

115.

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

FAO-1387-2017 (O&M)

Date of decision:03.03.2017

CHOLAMANDLAM MS GENERAL INSURANCE CO. LTD
.... Appellant

versus

MANJIT KAUR AND ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Punit Jain, Advocate, for the appellant.

HARI PAL VERMA, J.

CM-4514-CII-2017

Prayer in the application filed under Section 5 of the
Limitation Act is for condonation of delay of 1 day in filing the appeal.

For the reasons stated in the application, same is allowed
and the delay of 1 day in filing the appeal is condoned.

CM-4513-CII-2017

Prayer in the application filed under Section 151 CPC is for
condonation of delay of 25 days in refiling the appeal.

For the reasons stated in the application, same is allowed
and the delay of 25 days in refiling the appeal is condoned.

FAO-1387-2017

The appellant-Insurance Company has filed the present
appeal against the award dated 19.07.2016 passed by Motor Accident
Claims Tribunal, Kurukshetra (for short, the Tribunal), whereby the

claim petition filed by the claimants (respondents No.1 and 2 herein) under Sections 166 and 140 of the Motor Vehicles Act, 1988, for grant of compensation on account of death of their son Virender Singh, was allowed and the claimants were held entitled to compensation of ₹11,47,000/- along with interest @ 9% per annum from the date of institution of the petition till realization.

Briefly stated, on 11.10.2015, Harpreet Singh and his cousin Virender Singh were coming from the side of their fields to the side of their house on a motorcycle bearing registration No.HR-01P-8598 being driven by Virender Singh on normal speed and on his correct left hand side of the road while observing traffic rules. At about 6.30 PM, when they have reached near the fields of Milkhi Singh, situated in between villages Kanthala Kalan and Kanthala Khurd, in the meantime, offending tractor trailer bearing registration No.HR-03D-6382, driven by Sanjay Kumar (respondent No.3 herein) in a rash and negligent manner came from the side of Village Kanthala Khurd. On seeing the offending tractor trailer, Virender Singh slowed down the speed of his motorcycle, but the offending tractor trailer struck against the motorcycle of Virender Singh after coming on the wrong side of the road. Due to this impact, Virender Singh and his cousin fell down and received multiple and grievous injuries. Both the injured also came under the wheels of the offending tractor trailer and died at the spot. After the accident, the injured were shifted to LNJP Hospital, Kurukshetra where they were declared dead by the doctors.

Before the Tribunal, two separate claim petitions for the deaths of Harpreet Singh and Virender Singh were filed by their respective parents seeking compensation of their deaths i.e. MACP No.396 of 2015-Smt. Sukhwinder Kaur and another Versus Sanjay Kumar and others and MACP No.397 of 2015-Smt. Manjit Kaur and another Versus Sanjay Kumar and others.

However, the present appeal has arisen out of MACP No.397 of 2015 filed by Smt. Manjit Kaur and another Versus Sanjay Kumar and others, wherein the claimants (i.e. parents of the deceased) have averred that their son Virender Singh (since deceased) was aged about 17 years at the time of accident and was a student of 10+2 class and was also earning ₹15,000/- per month by helping his father in his work.

There is no dispute that both Harpreet Singh and Virender Singh have died due to the impact suffered in the accident caused on 11.10.2015 by rash and negligent driving of tractor trailer bearing registration No.HR-03D-6382. Before the Tribunal, the claimants succeeded in establishing the negligence on the part of the driver of the offending vehicle and accordingly, compensation of ₹11,47,000/- was awarded to the claimant No.1 (Manjit Kaur-mother of the deceased) vide award dated 19.07.2016, which is payable by the respondents No.1 to 3 jointly and severally with costs and interest @ 9% per annum from the date of institution of the petition till realization.

