

124.

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

FAO-783-2017 (O&M)

Date of decision:06.02.2017

CHOLAMANDLAM MS GENERAL INSURANCE CO. LTD

.... Appellant

versus

SUKHWINDER 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-2498-CII-2017

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 11 days in filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 11 days in filing the appeal is condoned.

FAO-783-2017

The appellant-Insurance Company has been filed the present appeal against the award dated 19.07.2016 passed by MACT, Kurukshetra, in favour of claimants under Section 166 and 140 of the Motor Vehicles Act, 1988.

Briefly stated, on 11.10.2015, Harpreet Singh (since deceased) and his cousin Virender Singh were coming from the side of

their fields to the side of their house on 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 observing traffic rules. At about 6.30 PM, when they 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, serious 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 claim petitions for the death of Harpreet Singh and Virender Singh were filed by their respective parents for compensation 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.396 of 2015- Smt. Sukhwinder Kaur and another Versus Sanjay

Kumar and others, wherein the claimants (i.e. parents of the deceased) have averred that their son Harpreet Singh (since deceased) was aged about 16 years at the time of accident and was a student of 10+1 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 Varinder 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 vide award dated 19.07.2016, which shall be 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 Tribunal has erred in applying future prospects of 50% which is not applicable in the case of notional income. The Tribunal should have applied the multiplier as per the age of the parents and taking into consideration the age of the parents, multiplier cannot be more than 14 in the present case. He has further argued that in case of a bachelor, the multiplier has to be adopted as per the age of the claimants (normally the mother of the deceased). He has further argued that the Tribunal

has awarded higher compensation for death of a child in a motor accident. He relied upon the judgment of the Hon'ble Apex Court in **Kishan Gopal and another Versus Lala Ram and others-2013 (4) RCR (Civil) 276** to contend that the Hon'ble Apex Court has fixed compensation of ₹5 lakhs in case of death of a child, aged 10 years, who was assisting his parents in agricultural occupation and the notional income was taken at ₹30,000/- per annum. Reliance has also been made to the judgment rendered in **Kaushlya Devi Versus Shri Karan Arora and others-(2007) 11 SCC 120**, to contend that compensation in case of death of children in accident cannot be assumed with reasonable certainty as neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation. He has further argued that this Court, while disposing the appeal i.e. **FAO No.5186 of 2013 titled as Laxman and another Versus Shiv Shankar and others, decided on 10.05.2016**, has placed reliance upon the decision in **Kishan Gopal (supra)** wherein the claimants have been awarded ₹5 lakhs as compensation on account of death of their son, aged 15 years, who was learning welding work.

I have heard learned counsel for the appellant.

There is no dispute that the deceased-Harpreet Singh was aged about 15 years which is supported by school certificate (Ex.P9). The deceased was helping his father in his work. Since the deceased was held to be a student, the Tribunal has worked out the determination

of compensation on the basis of notional income and some other guesswork. Accordingly, the compensation was awarded on the basis of minimum wages which will be payable to a casual worker which the deceased would have got on completion of his education. As per notification No.6185-6315 dated 13.02.2015, the Government has fixed the minimum wages of ₹5,812/- as payable to a casual labourer. Therefore, the Tribunal has not committed any error in assessing the income of the deceased-Harpreet Singh of ₹6,000/- per month. The case cited by the learned counsel for the appellant is prior to the date of issuance of notification. Therefore, that is not applicable to the facts and circumstances of the present case. Accordingly, by considering the minimum wages of ₹6,000/- and also considering the age of the deceased, adding 50% towards future prospects, the Tribunal has awarded a compensation ₹11,47,000/-.

I find no illegality in the impugned award and accordingly, the appeal filed by the Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

06.02.2017
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.