₹5,54,000/- including funeral expenses and loss of estate.

Admittedly, the age of deceased-Ajay Gupta was 18 years at the time of accident and his income has been assessed as ₹6000/- per month. The deduction of 50% has been made towards personal expenses and multiplier of 14 has been applied by considering the age of the mother whereas the appellants are claiming that the multiplier of 18 should have been applied by considering the age of the deceased. Two claim petitions were filed i.e., first claim petition was filed by the parents of the deceased-Ajay Gupta and second claim petition was filed by claimant-injured Neelam. Both the petitions were consolidated by the Presiding Officer of the Tribunal vide order dated 19.05.2012.

The following issues were framed by the Tribunal:-

1. Whether Ajay Gupta died and Neelam had suffered injuries in the accident in question took place on account of rash and negligent driving of offending Truck bearing registration No. HR04N-5555 by respondent No.1, as alleged?OPP.
2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what amount and from

whom?OPP.

3. Whether the respondent No.1 was holding a valid and effective driving licence at the time of accident, if so, to what effect?OPR.

4. Relief.

Claimant-Neelam was held entitled for a compensation of ₹15,000/- on account of medical expenses, ₹2000/- for diet and nutrition, ₹1500/- for transportation, ₹1500/- for attendant charges, ₹5000/- on account of pain and suffering and ₹15,000/- on account of loss of expectation of amenities or loss of life span due to the disability i.e., in total she was awarded ₹40,000/- against all heads as mentioned above.

Appellant-Claimant No.2-father of the deceased, Karam Chand, was not found to be dependent upon the deceased and he was not granted any compensation.

Appellant-claimant No.1, mother of deceased, Prem Lata, was granted compensation to the tune of ₹5,04,000/- after deducting 50% towards personal expenses + ₹25,000/- towards funeral expenses + ₹25,000/- towards loss of estate, which comes to ₹5,54,000/-.

The issue regarding grant of compensation towards future prospects has been referred to a Larger Bench of Hon'ble the Apex Court in ***National Insurance Company Limited vs. Pushpa and others, (2015) 9 SCC 166*** and it would not be possible to make recoveries in case, the same is not granted and as such, nothing can be granted at this stage towards future prospects.

As far as the issue regarding applying of multiplier by

considering the age of the deceased or the dependent is concerned, the same is to be applied by considering the age of the dependent instead of the deceased. This issue was considered by this Court in Usha's case (supra) and the observation made therein is reproduced as under: -

*“The next question to be considered is the multiplier applicable in this case. The submission made by learned counsel for the appellants was that the multiplier has to be according to the age of the deceased as referred to in the IIInd Schedule as well in view of the latest decision of the Supreme Court in **Munna Lal Jain Vs. Vipin Kumar Sharma, 2015(6) Scale 522**, is liable to be rejected in view of the decision of Supreme Court in **UPSRTC Vs. Trilok Chandra (1996) 4 SCC 362** which shall be a binding precedent. The logic of taking the age of the deceased or the claimant as laid down in **General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas 1994 (2) SCC 176** and **Trilok Chandara (supra)**, was not brought to the notice of the Supreme Court in **Munna Lal Jain & Anr. (supra)**. Otherwise also, in view of the judgment in **Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94** and **Union of India and Ors. v. S.K. Kapoor, (2011) 4 SCC 589**, the law laid down in **U.P.SRTC v. Trilok Chandara (1996) 4***

SCC 362 shall be taken as a binding precedent.”

In the present case, the age of the deceased was 18 years at the time of accident whereas the age of the dependent-mother was taken into consideration and multiplier of 14 has been applied. The Tribunal has correctly applied the multiplier by considering the age of the mother and as such, no interference is required by this Court.

The Tribunal has failed to award compensation towards love and affection. Although appellant-claimant No.2-Karam Chand was not granted any compensation as he was not dependent upon the deceased but he is also held entitled for an amount of ₹1,00,000/- towards love and affection. Appellant-Claimant No.1-Prem Lata is also held entitled for an amount of ₹1,00,000/- towards love and affection.

Accordingly, both the appellants are held entitled for ₹1,00,000/- each towards love and affection. The appellants are also held entitled for interest @ 7.5 % per annum on the enhanced amount from the date of filing of claim petition till its realization.

Accordingly, the present appeal is partly allowed and the appellants are held entitled for an amount of ₹5,54,000/-, which has been awarded by the Tribunal + ₹2,00,000/- towards love and affection along with interest @ 7.5 % per annum from the date of date of filing of claim petition till its realization

28.04.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes