

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

**FAO No.9978 of 2014 (O&M)
Date of decision: 18.07.2017**

Urmila Rani and another

....Appellants

Versus

Ravi Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Suri, Advocate,
for the appellants.

Mr. Vikram Bali, Advocate,
for respondent No.1.

Mr. Abhinandan Pandhi, Advocate,
for Ms. Manjari Nehru Kaul, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM-27555-CII-2014

In view of the averments mentioned in the application, same is allowed and delay of 223 days in filing of the appeal is condoned.

FAO No.9978 of 2014

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') vide award dated 06.01.2014, on account of death of Anil Kumar Sharma in a motor vehicular accident which took place on 28.09.2011. Appellants are parents of deceased Anil Kumar Sharma.

Brief facts of the case are that on 28.09.2011, Anil Kumar Sharma (since deceased) had gone to drop his colleague-Saruchi Sharma at Amrawati Main Bazar, Baddi, on a motorcycle bearing registration No.HP-12-B-6912. On return journey, at about 9.00 P.M., when he reached in front of Amartax on Sai Road, village Kaduana, a Trax jeep bearing registration No. HP-12-D-8883 being driven by Ravi Kumar-respondent No.1 in a rash and negligent manner, came from the opposite side at a high speed and struck against the motorcycle of Anil Kumar. Anil Kumar Sharma along with his motorcycle was dragged by the offending jeep upto 100 yards. With regard to the accident, FIR No.236 dated 28.09.2011, under Sections 279/304-A IPC was registered at Police Station, Baddi. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

Upon notice, driver and owner i.e. respondents Nos.1 and 2 filed a joint written statement, whereby they denied any accident having been taken place as alleged. It was further stated that the deceased himself had struck his motorcycle with the jeep in question. A false FIR was registered by the police just to help the claimants in getting compensation.

Insurance Company-appellant-respondent No.3 contested the claim of the claimants and pleaded that the petition is not maintainable. It was further stated that no accident had taken place, as alleged by the claimants and a false and frivolous FIR had been lodged against respondent No.1. Rest of the averments have been denied and a prayer for dismissal of petition was made.

From the pleadings of the parties, following issues were framed:-

1. Whether Anil Kumar Sharma has died on account of injuries sustained in the accident in question which took place due to

rash and negligent driving of Trax bearing registration No. HP-12-D-8883 by respondent No.1? OPP.

2. If issue No.1 is proved, whether the claimants are entitled to any compensation, if so to what amount and from whom? OPP.

3. Whether the respondent No.1 was not holding a valid and effective driving licence at the date of accident in question, if so, to what effect? OPR-3.

4. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had taken place due to rash and negligent driving of offending vehicle by its driver-Ravi Kumar and thus, returned the finding on issue No.1 in favour of the claimants. This finding is rightly based on the deposition of Amit Kumar (PW-2), who was an eye witness of the accident and on whose statement, FIR, Ex.P18, was registered. ASI Raghubir Singh (PW-3) deposed that after getting information regarding the accident, he reached at the spot and recorded the statement of complainant-Amit Kumar, on the basis of which, FIR, Ex.P18, was registered. He proved copy of challan as Ex.P19. Umesh Verma (PW-4), who was posted as Criminal Ahlmad in the Court of Judicial Magistrate, Nalagarh, produced the criminal file relating to the case titled as 'State Vs. Ravi Kumar' and deposed that charge against the accused (driver) was framed on 06.10.2012 for commission of offences punishable under Sections 279 & 304-A IPC.

Mr. C.L. Sharma, Assistant Examiner, SFCL, Himachal Pradesh was examined as RW-1, who produced the summoned record relating to FIR in question and deposed that he had received a sealed parcel (vial) bearing four seals bearing impression 'E', which was stated to be

containing blood of Ravi Kumar. On examination, the contents were found containing ethyl alcohol and the quantity of the same was 168.59% mg. He proved his report as Ex.R1 in this regard. He has further stated that presence of quantity of ethyl alcohol was moderate, but he could not say as to what extent this quantity of alcohol could effect the senses and driving skills of a person. Ramesh Kumar, Naib Nazir, Office of Civil Judge (Junior Division), Nalagarh (RW-2) had produced the record of criminal case file relating to the accident in question and deposed that the driving licence of Ravi Kumar (driver) was not on the same.

Deceased-Anil Kumar Sharma was working as Assistant-HR with the Time Technoplast, village Dharampur, District Solan. As per salary certificate, Ex.P21, he was getting salary of Rs.1,01,887/- per annum. In this income, 30% has been added on account of future prospects, which came to be Rs.1,32,453/- per annum. Out of this, 50% has been deducted towards personal expenses of the deceased. Accordingly, total dependency came to Rs.66226/- per annum. After applying the multiplier of 17, loss of dependency came to be Rs.11,25,850/-. Apart from this, Rs.25,000/- were awarded to claimant No.1 (mother) towards funeral expenses and Rs.5000/- towards loss of estate. Ultimately, the claim petition was accepted and a sum of Rs.11,55,850/- was awarded as compensation in favour of claimant No.1-mother. Suresh Kumar-claimant No.2 (father) and Kamal Sharma-claimant No.3 (brother) were not found entitled to the compensation, as they were not dependent upon the deceased. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

I have heard learned counsel for the parties and perused the

case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of *Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520, *New India Assurance Company Limited vs Gopali and others*, 2012 (12) SCC 198, *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77, *Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54 and *Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex Judgments 459, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.1,01,887/- per annum
(ii)	30% of (i) above is added towards future prospects.	1,01,887 + 30566 = Rs.132453/- per annum
(iii)	50% of (iii) above is deducted as personal expenses of the deceased	1,32,453 – 66,227 = Rs.66,226/-
(iv)	Compensation after multiplier of 17 is applied	Rs.66,226/- x 17 = Rs.11,25,842/-
(v)	Loss of love and affection for the mother (appellant Nos.1)	Rs.50,000/-
(vi)	Funeral expenses	Rs.25,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.12,00,842/-
(viii)	Enhanced amount of compensation	Rs.12,00,842 – 11,55,850 = Rs.44,992/-

The enhanced amount of compensation of **Rs.44,992/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the

case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. The amount of compensation shall be released in favour of the claimant on furnishing of adequate surety bonds to the satisfaction of the Tribunal/Execution Court. In view of the order of even date passed by this Court in connected appeal i.e. FAO-1448-2014, the insurance company is directed to pay the amount of compensation as assessed above to the claimant(s) with the liberty to recover the same from the respondent Nos.1 and 2 (owner and driver).

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

18.07.2017
ajp

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No