Learned counsel for the appellant-Insurance Company has argued that the award dated 19.07.2016 is wrong on facts and law. The deceased-Virender Singh was a school going student who was aged about 16 years at the time of accident as he was born in the year 1999 and the accident took place on 11.10.2015. Since the deceased was a student and non-earning member, the Tribunal has committed an error while taking the monthly income of a 16 year old student as ₹6,000/- which is equivalent to minimum wages. The judgment of the Hon'ble Apex Court in **Kishan Gopal and another Versus Lala Ram and others-2013 (4) RCR (Civil) 276** has not been considered by the Tribunal, where the Hon'ble Apex Court had taken the notional income of a child at ₹30,000/- per annum. The Tribunal should have applied the multiplier as per the age of the parents of the deceased and while seeing the old age of the parents, multiplier cannot be more than 14 in the present case. In the case of a bachelor (deceased), multiplier has to be adopted as per the age of the claimants and not as per the age of the deceased. He has relied upon the order dated 15.02.2017 passed by the Hon'ble Supreme Court in SLP (C) No.34648 of 2015 titled as **Meena and others Versus Rani Ammal and another** to contend that the age of the claimants should be taken into consideration for the purpose of determining compensation. He has further argued that the Tribunal has erred in applying future prospects of 50% which is not applicable in the case of notional income.

I have heard learned counsel for the appellant.

So far as the death of Virender Singh in the accident is concerned, the same is admitted. The Tribunal has held that Virender Singh died due to rash and negligent driving of Sanjay Kumar-respondent No.3 and the validity of his driving licence has also been established. The deceased-Virender Singh was a bachelor and at the time of his death, he was 16 years of age and, therefore, in view of law laid down by the Hon'ble Supreme Court in **Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121**, the Tribunal has rightly adopted the multiplier of 18. In view of judgments of the Hon'ble Supreme Court rendered in **Rajesh and others Versus Rajbir Singh and others-2013(3) RCR (Civil) 170 (Supreme Court)** and **Munna Lal Jain Versus Vipin Kumar Sharma-2015(3) RCR (Civil) 447 (Supreme Court)**, as per the age of the deceased, addition of 50% was made to notional income of the deceased towards future prospects. In this manner, the Tribunal assessed the income of ₹9,000/- per month. Since the deceased was bachelor, therefore, in the light of judgment of **Sarla Verma's case** (supra), 50% deduction was made towards the personal expenses.

As per the judgment of the Hon'ble Supreme Court rendered in **Reshma Kumari and others Versus Madan Mohan and another-2013(9) SCC 65**, which requires to select the multiplier as indicated in Column No.4 prepared in **Sarla Verma's case** (supra), reads as under:-

<i>Age of the deceased</i>	<i>Multiplier scale as envisaged in Susamma Thomas</i>	<i>Multiplier scale as adopted by Trilok Chandra</i>	<i>Multiplier scale in Chandra as clarified in Charlie</i>	<i>Multiplier specified in second column in the Table in II Schedule</i>	<i>Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)</i>
(1)	(2)	(3)	(4)	(5)	(6)
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15 to 20 yrs.	16	18	18	16	19

Thus, this Court finds that the Tribunal has rightly applied the multiplier of 18 for the deceased who was 16 years of age at the time of his death. So far as the citation in Meena's case (supra) is concerned, the perusal thereof shows that in the said order, the judgments passed in Reshma Kumari and Sarla Verma have not been considered and the said order has been passed in the peculiar facts and circumstances of that case.

In the connected appeal i.e. FAO-783-2017 titled as Cholamandlam MS General Insurance Company Limited Versus Sukhwinder Kaur and others, this Court has considered the controversy included in the present appeal, and has maintained the award passed by the MACT, Kurukshetra, vide judgment dated 06.02.2017.

In view of above including the judgment dated 06.02.2017 passed in FAO-783-2017 titled as Cholamandlam MS General Insurance Company Limited Versus Sukhwinder Kaur and others, this Court does not find any illegality in the impugned award and accordingly, the appeal filed by the Insurance Company stands dismissed.

03.03.2017
sanjeev

(HARI PAL VERMA)
JUDGE