

112.

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

FAO-7758-2016 (O&M)

Date of decision:06.02.2017

ORIENTAL INSURANCE CO LTD

... Appellant

versus

DANI RAM & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.N. Singal, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-Insurance Company has filed the present appeal against the award dated 04.10.2016 passed by MACT, Bhiwani, whereby the claim petition filed by respondents No.1 and 2/claimants under Section 166 of Motor Vehicles Act, 1988 for grant of compensation in respect of death of their son Rajbir, was allowed and the claimants were held entitled to compensation of ₹8,08,400/-.

Briefly stated, on 15.06.2014, Rajbir (since deceased) was going from his house to Bala Wala Johar for serving food to Baba Ji on his motorcycle bearing registration No.HR19A-0237. His brother-Satyavir, was following him on his motorcycle bearing registration No.HR35-C/1257. When Rajbir reached in between village Achina and Bass, a motorcycle bearing registration No.HR77-8918 came from the opposite side, being driven in rash and negligent manner and at a very

high speed, struck into the motorcycle of deceased Rajbir straightly. Due to the impact of accident, Rajbir fell down on the road and received multiple injuries on his forehead. The driver of the offending motorcycle, left the same at the spot and ran away. Rajbir succumbed to the injuries received by him in the accident. On the basis of statement of his brother-Satyavir, an FIR No.136 dated 16.06.2014 under Sections 279 and 304-A of IPC was registered at Police Station Baund Kalan against the driver of the motorcycle, namely, Sanjay.

The Tribunal granted compensation of ₹8,08,400/- to the claimants in the following manner:-

(i)	Monthly income of Rajbir son of Dani Ram	₹6700
(ii)	One-half amount is to be deducted towards personal living expenses of deceased in view of <u>Sarla Verma's case (Supra)</u>	₹6,700-3,350=3,350/-
(iii)	Annul income for the purpose of awarding compensation.	₹3,350x12=40,200/-
(iv)	Multiplier is to be applied in accordance with age of the deceased, who was in the age group of 26 to 30 years at the time of accident as per <u>Sarla Verma's case (Supra)</u>	₹40,200x17=6,83,400/-
(v)	Compensation comes to	₹6,83,400/-
(vi)	Expenditure incurred on transportation and cremation of deceased Rajbir	₹25,000
(vii)	Compensation on account of breakage of emotional bondage.	₹1,00,000/-
	Total amount of compensation comes to:-	₹8,08,400/-

Learned counsel for the appellant-Insurance Company has impugned the said award through the instant appeal. He has argued that the multiplier in the case should have been applied considering the age of the dependents and not of the deceased. The claimants, who are father and mother of the deceased-Rajbir, are aged about 75 years and 72 years respectively. He has further argued that since there was a

head-on collision between two motorcycles, the deceased was equally negligent. Therefore, the principle of contributory negligence is to be applied in the case. Further, there is no averment that the deceased was having motorcycle on his extreme left side of the road and, therefore, the accident took place in the middle of the road. The income of the deceased at ₹6,700/- per month has been wrongly assessed by the Tribunal. He has further argued that both the claimants are at the fag end of their life and, therefore, multiplier of 17 should not have been applied.

I have heard learned counsel for the appellant.

As per claim petition, at the time of death, the deceased-Rajbir was aged about 26 years. He was an agriculturist and was also doing the work of dairy farming. His monthly income was ₹20,000/-. PW3-Satyavir, who is brother of the deceased and an eye witness to the accident, on whose behalf, FIR was registered, has supported the claim of the claimants and has stated that the motorcycle bearing registration No.HR77-8918 came from the opposite side, being driven in rash and negligent manner and at a very high speed, struck into the motorcycle of deceased-Rajbir straightly and due to the impact of the accident, the deceased fell down on the road and received multiple injuries on his forehead.

Respondents No.1 and 2/claimants have claimed that the deceased was an agriculturist and was also doing dairy farming. PW2-Mahabir son of Sukh Ram has supported this fact and has stated that

the deceased-Rajbir was cultivating his land on contract basis. Since no documentary evidence was produced, the fact that the deceased was cultivating the land of Mahavir on contract basis, was not accepted. Accordingly, the income of the deceased was taken as that of a casual labourer in the year, 2014 i.e. ₹6,700/- per month. The offending motorcycle has resulted the accident leading to the death of Rajbir and on the relevant date of accident, the vehicle was owned by Sanjay (respondent No.4 herein). The Tribunal has assessed the income of the deceased as ₹6,700/- and one-half of the amount has been deducted towards personal living expenses of the deceased in view of law laid by the Hon'ble Supreme Court in **Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121**. After considering various heads, the Tribunal has awarded ₹8,08,400/-.

In view of above, the plea as raised by the counsel for the appellant that it being a head-on collision accident and the deceased was liable for contributory negligence, cannot be accepted. Similarly, this Court does not find that the multiplier adopted by the Tribunal is to be interfered with.

Accordingly, the appeal filed by the Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

06.02.2017
sanjeev

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