

FAO No.9825 of 2014 (O&M)

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

Sr. No.222

**FAO No.9825 of 2014 (O&M)
DECIDED ON: May 15, 2017**

SARIFAN

..APPELLANT

VERSUS

KHUTI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

Mr. Rajbir Singh, Advocate,
for respondent No.6-Insurance Company.

JASPAL SINGH, J.

CM No.27217-CII of 2014

Heard.

In view of the reasons mentioned in the application, which is duly supported with an affidavit of Smt. Sarifan widow of Aziz, the same is allowed and delay of 91 days in filing the present appeal is condoned.

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By virtue of the instant appeal, appellant-Sarifan has sought the enhancement of compensation awarded by the Motor Accident Claims

Tribunal, Nuh (for short 'Tribunal') vide Award dated March 28, 2014 on account of death of her minor son namely Rahul in a motor vehicular accident occurred on March 23, 2011.

2. The brief facts of the case are that on March 23, 2011, deceased Rahul along with his brother Jakir Hussain was going to Village Chilawali from their village on foot. When they reached near the field of Sharif, they met with Ms Kalsum and were talking with her on the kacha berm of the road. In the meantime, at about 1.00 AM, a tractor bearing registration No.RJ-02/1R-2348 came there, being driven in a very rash and negligent manner and struck against deceased Rahul and Ms Kalsum. As a result of accident, the deceased Rahul and Ms Kalsum had sustained serious multiple injuries on their person. After the accident, respondent No.5 i.e. driver of the tractor fled away from the spot after leaving the tractor there.

3. The respondents No.1 & 2 filed their joint written statement in the claim petition filed by appellant, whereas respondent No.4 filed a separate written statement. After the framing of necessary issues arising out of the pleadings of the parties, the parties led their evidence in support of their respective claims. After hearing the learned counsel for the parties and appraisal of the evidence, the learned Tribunal awarded compensation to the tune of ₹2,70,000/- on account of death of Rahul along with interest @ 9% per annum from the date of filing of claim petition till its realization. The respondents No.1 to 5 were held liable to make the payment of compensation so awarded.

4. Dissatisfied with the quantum of compensation awarded by the learned Tribunal, the appellant has preferred the instant appeal.

5. While assailing the impugned award, it has been submitted by learned counsel for the appellant that the same is absolutely against the evidence available on file and settled canons of law. The compensation awarded by the learned Tribunal is neither just nor adequate and only meagre amount of ₹2,70,000/- has been awarded on account of death of Rahul, who was aged about 12 years, at the time of his demise. It has further been submitted by learned counsel for the appellant that in the similar set of circumstances, the Hon'ble Apex Court through various judgments has awarded compensation to the tune of ₹5,00,000/- lacs and one of those judgments relied upon by learned counsel for the appellant is 'Kishan Gopal & another vs. Lala & others' 2013(4), R.C.R.(Civil) 276. In the said case, the age of deceased was 10 years, who was assisting his parents in agricultural occupation. His notional income was held to be ₹30,000/- per annum and by applying the multiplier of 15, it was worked out to ₹4.50 lacs. Apart from it, a sum of ₹50,000/- was awarded under conventional heads i.e. loss of love and affection, funeral expenses and last rites etc.

6. While concluding his arguments, it has been submitted by learned counsel for the appellant that at least the amount of compensation deserves to be enhanced to the tune of ₹5 lacs in this case.

7. On the other hand, learned counsel for respondent No.6- Insurance Company has submitted that the offending vehicle was not duly insured with the Insurance Company. Learned Tribunal while passing the impugned Award came to the conclusion that the cover note Ex.R1 of Shri Ram General Insurance Company Limited was fake through letter Ex.R4.

Cheque Ex.R5 which was given as premium of insurance was returned back to the Insurance Company by the concerned bank on account of “insufficient funds” through Ex.R7.

8. The respondents No.4 & 5 had also filed an appeal challenging their liability to pay the compensation but their appeal has already been dismissed by this court vide judgment dated August 01, 2016 passed in FAO No.8300 of 2014 (O&M) titled as “*Kallu and another vs. Bharti Axa General Insurance Company Ltd. and others*”. Thus, the Insurance Company cannot be held liable in any manner to pay the compensation.

9. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties and appraisal of the evidence on record as well as legal proposition, this court is of the considered view that the compensation awarded by learned Tribunal deserves to be enhanced to some extent.

10. Adverting to the facts of the case, deceased Rahul was aged about 12 years at the time of his demise in a vehicular accident and in view of the judgments relied upon by the learned counsel for the appellant referred to above, the notional income of the deceased aged about 10 to 15 years has been determined to the tune of ₹30,000/- per annum and by applying a multiplier of 15, the compensation works out to ₹4.50 lacs. In addition to it, the claimant is also entitled to a sum of ₹50,000/- under the conventional heads i.e. loss of love and affection, funeral expenses and last rites etc. Thus, the amount of compensation stood enhanced to ₹5 lacs from a sum of ₹2,70,000/-.

11. As far as the liability of the Insurance Company is concerned,

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there was no privity of contract in between the owner(s) and the Insurance Company as the insurance policy/cover note was found to be fake. The cheque through which the premium was allegedly paid to the Insurance Company also stood dishonoured. There is a detailed discussion in this regard made by learned Tribunal. Otherwise also, an appeal preferred by respondents No.4 & 5 i.e. owner and driver against the Award in question dated March 28, 2014 has already been dismissed as referred to above upholding their liability.

12. For the reasons aforesated, the instant appeal is partly allowed and the amount of compensation stands enhanced to the tune of ₹5 lacs from the sum of ₹ 2,70,000/- (i.e. a sum of ₹2,30,000/- in addition to the amount already awarded by the learned Tribunal). Respondents No.1 to 4 i.e. owners and respondent No.5 i.e. driver of the offending Tractor bearing Registration No.RJ-02/1R-2348 shall be jointly and severally liable to pay the enhanced compensation. They are directed to make the payment of enhanced compensation within a period of two months from the date of receipt of certified copy of this order, otherwise it shall entail interest @ 9% per annum as awarded by the learned Tribunal from the date of claim petition till its actual payment.

May 15, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**