

Sr. No. 223

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

**FAO No. 6246 of 2015(O&M)
Decided on: 09.08.2017**

Roshni Devi

.....Appellant

versus

Kulwinder Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ajay Shekhawat, Advocate
for the appellant.

Mr. Shekhar Kumar, Advocate for
Mr. Puneet Sharma, Advocate
for respondent.

Mr. Vinod Gupta, Advocate
for respondent No. 4-Insurance Company.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the claimant who is the mother of the deceased Manju, who expired in the accident.

The brief facts of the case are that on 7.11.2013 Manju and her sister Meenu were coming to their village from Fatehabad in the offending bus bearing Registration No. HR-57/3076, driven by respondent No. 1 in a rash and negligent manner. At about 3.00 P.M. when the bus reached near the village Kharakheri, both of them requested the driver of the bus to stop the bus so that they could alight from the bus. However, the driver did not slow down the bus rather he stopped the bus after about one kilometer near a hotel. When Manju was in process of alighting from the bus, the respondent driver suddenly started the bus in a high speed. Due to this,

Manju fell down on the road and received injuries on her head as well as over her body. The injured was shifted to MAMC, Agroha where she was provided first aid but was referred to Sarvodaya Hospital, Hisar in view of the seriousness of the injuries. She was operated upon for the injuries. However, she remained totally unconscious because she was having head injury. She was discharged from the hospital on 19.12.2013 as there was no sign of improvement in her condition. She could not recover from the injuries despite spending of more than ₹10 lakhs by the petitioner and ultimately she expired on 31.12.2013. On account of her death, the mother of the deceased Manju filed claim petition claiming ₹25 lakhs as compensation.

Respondent No. 1 the driver of the vehicle filed the written statement. He altogether denied the accident and said that the above said bus was never involved in this accident. Respondents No. 2 and 3 being the owner of the vehicle in question filed separate and joint written statement. They also claimed that the bus in question was not involved in the accident. It was further pleaded that false criminal case has been registered against the driver in this case. It was pleaded by respondents No. 2 and 3 that the bus in question was insured with respondent No. 4-Insurance Company.

Respondent-Insurance Company also filed separate written statement claiming that the petition has been filed in collusion with respondents No. 1 to 3. It was further pleaded that the vehicle in question was being driven in violation of the terms and conditions of the policy and the person driving it was not having a valid driving license.

Parties led their respective evidence.

After hearing learned counsel for the parties, the Motor

Accidents Claim Tribunal, Hisar(for short, 'the Tribunal') has awarded an amount of ₹9,06,260/- which is given as under:-

Expenses incurred on treatment of deceased	Rs. 5,51,260-00
Expenses upon transportation & last rites	Rs. 25,000-00
Compensation on account of loss of dependency	Rs. 2,80,000-00
Compensation on account of loss of love and affection	Rs. 50,000-00
Total:	Rs. 9,06,260-00

Learned counsel for the appellant has submitted that the Tribunal has wrongly assessed the notional income of the deceased to be ₹40,000/- per annum only. He has relied upon the judgment of the Hon'ble Supreme court rendered in the case of *V.Mekala versus M.Melathi and anohter; Civil Appeal No. 4880 of 2014* decided on 25.04.2014 and has submitted that the notional income of the deceased should be assessed to be ₹10,000/- per month as per the judgment of the Hon'ble Supreme Court. He has further, submitted that amount awarded on account of Loss of Love and Affection is grossly inadequate and it has to be enhanced to ₹1 lakh in view of the judgment of Hon'ble Supreme Court in *Vimal Kanwar and others vs. Kishore Dan and others 2013(2) R.C.R.(Civil) 945*. Further, it has been argued that the compensation granted on account of Transportation and Last Rites is also grossly inadequate. It is further submission of learned counsel for the appellant that the entire expenses of the Medical Treatment has not been reimbursed to the claimant. Therefore, it was prayed by learned counsel for the appellant that amount of compensation deserves to be enhanced.

Learned counsel for respondent No. 4 has vehemently opposed

the plea raised by learned counsel for the appellant and has submitted that the amount of compensation has rightly been assessed by the Tribunal. It does not require any enhancement.

After hearing learned counsel for the parties and perusing the records, this Court is of the view that the submission of learned counsel for the appellant regarding the notional income of the deceased deserves to be accepted to some extent in terms of the above said judgment of the Hon'ble Supreme Court rendered in the case of **V.Mekala (supra)**. In the above said judgment the Hon'ble Supreme Court assessed the notional income of the deceased, at ₹10,000/- per month taking her to be a bright student. Even after moderation of the same by any standards the notional income of the deceased at the time of accident cannot be assessed less than ₹6,000/- in any case. Even the minimum wages of unskilled labourer were at this level at the time of the accident. Therefore, the income of the deceased is taken to be ₹6,000/- per month. Hence, the annual income of the deceased comes to ₹72,000/-. After deducting 50% on account of personal expenses, as applied by the Tribunal, the loss of dependency in the case comes to ₹36,000/- per annum. Applied the multiplier as per the age of the mother, as has been applied by the Tribunal, the loss of dependency in this case comes to be ₹36000 x 14=5,04,000/-.

The submission of learned counsel for the appellant regarding Pain and Suffering also deserves to be accepted in terms of the above said judgment of the Hon'ble Supreme Court rendered in **Vimal Kanwar and others case(supra)**. In this judgment the Hon'ble Supreme Court has awarded an amount of ₹1,00,000/- on account of Loss of Love and Affection. Accordingly, in this case also an amount of ₹ 1,00,000/- is

awarded as compensation on account of Loss of Love and Affection. The amount awarded on account of transportation and last rites is also on the lower side. Since both the heads have been clubbed together, therefore, an amount of ₹35,000/- would be appropriate in this case. Hence, ₹35,000/- awarded on account of Transportation and Last Rites. The remaining heads of the compensation are retained as such.

In view of the above, the claimant in this case is held entitled to the amounts of compensation as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount (₹)</i>
1	Expenses on Treatment	5,51,260/-
2	Transportation and Last rites	35,000/-
3	Loss of Dependency	5,04,000/-
4	Loss of Love and Affection	1,00,000/-
	Total	11,90,260/-

Besides this, the interest is retained at the same rate as has been awarded by the Tribunal.

In view of the above, the present appeal is allowed and the Award of the Motor Accidents Claim Tribunal, Hisar is modified to the above extent.

9th August, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes